INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2020–25
June 15, 2020

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

Rev. Proc. 2020-33, page 956.
This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

ADMINISTRATIVE, EMPLOYEE PLANS, EMPLOYMENT TAX, EXEMPT ORGANIZATIONS

Notice 2020-35, page 948.
Notice 2020-35 postpones deadlines for certain specified time-sensitive actions with respect to certain employment taxes, employee benefit plans, exempt organizations, and Coverdell education savings accounts on account of the ongoing COVID-19 pandemic. The notice also provides a temporary waiver of the requirement for a Certified Professional Employer Organization to file certain employment tax returns and their accompanying schedules electronically.

EMPLOYEE PLANS

Announcement 2020-7, page 959.
Rev. Proc. 2017-41, 2017-29 I.R.B 92, sets forth procedures for providers of pre-approved plans to obtain opinion letters, once every six years, for qualified pre-approved plans submitted with respect to the third (and subsequent) six-year remedial amendment cycles. This announcement states that 1) the IRS plans to issue opinion letters with regard to the third six-year remedial amendment cycle for pre-approved defined contribution plans by June 30, 2020 or soon thereafter, 2) the IRS will accept from an employer eligible to submit a determination letter request an application for an individual determination letter under the third six-year remedial amendment cycle for pre-approved defined contribution plans from August 1, 2020 to July 31, 2022, and 3) an employer adopting a newly approved plan will be required to adopt the plan document by July 31, 2022.

EMPLOYMENT TAX

REG-100320-20, page 960.
This document sets forth a proposed regulation that provides rules for Federal income tax withholding on certain periodic retirement and annuity payments to implement an amendment made by the Tax Cuts and Jobs Act. This proposed regulation would affect payors of certain periodic payments, plan administrators that are required to withhold on such payments, and payees who receive such payments.

EXEMPT ORGANIZATIONS

T.D. 9898, page 935.
This document contains final regulations updating information reporting regulations under section 6033 that are generally applicable to organizations exempt from tax under section 501(a) to reflect statutory amendments and certain grants of reporting relief for tax-exempt organizations required to file an annual Form 990 or 990-EZ information return that have been made since the previous regulations were adopted.

Finding Lists begin on page ii.

INCOME TAX

Notice 2020-40, page 952.
The notice publishes the inflation adjustment factor for the carbon oxide sequestration credit under § 45Q for calendar year 2020. Also, the notice includes a statement of the amount of qualified carbon oxide that has been taken into account by taxpayers filing an annual report pursuant to section 6 of Notice 2009-83, 2009-2 C.B. 588.

Notice 2020-41, page 954.
Beginning of Construction for Sections 45 and 48; Extension of Continuity Safe Harbor to Address Delays Related to COVID-19. Notice 2020-41 extends the Continuity Safe Harbor for both the production tax credit for renewable energy facilities under section 45 (PTC) and the investment tax credit for energy property under § 48 (ITC) for projects that began construction in either calendar years 2016 or 2017. The notice also provides a 3½ Month Safe Harbor for services or property paid for by the taxpayer on or after September 16, 2019 and received by October 15, 2020.

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

26 CFR §1.6033-2

T.D. 9898

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations updating information reporting regulations under section 6033 that are generally applicable to organizations exempt from tax under section 501(a) to reflect statutory amendments and certain grants of reporting relief for tax-exempt organizations required to file an annual Form 990 or 990-EZ information return that have been made since the previous regulations were adopted. The final regulations affect tax-exempt organizations.

DATES: Effective date: The final regulations contained in this document are effective on May 28, 2020.

Applicability date: For dates of applicability, see §1.6033-2(l)(2).

FOR FURTHER INFORMATION CONTACT: Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-3150 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Subject to various exceptions, section 6033(a)(1) of the Internal Revenue Code (Code) requires every organization exempt from taxation under section 501(a) (tax-exempt organization) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary of the Treasury or his delegate (Secretary) may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. This requirement also applies to certain political organizations described in section 527(e)(1) (section 527 organizations). The annual information returns required under section 6033 are Forms 990, "Return of Organization Exempt From Income Tax;" 990-EZ, "Short Form Return of Organization Exempt From Income Tax;" 990-PF, "Return of Private Foundation;" and 990-BL, "Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons." Annual returns filed by tax-exempt organizations, section 527 organizations, nonexempt private foundations described in section 6033(d), and section 4947(a)(1) trusts (which are both treated as organizations described in section 501(c)(3) for this purpose) are information returns intended to help ensure that the filing organizations comply with applicable federal tax laws. Most information on these annual returns is available for public inspection under section 6104.

Section 6033(a)(3) provides a list of organizations that are excepted from the filing requirements imposed under section 6033(a)(1). Specifically, section 6033(a)(3)(A)(ii) provides that section 6033(a)(1) shall not apply to any organization (other than a private foundation) that is described in section 6033(a)(3)(C) whose gross receipts are not normally more than $5,000 annually. The list of organizations provided in section 6033(a)(3)(C) includes certain fraternal beneficiary societies, orders or associations described in section 501(c)(8); certain organizations described in section 501(c)(3) (such as religious organizations and educational organizations described in section 170(b)(1)(A)(ii)); and organizations described in section 501(c)(1) that are corporations wholly owned by the United States or any agency or instrumentality thereof or wholly-owned subsidiaries of such corporations.

Section 6033(a)(3)(B) provides discretionary authority to the Secretary to relieve any organization required to file under section 6033(a)(1) (other than supporting organizations described in section 509(a)(3)) from filing an information return where he determines that such filing is "not necessary to the efficient administration of the internal revenue laws."

Section 6033(b) provides a list of items that are generally required to be furnished annually by organizations described in section 501(c)(3), "at such time and in such manner as the Secretary may by forms or regulations prescribe." The statutory list of items generally required to be furnished annually has been amended by Congress from time to time to account for additional requirements of organizations described in section 501(c)(3). For example, section 6033(b) was updated by the Taxpayer Bill of Rights 2, Public Law 104-168, in 1996 to include items in sections 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in section 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person under section 4958).

Section 6033(g) provides that a section 527 organization that has gross receipts of $25,000 or more for a taxable year[1] shall file an annual return containing the information required by section 6033(a)(1) for organizations exempt from taxation under section 501(a). The statute authorizes the Secretary to modify the information required to be reported to require only information that is necessary for purposes of carrying out section 527 and such other information as the Secretary deems necessary to carry out the provisions of section 6033(g).

Section 6033(h) provides additional reporting requirements for controlling organizations, within the meaning of section 512(b)(13). Section 6033(h) requires con-

[1] In the case of a qualified State or local political organization described in section 527(e)(5), $25,000 is replaced by $100,000.

trolling organizations to include on their returns any (1) interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13)), (2) any loans made to each such controlled entity, and (3) any transfers of funds between such controlling organization and each such controlled entity.

Section 6033(k) provides additional reporting requirements for sponsoring organizations described in section 4966(d)(1). Section 6033(k) requires each such organization to report on its annual return (1) the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year, (2) the aggregate value of assets held in such funds at the end of such taxable year, and (3) the aggregate contributions to and grants made from such funds during such taxable year.

Section 6033(l) provides additional reporting requirements for supporting organizations described in section 509(a)(3). Section 6033(l) requires each supporting organization to report on its annual return: (1) The supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support; (2) whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and (3) a certification that the organization meets the requirements of section 509(a)(3)(C).

The general rule regarding confidentiality of returns is found in section 6103, which provides that returns and return information shall be confidential, and, except as authorized by the Code, no person having access to this information shall disclose any return or return information obtained by that person in any manner.

Section 6104 provides an exception to the general rule regarding confidentiality of returns. In general, under section 6104(b), the Secretary must make the annual returns filed under section 6033 available to the public. However, section 6104(b) does not authorize the Secretary to disclose to the public the name or address of any contributor to any tax-exempt organization except a private foundation (as defined in section 509(a), including a trust described in section 4947(a)(1) that is treated as a private foundation) or a section 527 organization. Section 301.6104(b)-1(b)(2) provides that although the names and addresses are not to be disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure of annual returns by the Secretary, section 6104(d) and §301.6104(d)-1 require certain tax-exempt organizations to provide their annual information returns to a member of the public upon request. Similar to the restrictions on disclosing contributor information placed on the Secretary by section 6104(b), section 6104(d)(3)(A) provides that an organization, other than a private foundation or a section 527 organization, is not required to disclose the names and addresses of its contributors.

The Treasury Regulations in effect prior to this Treasury Decision (prior regulations), which remain largely unchanged, reflected many of the statutory requirements of section 6033. Consistent with section 6033(a)(1), §1.6033-2(a)(1) of the regulations provides that "except as provided in section 6033(a)(3) and paragraph (g) [of §1.6033-2], every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions, issued with respect to the return."

Although the information to be reported for any particular tax year is set forth in the forms and instructions for each such year, §1.6033-2(a)(2)(ii) of the regulations also provides a list of "information generally required to be furnished by an organization exempt under section 501(a)" on the annual return, which generally tracks section 6033(b).[2] However, the list in the prior regulations had not been updated to reflect certain information that the statute generally requires to be reported because the statute had been amended following the original issuance of the regulations. Specifically, items in sections 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in section 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person under section 4958) were not reflected in the prior regulations.

Two provisions of the prior regulations expanded upon the statute with regard to the reporting of certain contributor information. First, section 6033(b)(5) requires organizations described in section 501(c)(3) generally to provide on the annual information return filed with the IRS the names and addresses of persons who contribute $5,000 or more during the taxable year. Section 1.6033-2(a)(2)(ii)(F) of the prior regulations had extended this requirement beyond section 501(c)(3) organizations to all organizations exempt from taxation under section 501(a). Second, §1.6033-2(a)(2)(iii)(D) of the prior regulations provided that organizations described in section 501(c)(7) (social clubs), section 501(c)(8) (fraternal beneficiary societies), or section 501(c)(10) (domestic fraternal societies) generally must report the name of each person who contributes more than $1,000 to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Incorporating the statutory filing exceptions of section 6033(a)(3), §1.6033-2(g)(1) provides a list of organizations that are not required to file an annual return under section 6033(a)(1). Within that list, §1.6033-2(g)(1)(iii) previously provided that certain specified organizations described in section 6033(a)(3)(C) whose gross receipts are generally not more than $5,000 annually are not required to file the return required under section 6033(a)(1). Further, §1.6033-2(g)(6) provides that the Commissioner may relieve any organization or class of organizations (other than a supporting organization described in section 509(a)(3)) from filing, in whole or

[2] The list in the regulations includes, but is not limited to, gross income for the year; dues and assessments from members and affiliates for the year; expenses incurred within the year attributable to gross income; disbursements (including prior years' accumulations) made within the year for the purposes for which it is exempt; a balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year; the total of the contributions, gifts, grants and similar amounts received by it during the taxable year; the names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization; and certain compensation and payment information. See §1.6033-2(a)(2)(ii).

in part, the annual return required under section 6033 if the Commissioner "determines that such returns are not necessary for the efficient administration of the internal revenue laws."

Accordingly, other than with regard to supporting organizations, section 6033 and the regulations under section 6033 provide the Commissioner with broad discretionary authority to determine what information must be reported and to grant relief, in whole or in part, from the annual filing requirements of tax-exempt organizations if the Commissioner determines that the information is not necessary for the efficient administration of the internal revenue laws.

For decades, the Commissioner has exercised discretion under section 6033(a)(3)(B) and §1.6033-2(g)(6) to relieve organizations of filing requirements under section 6033 through subregulatory guidance such as revenue procedures and annual information return instructions including, for example, Rev. Proc. 95-48, 1995-2 C.B. 418, which grants reporting relief for governmental units and affiliates of governmental units, and Rev. Proc. 96-10, 1996-1 C.B. 577, which relieves from a filing requirement under section 6033(a) certain organizations that are operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches. (Both revenue procedures are discussed further in Part VI of the Summary of Comments and Explanation of Provisions section of this preamble.) Revenue Procedure 83-23, 1983-1 C.B. 687, represents another exercise of this discretion. In that revenue procedure, the Department of the Treasury (Treasury Department) and the IRS increased to $25,000 the minimum amount of gross receipts normally required to be received in a year by an organization exempt under section 501(a) to trigger a filing requirement under section 6033(a). That revenue procedure also expanded the group of tax-exempt organizations not required to file an annual information return due to a gross receipts threshold beyond those listed in section 6033(a)(3)(C). Revenue Procedure 2011-15, 2011-3 I.R.B. 322, further increased this gross receipts threshold amount to $50,000 for most organizations exempt under section 501(a).[3] Revenue Procedure 2011-15 also relieved most foreign organizations and organizations formed in a United States possession from a filing requirement under section 6033(a) if their gross receipts from sources within the United States do not exceed the $50,000 threshold and if they have no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

Similarly, consistent with past exercises of authority under section 6033 and the prior regulations, the Treasury Department and the IRS issued Rev. Proc. 2018-38, 2018-31 I.R.B. 280, granting tax-exempt organizations required to file the Form 990 or Form 990–EZ, other than organizations described in section 501(c)(3), relief from reporting the names and addresses of contributors on Schedules B, "Schedule of Contributors," filed with Form 990 or 990-EZ (or completing the similar portions of Part IV of the Form 990–BL). Revenue Procedure 2018-38 also provided that organizations described in sections 501(c)(7), (8), or (10) need not provide the names and addresses of persons who contributed more than $1,000 during the taxable year to be used for exclusively charitable purposes on their annual information returns required under section 6033. Revenue Procedure 2018-38 did not affect the information required to be reported on Forms 990, 990-EZ, or 990-PF by organizations described in section 501(c)(3) (which for purposes of section 6033 include nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations described in section 6033(d)) or section 527 organizations.

On July 30, 2019, the United States District Court for the District of Montana set aside Rev. Proc. 2018-38 on procedural grounds because, in the court's view, the notice and comment procedures of the Administrative Procedure Act applied and Rev. Proc. 2018-38 had not been subject to such notice and comment. *See Bullock, et al. v. IRS*, 401 F.Supp.3d 1144 (D. Mont. Jul. 30, 2019). However, the court emphasized that its ruling did not implicate the merits of the revenue procedure and that "the substance" of the Commissioner's ultimate decision on reporting the names and addresses of contributors "remains subject to the Commissioner's discretion." *Id*. at 1154, 1159.

On September 10, 2019, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-102508-16) in the **Federal Register** (84 FR 47447) containing proposed regulations under section 6033 (2019 proposed regulations). The Treasury Department and the IRS received 8,387 written and electronic comments responding to the 2019 proposed regulations. Comments are available at *www.regulations.gov* or upon request. A public hearing on the 2019 proposed regulations was held on February 7, 2020.

After consideration of all comments received on the 2019 proposed regulations and the testimony presented at the public hearing, this Treasury Decision adopts the proposed regulations with minor modifications, as described in the Summary of Comments and Explanation of Provisions.

Summary of Comments and Explanation of Provisions

I. Overview

The 2019 proposed regulations proposed to modify the regulations under section 6033 to align them with certain statutory amendments to section 6033 that had not previously been reflected in the regulations, and to update them to encompass certain instances in which the Commissioner has previously exercised discretion under the statute and regulations to relieve organizations, in whole or in part, from the filing requirements set forth in section 6033 or in the regulations issued under section 6033.

Specifically, the proposed changes included the following: (1) Adding items listed in section 6033(b)(10) and (11), as applicable, to the list of items generally required to be reported and adding

[3] An organization that is not required to file an annual return by virtue of Rev. Proc. 2011-15 must submit a Form 990-N e-Postcard annually in electronic format as described in section 6033(i)(1). Rev. Proc. 2011-15, section 3.03.

other statutory reporting requirements for controlling organizations, sponsoring organizations, and supporting organizations; (2) amending the gross receipts threshold (with an additional requirement for foreign organizations and United States possession organizations) that triggers a filing requirement under section 6033 for tax-exempt organizations (other than private foundations and supporting organizations); (3) clarifying that section 527 organizations with gross receipts greater than $25,000 generally are subject to the reporting requirements under section 6033(a)(1) as if they were exempt from taxes under section 501(a); and (4) specifying that only organizations described in section 501(c)(3) and section 527 organizations generally would continue to be required to provide names and addresses of contributors on their Forms 990, Forms 990-EZ, and Forms 990-PF.

The following sections address these proposed changes in more detail, summarize the comments received on the proposed changes, provide the responses of the Treasury Department and the IRS to the comments, and describe the final regulation adopted in this Treasury Decision.

II. Items Required in Annual Information Returns

In the 2019 proposed regulations, the Treasury Department and the IRS proposed to amend §1.6033-2(a)(2)(ii) by adding two new provisions to reflect information to be furnished annually that had been added to section 6033(b) but that had not yet been added to the list in the regulations of items generally required to be reported on an organization's annual information return. These items of information are listed in section 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in section 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person on any excess benefit transaction under section 4958). In addition, a cross-reference to §1.6033-2(a)(1) was proposed to be added to the introductory sentence of §1.6033-2(a)(2)(ii).

The Treasury Department and the IRS also proposed to incorporate into the regulations the statutory reporting requirements found in section 6033(h) for controlling organizations (as defined in section 512(b)(13)), section 6033(k) for sponsoring organizations (as defined in section 4966(d)(1)), and section 6033(l) for supporting organizations (as defined in section 509(a)(3)).

The Treasury Department and the IRS did not receive any comments on these additions to §1.6033-2. This Treasury Decision adopts these provisions from the 2019 proposed regulations without change.

III. Gross Receipts Filing Threshold

Consistent with the discretionary authority granted by section 6033(a)(1)(B), the Treasury Department and the IRS previously determined that the efficient administration of the tax laws does not require the filing of returns by organizations that are exempt under section 501(a) (other than private foundations and supporting organizations) that normally have less than $50,000 in gross receipts annually, except for foreign organizations and organizations formed in a United States possession that have significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States. See Rev. Proc. 2011-15. In the 2019 proposed regulations, the Treasury Department and the IRS proposed to amend §1.6033-2(g)(1)(iii) to reflect the $50,000 gross receipts filing threshold currently in effect, rather than the $5,000 gross receipts threshold found in section 6033(a)(3)(A)(ii), and the application of the $50,000 threshold to organizations other than those listed in section 6033(a)(3)(C).

The Treasury Department and the IRS received two comments expressing support for amending the regulations to reflect the $50,000 threshold and one comment stating, without explaining why, that organizations with annual gross receipts normally not more than $50,000 but more than $25,000 ought to be required to file a return. As discussed earlier in this section III, the Treasury Department and the IRS increased the filing threshold from $25,000 to $50,000 in 2011 based on a consideration of the needs of tax administration. The Treasury Department and the IRS continue to consider the $50,000 threshold to strike an appropriate balance between the efficient use of resources for both tax-exempt organizations and the IRS, and ensuring compliance with the tax laws by tax-exempt organizations. Organizations with gross receipts below the threshold must continue to file Form 990-N under section 6033(i).

Accordingly, the final regulations provide that the gross receipts threshold for all organizations (other than private foundations and supporting organizations) formed in the United States is $50,000. The final regulations also incorporate the previously granted relief from the filing requirement under section 6033(a) for foreign organizations and organizations formed in a United States possession (other than private foundations and supporting organizations) that is reflected in Rev. Proc. 2011-15.

In the 2019 proposed regulations, the Treasury Department and the IRS also proposed to amend §1.6033-2(g)(6) to clarify that the Commissioner has authority to provide further relief (including possible further increases in filing thresholds) through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS did not receive any comments on this proposed clarification, and the final regulations incorporate the language as proposed.

IV. Clarifying the Treatment of Section 527 Organizations

In the 2019 proposed regulations, the Treasury Department and the IRS proposed to add §1.6033-2(a)(5) to state the current requirement that section 527 organizations, subject to the filing exceptions provided by section 6033(g)(3) or as permitted under section 6033(g)(4), follow the reporting requirements under section 6033(a)(1) in the same manner as tax-exempt organizations, except to the extent that the Commissioner revises those requirements as appropriate to carry out the purposes of section 527. Proposed §1.6033-2(a)(5) would also state the current requirement that section 527 organizations, like organizations described in section 501(c)(3), must continue to report

the names and addresses of certain contributors on the section 527 organizations' annual Forms 990 or Forms 990-EZ.

The Treasury Department and the IRS did not receive comments on this clarification of the treatment of section 527 organizations in §1.6033-2(a)(5). This Treasury Decision adopts these provisions from the 2019 proposed regulations without change.

The Treasury Department and the IRS received one comment requesting that all qualified state and local political organizations described in section 527(e)(5) be exempted from annual filing requirements. Section 6033(g)(1) generally requires a section 527 organization to file an annual information return if it has annual gross receipts of $25,000 or more for the taxable year (subject to mandatory exceptions in section 6033(g)(3)) but provides a higher threshold of $100,000 or more of gross receipts for qualified state and local political organizations. Under section 6033(g)(4), the Secretary has discretionary authority to relieve any section 527 organization from filing an information return if the Secretary determines that such filing is "not necessary to the efficient administration of the internal revenue laws." Because the filing threshold for qualified state and local political organizations under section 6033(g)(1) already is higher than the threshold that applies to organizations exempt from tax under section 501(a), the Treasury Department and the IRS do not adopt this suggestion.

V. Reporting of Names and Addresses of Contributors

As stated in the 2019 proposed regulations, section 6033 does not specify that the names and addresses of contributors to tax-exempt organizations, other than those described in section 501(c)(3), be reported on annual information returns. Consistent with the Secretary's broad discretion under section 6033(a) to set forth information reporting requirements "for the purpose of carrying out the internal revenue laws . . . by forms or regulations," § 1.6033–2(a)(2)(ii) lists items that are generally required to be included in the annual filings of organizations exempt under section 501(a). In the 2019 proposed regulations, the Treasury Department and the IRS proposed to amend the regulations to specify that the need to provide the names and addresses of substantial contributors will generally apply only to tax-exempt organizations described in section 501(c)(3), and to remove reference to the provision of names of certain contributors to organizations described in sections 501(c)(7), (8), and (10). The proposed regulations did not alter the existing requirement contained in Schedule B of the Form 990 and 990-EZ for tax-exempt organizations to report annually the amounts of contributions from each substantial contributor, or the existing requirement to maintain the names and addresses of substantial contributors should the IRS need this information on a case-by-case basis.

In proposing to exercise this discretion, the Treasury Department and the IRS sought to balance the IRS's need for the information for tax administration purposes against the costs and risks associated with reporting of the information.

The majority of the comments the Treasury Department and the IRS received in response to the 2019 proposed regulations concerned the general requirement for reporting of names and addresses of substantial contributors.[4] This information is reported on Schedule B, "Schedule of Contributors," to Forms 990, 990-EZ, or 990-PF. The next several sections of this preamble summarize and respond to those comments.

a. IRS Need for Annual Reporting of Names and Addresses of Substantial Contributors for Tax Administration Purposes

Some commenters favoring the proposed changes stated that the IRS does not need the names and addresses of substantial contributors to tax-exempt organizations to which the relief extends to be reported annually, and expected that other information contained in Forms 990 or 990-EZ would be adequate for administration of the Code. Commenters favoring the proposed changes also noted that the names and addresses are still required to be maintained and the IRS can obtain that information on examination. These commenters asserted that such an approach is more appropriately tailored to the IRS's need for the information than a blanket reporting requirement.

Several other commenters opposing the proposed changes asserted instead that the IRS would not be as efficient in enforcing federal tax laws without direct access to the names and addresses of substantial contributors to the tax-exempt organizations affected by the proposed rule. These commenters asserted that information contained elsewhere in Forms 990 and 990-EZ were not adequate substitutes for information contained in Schedule B for purposes of evaluating private benefit or enforcing political activity limits on organizations described in section 501(c)(4). Some commenters also asserted that obtaining contributor names and addresses on examination was not a sufficient substitute for having the information on hand for the following reasons. Some commenters suggested that requesting the information on examination could be a "tip-off" to the organization that it is under additional scrutiny, leading the organization to hide assets and destroy or falsify evidence. Some commenters suggested that Schedule B contains information that helps the IRS initially determine whether or not it should conduct an examination. And some commenters suggested that requesting information on an *ad hoc* basis is not efficient for the IRS or affected tax-exempt organizations.

The concerns expressed by commenters opposing the proposed changes are misplaced. As explained in the preamble to the 2019 proposed regulations, the IRS does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually on Schedule B of Form 990 or Form 990-EZ in order to administer the inter-

[4] No comments were received specifically addressing the removal of the requirement to provide the names of certain contributors to organizations described in sections 501(c)(7), (8), and (10). However, most comments did not distinguish between types of tax-exempt organizations affected by the proposed changes, and some of the issues discussed are applicable to the specific change to reporting requirements of organizations described in sections 501(c)(7), (8), and (10).

nal revenue laws. For the specific purpose of evaluating possible private benefit or inurement or other potential issues relating to qualification for exemption, the IRS can obtain sufficient information from other elements of the Form 990 or Form 990-EZ and can obtain the names and addresses of substantial contributors, along with other information, upon examination, as needed. In light of the inefficiencies involved in collecting, maintaining, and redacting this information if it were reported annually, the Treasury Department and the IRS do not agree with comments suggesting that requiring affected tax-exempt organizations to provide name and address information of substantial contributors upon examination is less efficient for the IRS and affected tax-exempt organizations. Moreover, as noted in the proposed regulations, the primary utility of the names and addresses of substantial contributors arises during the examination process. While some commenters suggested that such information could be used before an examination to determine whether an examination is warranted, the IRS takes various factors into account when deciding whether to select a case for examination, and the IRS's process for selection would not be affected by this change. Since examinations are initiated by prescribed correspondence, the taxpayer will already know of the IRS's compliance interest before receiving the request for the particular information.

Therefore, the Treasury Department and the IRS have determined that the annual collection of the names and addresses of substantial contributors to tax-exempt organizations, other than organizations described in section 501(c)(3), is not necessary for the efficient administration of the internal revenue laws. Instead, requiring all tax-exempt organizations to report the amounts of contributions from each substantial contributor on the Schedule B of the Form 990 and 990-EZ, as well as requiring them to maintain the names and addresses of substantial contributors should the IRS need this information on a case-by-case basis, is sufficient for the efficient administration of the Code.

b. Privacy and Risk of Disclosure

Commenters supporting the proposed changes relating to the furnishing of certain contributors' names and addresses expressed general concerns about the privacy of contributors to tax-exempt organizations. While the IRS is statutorily required to maintain the confidentiality of contributor names and addresses pursuant to section 6104(b), some commenters expressed concern that such information may accidentally be disclosed or that IRS systems could be breached. Some commenters also discussed the risk of disclosure by state authorities to the extent contributor names and addresses are shared by the IRS with an appropriate state officer consistent with section 6104(c). A few commenters also expressed concern that politically or ideologically motivated IRS employees could leak contributor names and addresses or select certain contributors for additional tax scrutiny. In contrast, however, some commenters, who opposed the proposed changes eliminating the requirement to report certain contributor names and addresses, asserted that the risk of disclosure is insubstantial.

The IRS takes seriously its duty to protect confidential information as required by section 6103 and to enforce the internal revenue laws with integrity and fairness to all. However, reporting the names and addresses of substantial contributors on an annual basis poses a risk of inadvertent disclosure of information that is not open to public inspection because information on Schedule B generally must be redacted from an otherwise disclosable information return. The IRS has experienced incidents of inadvertent disclosure and has taken other steps to reduce future occurrences of such disclosures. By removing the general requirement to report names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3), the final regulations further reduce the risk of inadvertent disclosure of names and addresses of contributors for such organizations. Without a tax administration need to collect this information on an annual basis, the Treasury Department and the IRS have determined this change in affected tax-exempt organizations' reporting obligations furthers the steps already taken to protect confidential taxpayer information.

c. Harassment of Contributors and Related Constitutional Concerns

Commenters supporting the proposed change also discussed, often in connection with the risk-of-disclosure issue, the concern that supporters of certain causes or organizations face possible reprisals (such as harassment, threats of violence, or economic retribution) if their status as contributors is revealed publicly. Additional commenters discussed the concern that fear of exposure and fear of reprisal may have a "chilling effect," discouraging or deterring potential contributors from giving to certain tax-exempt organizations and reducing public participation in organizations benefiting social welfare. Many of these commenters believed this "chilling effect" implicates constitutional rights such as freedom of speech and freedom of association.

Other commenters opposing the proposed change asserted that requiring reporting to the IRS of substantial contributors' names and addresses is constitutional, citing federal appellate court decisions upholding state laws requiring that charitable organizations provide state regulators with copies of unredacted Schedules B.[5]

The Treasury Department and the IRS note that the names and addresses of substantial contributors provided to the IRS are generally required to be kept confidential in accordance with section 6103. By removing the general requirement to report annually names and addresses of substantial contributors to organizations exempt under section 501(a) but not described in section 501(c)(3), the final regulations reduce the risk of inadvertent disclosure of names and addresses of contributors for such organizations and thereby address concerns expressed by some commenters regarding potential adverse consequences of any such public disclosures.

[5] *Citizens United v. Schneiderman*, 882 F.3d 374 (2d Cir. 2018); *Center for Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015).

d. Compliance Burden on Affected Tax-Exempt Organizations and Associated Costs on the IRS

Some commenters supporting the proposed changes to the general requirement to report names and addresses of substantial contributors mentioned an expectation that the changes would reduce the compliance burden on affected tax-exempt organizations, allowing such organizations to spend more time and resources on their missions. Commenters also expressed an expectation that the proposed changes would reduce the burden on the IRS associated with the redaction of information as required by section 6104(b).

Other commenters opposed the proposed changes regarding the general requirement to report names and addresses of substantial contributors, stating that both the compliance costs associated with reporting contributor names and addresses and the IRS burden associated with redacting such information are insubstantial. Some commenters further argued that the proposed changes would lead to an increase in compliance costs for tax-exempt organizations as individual states, no longer able to rely on Schedule B information obtained from the IRS, would develop their own disparate reporting requirements.

The Treasury Department and the IRS agree with certain commenters that limiting the general requirement to report names and addresses of substantial contributors will reduce costs with respect to federal tax compliance. While it is true that all tax-exempt organizations will continue to be required to maintain records regarding their substantial contributors, removing the annual reporting requirement will lessen their overall compliance burden. In addition, this change will obviate the need for an affected tax-exempt organization to redact name and address information if the tax-exempt organization must provide its Schedule B to a member of the public if requested under section 6104(b). Particularly for smaller tax-exempt organizations with limited resources, few dedicated staff, and less access to advisors regarding the rules governing tax-exempt organizations eliminating this requirement will be beneficial.

Without a tax administration need for annually reporting name and address information, the Treasury Department and the IRS determined that it is valuable to save tax-exempt organizations the administrative burdens of reporting and redacting it. While some commenters have suggested that some states may choose to impose their own reporting requirements, thereby increasing the compliance burden on tax-exempt organizations, the Treasury Department and the IRS expect that each state can determine the appropriateness of the burdens it may impose in light of its own tax administration needs.

Similarly, the potential burden on the IRS associated with redacting Schedule B information is lessened when fewer organizations are required to report names and addresses on Schedule B. This reduction in burden, when combined with the lack of tax administration need discussed earlier in this preamble, supports specifying that the need to provide the names and addresses of substantial contributors will generally apply only to organizations described in section 501(c)(3), as provided in the statute.

e. Extension of Relief to Organizations Described in Section 501(c)(3)

A few commenters supported the proposed changes, but also requested that the Treasury Department and the IRS extend the relief from reporting the names and addresses of substantial contributors to organizations described in section 501(c)(3). One commenter asserted that the IRS had exceeded its statutory authority by requiring the reporting of the names and addresses of substantial contributors to organizations described in section 501(c)(3) (other than private foundations). That commenter contends that the Secretary only has the authority to request the names and addresses of substantial contributors as that term is defined in section 507(d)(2). This definition, according to the commenter, would limit the existence of substantial contributors solely to contributors to private foundations and would require that a contributor have provided more than two percent of the total contributions to the organization over its lifetime.

The Treasury Department and the IRS do not agree with this interpretation of section 6033(b). Section 507(d)(2) specifically limits the application of the definition of "substantial contributor" found therein to section 507(d)(1). Section 6033 does not incorporate the definition of substantial contributor found in section 507(d)(2) and provides the Secretary with broad discretion to prescribe information to be collected on an annual return that is necessary for carrying out the purposes of the Code. Accordingly, consistent with section 6033(b), the Treasury Department and the IRS have the authority to continue to require that organizations described in section 501(c)(3) report the names and addresses of substantial contributors on Schedule B. The Treasury Department and the IRS decline to extend the relief from reporting names and addresses of substantial contributors to organizations described in section 501(c)(3) in this final regulation.

f. Campaign Finance Enforcement

Commenters opposing the proposed changes to the general requirement to report names and addresses of substantial contributors commonly invoked concerns about the use of tax-exempt entities, including by special interests, to anonymously influence elections and enable improper interference in U.S. elections. Commenters asserted that the proposed changes would lead to an increase in the flow of money into U.S. elections through organizations described in sections 501(c)(4) and (6). Several commenters also suggested that the changes would make it more difficult to detect foreign spending or federal contractor spending on U.S. elections in violation of federal campaign finance laws. One commenter discussed 52 U.S.C. 30111(f), asserting that Congress had directed the IRS to "consult and work with" the Federal Election Commission (FEC) on rulemakings regarding campaign finance matters.

Other commenters supporting the proposed changes stated that there are other, better measures in place to track foreign spending on U.S. elections than Schedule B and that it is unlikely that contributors who are intending to violate campaign finance laws will use foreign addresses or otherwise make clear their violation in a manner subject to reporting to the IRS on Schedule B. Commenters also stated that the IRS generally cannot share Schedule

B information with the agencies charged with enforcing campaign finance laws.

As stated in the preamble to the 2019 proposed regulations, the Treasury Department and the IRS reiterate that Congress has not authorized the IRS to enforce campaign finance laws. Schedule B reflects the enforcement needs related to the Code, not the campaign finance laws. Furthermore, section 6103 generally prohibits the IRS from disclosing any names and addresses of organizations' substantial contributors to federal agencies for non-tax investigations, including campaign finance matters, except in narrowly prescribed circumstances.[6]

With regard to coordination with the FEC, section 30111(f) of title 52 does not require the IRS to consult with the FEC on regulations issued by the IRS under the Code. Instead, section 30111 of title 52 authorizes the FEC to prescribe rules, regulations, and forms to carry out the provisions of the Federal Election Campaign Act and requires the FEC to consult with the IRS when "prescribing such rules under this section." This final regulation is prescribed by the IRS, not by the FEC; and, it is prescribed under section 7805 of title 26, not section 30111 of title 52.

Finally, the Treasury Department and the IRS note that the change in reporting of the names and addresses of substantial contributors will have no effect on information currently available to the public. Sections 6103 and 6104 prohibit the IRS from publicly disclosing the names and addresses of contributors to tax-exempt organizations (other than private foundations). With respect to such tax-exempt organizations, any names and addresses of substantial contributors on Schedule B are not made public and disclosure restrictions generally prohibit making such information available for use by other agencies for their enforcement purposes.[7]

g. Impact on States

Some commenters opposing the proposed changes discussed the impact on the state taxing and other authorities that may use Schedule B information shared by the IRS pursuant to sections 6103(d) or 6104(c).[8] In these comments, which included a comment from the attorneys general of nineteen states[9] and the District of Columbia, commenters discussed the states' use of Schedule B information for purposes related to state tax administration, enforcement of state-level campaign finance law, and enforcement of state-level consumer protection law. Commenters claimed that no longer receiving Schedule B information from the IRS would require a reorientation of processes that would cost the states time and money. A few commenters also referenced a history of cooperation between the IRS and state tax regulators in this area.

Other commenters in favor of the proposed changes asserted that states are not allowed to use Schedule B information for non-tax purposes and that states, in any event, did not need Schedule B information for the efficient administration of state tax laws. A comment from eleven state attorneys general[10] asserted that states would not be negatively impacted by the proposed rule because they do not rely on the Schedule B data for enforcement efforts and can receive the information through targeted examinations.

The Treasury Department and the IRS reiterate that the Code limits the purposes for which states may use returns or return information obtained from the IRS. When states receive returns or return information under section 6103(d), the use of that information is limited to the administration of state tax laws. When states receive returns or return information under section 6104(c), the use of that information is limited by statute to administering state laws relating to the solicitation or administration of charitable funds or charitable assets of such organizations. Use of returns or return information received from the IRS under these sections for purposes other than those listed above (for example, for the enforcement of campaign finance laws or consumer protection laws) is not consistent with states' authorized use under sections 6103(d) and 6104(c). While some states may use name and address information for those authorized purposes, the divergent comments from state attorneys general indicate that the desire to obtain such information, and the purpose for doing so, may differ from state to state. To the extent that any state determines that the burdens of collecting and maintaining such information are justified by its own needs, such a state is free to require reporting of such information to the state and to maintain the information at the state's own expense.

h. Conclusion

As explained in the preamble to the 2019 proposed regulations, in exercising the discretion to relieve tax-exempt organizations not described in section 501(c)(3) of the obligation to annually report the names and addresses of substantial contributors, the Treasury Department and the IRS seek to balance the IRS's need for the information for tax administration purposes against the burden and risks associated with reporting of the information.

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[6] The confidentiality and disclosure of tax returns and return information in both tax and non-tax investigations is governed by section 6103. Section 6103 contains several provisions authorizing the disclosure of returns and return information to Federal law enforcement agencies under prescribed circumstances after meeting specified procedural requirements. For example, these include disclosures to DOJ for the investigation and prosecution of non-tax Federal crimes via an ex parte court order or via a request from the highest ranking official of a Federal agency or the highest officials within DOJ and in the course of an investigation after referral to and approval by DOJ as a Grand Jury Tax Investigation. In the context of states, sections 6103 and 6104 authorize disclosure of certain returns and return information to the states for specified purposes. Generally, section 6103(d) authorizes disclosure to state tax agencies for state tax administration purposes only, while section 6104(c) permits disclosure of return information, in the case of organizations other than those described in section 501(c)(1) or (3), to an appropriate state officer to the extent necessary in administering state laws relating to the solicitation or administration of charitable funds or charitable assets of such organizations, if certain requirements are met. Some states may also independently obtain contributor information from the organizations.

[7] See note 6.

[8] Note that some commenters are unclear as to how the states obtained the Schedule B information. Information that a state obtains directly from a tax-exempt organization as part of its state filing is not information disclosed by the IRS under either section 6103 or section 6104.

[9] The nineteen attorneys general represented the states of New Jersey, New York, California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, Rhode Island, and Virginia.

[10] The eleven attorneys general represented the states of Arizona, Alabama, Alaska, Indiana, Kansas, Louisiana, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia.

The Treasury Department and the IRS have concluded that the IRS does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually on Schedule B of Form 990 or Form 990-EZ in order to administer the internal revenue laws. In light of the risks and burden associated with requiring the annual reporting of such information, this Treasury Decision revises the regulations under section 6033 to remove the general requirement for tax-exempt organizations not described in sections 501(c)(3) or 527 to report annually the names and addresses of substantial contributors.

This Treasury Decision revises §1.6033-2(a)(2)(ii)(F) to provide that organizations described in section 501(c)(3) generally are required to provide names and addresses of contributors of more than $5,000 on their Forms 990, 990-EZ, and 990-PF. Similarly, §1.6033-2(a)(2)(iii)(D) is revised to remove the requirement to provide the names of contributors who contribute over $1,000 for a specific charitable purpose to organizations described in sections 501(c)(7), (8), and (10). Additionally, as discussed earlier in this preamble, section 527 organizations must continue to report the names and addresses of substantial contributors.

Tax-exempt organizations must continue to report the amounts of contributions from each substantial contributor as well as maintain the names and addresses of their substantial contributors in their books and records in accordance with section 6001 and §1.6001-1(a) and (c) in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers. The records retained will enable organizations to substantiate upon examination the number of certain contributors and the amounts of their contributions and, if needed, to address any concerns identified during the examination for which the identity of the substantial contributors would be relevant.

VI. Rev. Proc. 95-48 and Rev. Proc. 96-10

In the preamble to the 2019 proposed regulations, the Treasury Department and the IRS requested comments on any other grants of section 6033 reporting relief announced in past exercises of the Commissioner's discretion that should be incorporated into the regulations or any other clarifications to reflect statutory changes since the original promulgation of §1.6033-2. In light of the 2006 amendment to section 6033(a)(3)(B), which proscribes the Commissioner's ability to exercise discretion to relieve from filing any organization described in section 509(a)(3), the Treasury Department and the IRS requested comments on the continued applicability of Rev. Proc. 96-10, 1996-1 C.B. 138, which relieves from a filing requirement under section 6033(a) certain organizations that are operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches.

The Treasury Department and the IRS received five comments requesting that the filing exception contained in Rev. Proc. 96-10 be incorporated into the regulations or that the Treasury Department and the IRS simply refrain from obsoleting Rev. Proc. 96-10. One commenter suggested that certain organizations are described in Rev. Proc. 96-10 and continue to rely appropriately on the filing exception provided in that revenue procedure because they are not supporting organizations described in section 509(a)(3).

This Treasury Decision does not incorporate the provisions of Rev. Proc. 96-10 into the final regulations. The Treasury Department and the IRS continue to study the applicability of Rev. Proc. 96-10, which is not withdrawn with the issuance of this Treasury Decision. However, the Treasury Department and the IRS note that organizations for which public charity status is dependent on being described in section 509(a)(3) are not eligible to rely on the filing relief provided in Rev. Proc. 96-10.

The Treasury Department and the IRS also requested comments on Rev. Proc. 95-48, 1995-2 C.B. 418, which grants reporting relief for governmental units and affiliates of governmental units. The Treasury Department and the IRS received one comment asserting that reporting relief granted under Rev. Proc. 95-48 is inappropriate because a government affiliate's decision to seek the benefits of exemption under section 501(c)(3) calls for it accepting the burdens of that status as well. This Treasury Decision does not incorporate the provisions of Rev. Proc. 95-48 into the final regulations and the Treasury Department and the IRS continue to consider whether the reporting relief in this revenue procedure should be updated.

VII. Technical Corrections

This Treasury Decision conforms the paragraph structure throughout §1.6033-2 to the current Code of Federal Regulations paragraph level structure. Previously, the fourth level of the paragraph structure utilized a lower-case letter (e.g., §1.6033-2(a)(2)(ii)(a)). This Treasury Decision modifies all fourth level letters to be upper-case (e.g., §1.6033-2(a)(2)(ii)(A)). For consistency with these amendments, this Treasury Decision also modifies §§1.401-1, 56.4911-9, and 56.4911-10 to correct certain cross-references to §1.6033-2.

Additionally, throughout §1.6033-2, this Treasury Decision makes certain other non-substantive changes.

VIII. Applicability Dates

Consistent with the applicability dates in the 2019 proposed regulations, the final regulations apply as of May 28, 2020. Pursuant to section 7805(b)(7), an organization may choose to apply the paragraphs listed in §1.6033-2(l)(2) to returns filed after September 6, 2019.

Effect on Other Documents

The following publication is obsolete as of May 28, 2020: Rev. Proc. 2018-38 (2018-31 I.R.B. 280).

Special Analyses

I. Regulatory Planning and Review

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

II. Paperwork Reduction Act

The collection of information contained in these final regulations is reflected in the collection of information for Forms 990 and 990-EZ that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control number 1545-0047. To the extent there is a decrease in burden as a result of this change, the decrease in burden will be reflected in the updated burden estimates for Forms 990 and 990-EZ included in this control number. The requirement to maintain records to substantiate information on the Form 990 or 990-EZ is already contained in the burden associated with the control number for those forms and remains unchanged.

The paperwork burden estimate for tax-exempt organizations is reported under OMB control number 1545-0047, which represents a total estimated burden time, including all other related forms and schedules for corporations, of 52 billion hours and total estimated monetized costs of $4.17 billion ($2017). The burden estimates provided in the OMB control number are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include, but not isolate, the estimated burden of these regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden removed by adoption of these regulations. The Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden. No burden estimates specific to these regulations are currently available. The Treasury Department has not estimated the burden related to the requirements under these regulations. The current status of the Paperwork Reduction Act submissions related to these regulations is provided in the following table.

Form	OMB Control Number	Status
990 and related forms	1545-0047	Sixty-day notice published on 9/24/2019. Thirty-day notice published on 12/31/2019. Approved by OIRA on 2/12/2020.
	Web address: https://www.irs.gov/forms-pubs/about-form-990	

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

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

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations reflect statutory requirements and reporting relief previously announced through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. The collection of information contained in these regulations instead maintains a current recordkeeping obligation while removing a filing burden. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f), the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are personnel from the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 56

Public Charity Excise Taxes

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 56 are 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. In §1.401-1, revise the last sentence of paragraph (e)(2) to read as follows:

§ 1.401–1 Qualified pension, profit-sharing, and stock bonus plans.

* * * * *

(e) * * *

(2) * * * For information required to be furnished periodically by an employer with respect to the qualification of a plan, see §§ 1.404(a)–2, and 1.6033–2(a)(2)(ii)(I).

Par. 3. Section 1.6033-2 is amended by:

1. Revising the section heading;
2. In paragraph (a)(2)(ii) introductory text, removing "The" and adding "Subject to paragraph (a)(1) of this section, the" in its place;

3. Redesignating paragraph (a)(2)(ii)(*a*) through (*l*) as paragraphs (a)(2)(ii)(A) through (L) respectively;
4. In newly redesignated paragraph (a)(2)(ii)(F), revising the first and last sentences;
5. Revising newly redesignated paragraph (a)(2)(ii)(H);
6. Redesignating paragraphs (a)(2)(ii)(K) and (L) as paragraphs (a)(2)(ii)(M) and (N);
7. Adding new paragraphs (a)(2)(ii)(K) and (L);
8. Revising the last sentence of paragraph (a)(2)(iii) introductory text;
9. Redesignating paragraphs (a)(2)(iii)(*a*) through (*d*) as paragraphs (a)(2)(iii)(A) through (D) respectively;
10. Revising the last sentence of newly redesignated paragraph (a)(2)(iii)(B);
11. Revising redesignated paragraph (a)(2)(iii)(C);
12. Revising the first sentence of newly redesignated paragraph (a)(2)(iii)(D)(*1*);
13. Redesignating paragraphs (a)(2)(iv)(*a*) and (*b*) as paragraphs (a)(2)(iv)(A) and (B) respectively;
14. Revising the next to last sentence in paragraph (a)(4);
15. Adding paragraphs (a)(5) through (8);
16. Revising paragraph (d)(5) introductory text and the last sentence of paragraph (d)(5)(ii);
17. Revising paragraph (g)(1)(iii);
18. Removing "or" at the end of paragraph (g)(1)(vi);
19. Removing the period at the end of paragraph (g)(1)(vii) and adding "; or" in its place;
20. Adding paragraph (g)(1)(viii);
21. Revising paragraph (g)(3);
22. Adding paragraph (g)(5);
23. Adding a sentence at the end of paragraph (g)(6);
24. Redesignating paragraph (k) as paragraph (l);
25. Adding a new paragraph (k); and
26. Revising newly redesignated paragraph (l).

The revisions and additions read as follows:

§ 1.6033-2 Returns by exempt organizations and returns by certain nonexempt organizations.

(a) * * *

(2) * * *

(ii) * * *

(F) The total of the contributions, gifts, grants, and similar amounts received by it during the taxable year, and, in the case of an organization described in section 501(c)(3), the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year. * * * For special rules with respect to contributors and donors, see paragraph (a)(2)(iii) of this section.

* * * * *

(H) A schedule showing the compensation and other payments made to each person whose name is required to be listed pursuant to paragraph (a)(2)(ii)(G) of this section during the calendar year ending within the organization's annual accounting period, or during such other period as prescribed by publication, form, or instructions.

* * * * *

(K) In the case of an organization described in section 501(c)(3), the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):

(*1*) Section 4911 (relating to tax on excess expenditures to influence legislation);

(*2*) Section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations); and

(*3*) Section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations), except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

(L) In the case of organizations described in section 501(c)(3), (4), or (29), the respective amounts (if any) of—

(*1*) The taxes imposed with respect to the organization on any organization manager, or any disqualified person, during the taxable year under section 4958 (relating to taxes on excess benefit transactions); and

(*2*) Reimbursements paid by the organization during the taxable year with respect to taxes imposed under such section, except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

* * * * *

(iii) * * * In providing the names and addresses of contributors and donors under paragraph (a)(2)(ii)(F) of this section:

* * * * *

(B) * * * In such case, unless the organization has actual knowledge that a particular employee gave more than $5,000 (and in excess of 2 percent if paragraph (a)(2)(iii)(A) of this section is applicable), the organization need report only the name and address of the employer, and the total amount paid over by the employer.

(C) Separate and independent gifts made by one person in a particular year need be aggregated to determine whether his contributions and bequests exceed $5,000 (and are in excess of 2 percent if paragraph (a)(2)(iii)(A) of this section is applicable), only if such gifts are of $1,000 or more.

(D)(*1*) Organizations described in section 501(c)(7), (8), or (10) that receive contributions or bequests to be used exclusively for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3), must attach a schedule with respect to all gifts that aggregate more than $1,000 from any one person showing the total amount of the contributions or bequests from each such person, the specific purpose or purposes for which such amount was received, and the specific use or uses to which such amount was put. * * *

* * * * *

(4) * * * Similarly, for purposes of paragraph (a)(2)(ii)(D) of this section, the purposes for which a section 4947(a)(1) trust or a nonexempt private foundation is organized shall be treated as the purposes for which it is exempt. * * *

(5) Political organizations, as defined by section 527(e)(1), that have gross receipts of $25,000 or more for the taxable year (or in the case of a qualified State or local political organization, as defined in section 527(e)(5), that has gross receipts of $100,000 or more for the taxable year) generally must comply with the requirements of section 6033 and this section in

the same manner as organizations exempt from tax under section 501(a), except to the extent that the Commissioner may modify such requirements through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin as appropriate for carrying out the purposes of section 527. For the purposes of this section, all references to organizations exempt from tax under section 501(a) shall include political organizations referred to in section 6033(g), other than those referred to in section 6033(g)(3) and except to the extent the Commissioner exercises discretion under section 6033(g)(4). This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. In addition to the reporting requirements applicable to organizations exempt under section 501(a), such political organizations generally must report the names and addresses of all persons that contributed, bequeathed, or devised $5,000 or more (in money or other property) during the taxable year.

(6) Each controlling organization (within the meaning of section 512(b)(13)) that is subject to the requirements of section 6033(a) shall include on its annual return such information required by that return regarding—

(i) Any interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13));

(ii) Any loans made to each such controlled entity; and

(iii) Any transfers of funds between such controlling organization and each such controlled entity.

(7) Every organization described in section 4966(d)(1) shall, on its annual return for the taxable year—

(i) List the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year;

(ii) Report the aggregate value of assets held in such funds at the end of such taxable year; and

(iii) Report the aggregate contributions to and grants made from such funds during such taxable year.

(8) Every organization described in section 509(a)(3) shall, on its annual return—

(i) List the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support;

(ii) Specify whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and

(iii) Certify that the organization meets the requirements of section 509(a)(3)(C).

* * * * *

(d) * * *

(5) In providing the information required by paragraphs (a)(2)(ii)(F), (G), and (H) of this section, such information may be provided: * * *

(ii) * * * A central or parent organization shall indicate whether it has provided such information in the manner described in paragraphs (d)(5)(i) or (ii) of this section, and may not change the manner in which it provides such information without the consent of the Commissioner.

* * * * *

(g) * * *

(1) * * *

(iii) Except as provided in paragraph (g)(1)(viii) of this section, an organization described in section 501(c) (other than a private foundation or a supporting organization described in section 509(a)(3)) the gross receipts of which in each taxable year are normally not more than $50,000 (as described in paragraph (g)(3) of this section);

* * * * *

(viii) A foreign organization (described in paragraph (k)(1) of this section) or a United States possession organization (described in paragraph (k)(2) of this section) (other than a private foundation or a supporting organization described in section 509(a)(3))—

(A) The gross receipts of which in each taxable year from sources within the United States (as determined under paragraph (k)(3) of this section) are normally not more than $50,000 (as described in paragraph (g)(3) of this section); and

(B) That has no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

* * * * *

(3) For purposes of paragraphs (g)(1)(iii) and (viii) of this section, the gross receipts (as defined in paragraph (g)(4) of this section) of an organization are normally not more than $50,000 if:

(i) In the case of an organization that has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of $75,000 or less during the first taxable year of the organization;

(ii) In the case of an organization that has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is $60,000 or less; and

(iii) In the case of an organization that has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is $50,000 or less.

* * * * *

(5) An organization that is not required to file an annual return by virtue of paragraphs (g)(1)(iii) and (viii) of this section must submit an annual electronic notification as described in section 6033(i). See §1.6033-6.

(6) * * * This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

* * * * *

(k) *Foreign organizations and United States possession organizations*—(1) *Foreign organization*. For purposes of this section, a *foreign organization* is any organization not described in section 170(c)(2)(A).

(2) *United States possession organization*. For purposes of this section, a *United States possession organization* is any organization created or organized in a possession of the United States.

(3) *Source of funds*. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts from gifts, grants, contributions or membership fees is determined by applying the rules found in §53.4948-1(b) of this chapter. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts other than gifts, grants, contributions, and membership fees is determined by applying the rules in

sections 861 through 865 and the regulations in this part issued under section 861 through 865. For purposes of applying this paragraph (k)(3) regarding United States possession organizations, a United States person does not include individuals who are *bona fide* residents of a United States possession.

(l) *Applicability date*—(1) *Generally*. This section applies to returns filed on or after January 30, 2020. Section 1.6033-2T (as contained in 26 CFR part 1, revised April 2019) applies to returns filed before January 30, 2020.

(2) Paragraphs (a)(2)(ii)(F), (a)(2)(iii)(D)(*1*), (g)(1)(iii) and (viii), and (g)(3) of this section apply to annual information returns filed after May 28, 2020. Under section 7805(b)(7) an organization may choose to apply the paragraphs listed in this paragraph (l)(2) to returns filed after September 6, 2019**.**

PART 56 – PUBLIC CHARITY EXCISE TAXES

Par. 4. The authority citation for part 56 continues to read in part as follows:

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

§ 56.4911-9 [Amended]

Par. 5. In §56.4911-9, amend paragraphs (d)(2) and (3) and (d)(4) introductory text by removing the language "1.6033-2(a)(2)(ii)(*k*)" and adding in its place "1.6033-2(a)(2)(ii)(M)".

§ 56.4911-10 [Amended]

Par. 6. In §56.4911-10, amend paragraph (f)(1) by removing the language "1.6033-2(a)(2)(ii)(*k*)" and adding in its place "1.6033-2(a)(2)(ii)(M)."

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved: May 20, 2020

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

(Filed by the Office of the Federal Register on May 26, 2020, 4:15 p.m., and published in the issue of the Federal Register for May 28, 2020, 85 F.R. 31959)

Part III

Additional Administrative Relief with Respect to Deadlines Applicable to Employment Taxes, Employee Benefits, and Exempt Organizations Affected by the Ongoing Coronavirus Disease 2019 Pandemic

Notice 2020-35

I. PURPOSE

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructed the Secretary of the Treasury "to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a)."

Pursuant to section 7508A of the Internal Revenue Code (Code), the Internal Revenue Service (IRS) is postponing deadlines for certain time-sensitive actions on account of the COVID-19 emergency. This relief is provided with respect to certain employment taxes, employee benefit plans, exempt organizations, individual retirement arrangements (IRAs), Coverdell education savings accounts, health savings accounts (HSAs), and Archer and Medicare Advantage medical saving accounts (MSAs) that, with certain exceptions, are due to be performed on or after March 30, 2020, and before July 15, 2020. In addition, pursuant to § 31.3511-1(g)(2)(ii) of the Treasury Regulations (Regulations), the IRS is providing a temporary waiver of the requirement that Certified Professional Employer Organizations (CPEOs) file certain employment tax returns and their accompanying schedules on magnetic media. The relief provided in this notice is provided on account of the ongoing COVID-19 pandemic and is in addition to the relief provided under Notice 2020-18, 2020-15 IRB 590, Notice 2020-20, 2020-16 IRB 660, and Notice 2020-23, 2020-18 IRB 742.

II. BACKGROUND

A. COVID-19 Disaster Relief – Prior Postponement of Certain Deadlines and Other Requirements Pursuant to Section 7508A

Section 7508A provides the Secretary with the authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary to be affected by a federally declared disaster as defined in section 165(i)(5)(A). Pursuant to section 7508A(a), a period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws.

Section 7508A(b) provides that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such a plan, affected by a federally declared disaster or a terroristic or military action described in section 7508A(a), the Secretary may specify a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. If the Secretary exercises that authority, no plan will be treated as failing to be operated in accordance with its terms solely because the plan disregards any period pursuant to this relief.[1]

Following the Emergency Declaration, the Department of the Treasury (Treasury Department) and the IRS published guidance utilizing the authority provided under section 7508A for the Secretary of the Treasury or his delegate (Secretary) to postpone certain deadlines in the case of a federally declared disaster.

On March 18, 2020, the Treasury Department and IRS issued Notice 2020-17, 2020-15 IRB 590, providing relief under section 7508A(a), which postponed the due date for certain federal income tax payments from April 15, 2020, until July 15, 2020. On March 20, 2020, the Treasury Department and IRS issued Notice 2020-18, which superseded Notice 2020-17 and provided expanded relief, postponing the due date for filing federal income tax returns and for making federal income tax payments from April 15, 2020, until July 15, 2020. On March 27, 2020, the Treasury Department and the IRS issued Notice 2020-20, which amplified Notice 2020-18 and provided additional relief, postponing certain federal gift (and generation-skipping transfer) tax return filings and payments from April 15, 2020, until July 15, 2020.

On April 9, 2020, the Treasury Department and the IRS issued Notice 2020-23, which provided additional relief pursuant to the Emergency Declaration. Notice 2020-23 provides relief for persons with a federal tax payment obligation specified in section III.A of the notice (Specified Payment), or a federal tax return or other form filing obligation specified in section III.A of the notice (Specified Form), due to be performed (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020 (Affected Taxpayers). Notice 2020-23 also provides that the term Affected Taxpayer includes any person who performs a time-sensitive action listed in either § 301.7508A-1(c)(1)(iv) - (vi) of the Regulations or Rev. Proc. 2018-58, 2018-50 IRB 990, due to be performed (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020 (Specified Time-Sensitive Action). Thus, for example, under Notice 2020-23, Affected Taxpayers include persons described in section 7508A(b), such as sponsors or plan administrators of qualified retirement plans, due to perform a Specified Time-Sensitive Action. In addition, Affected Taxpayers include exempt organizations with a federal tax

[1] Sections 518 and 4002(i) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), as amended (ERISA), similarly authorize the provision of relief under Titles I and IV of ERISA.

payment, federal tax return, or other form filing obligation specified in section III.A of Notice 2020-23, and exempt organizations performing time-sensitive acts listed in Rev. Proc. 2018-58, which includes the filing of Form 990 series annual information returns.

B. Employment Taxes

1. *Interest-free adjustments to correct employment tax reporting errors*

For purposes of this notice, "employment tax" means Federal Insurance Contributions Act (FICA) tax imposed on employees by sections 3101(a) and 3101(b) and on employers by sections 3111(a) and 3111(b); Railroad Retirement Tax Act (RRTA) tax imposed on employees by sections 3201(a) and 3201(b) and on employers by sections 3221(a) and 3221(b); and income tax withholding (ITW) imposed by section 3402. To the extent other types of withholding are treated as ITW under section 3402(a) (such as gambling withholding, pension withholding, and backup withholding as set forth in sections 3402(q)(7), 3405(f), and 3406(h)(10), respectively), these other types of withholding are also included in the term "employment tax."

Sections 6205 and 6413 permit interest-free adjustments to correct employment tax reporting errors, and sections 31.6205-1, 31.6413(a)-1 and 31.6413(a)-2 of the Regulations provide related rules for making these adjustments. Notice 2020-23 provided relief for filing claims for credit or refund of any tax, including employment tax, due to be filed on or after April 1, 2020, and before July 15, 2020. However, Notice 2020-23 did not provide relief for employers making interest-free adjustments to correct employment tax reporting errors.

2. Electronic filing requirements for CPEOs

Section 31.3511-1(g)(2) provides that CPEOs must file on magnetic media any Form 941, Employer's QUARTERLY Federal Tax Return, and Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, along with all required accompanying schedules. However, § 31.3511-1(g)(2)(ii) provides that the IRS may waive the requirements to file on magnetic media in cases of undue economic hardship. Individual requests for waivers from CPEOs must be made in accordance with applicable guidance. The term "magnetic media" generally includes electronic filing as well as other media specifically permitted under applicable guidance.

C. Employee Benefits

1. Funding provisions for qualified defined benefit pension plans

Section 412 provides minimum funding standards for qualified defined benefit and other pension plans. Section 412(c) provides for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive a waiver, section 412(c)(5) provides that an application for a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought.

Section 432(b)(3)(A) provides special rules for certain multiemployer defined benefit plans. For a plan that is subject to those requirements, the plan actuary must make certain certifications each year regarding the plan's funded status. The deadline for these certifications for a plan year is the 90th day of the plan year. Under section 432(b)(3)(D), in certain circumstances, the plan sponsor is required to provide notice regarding the plan's funded status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of Labor and, if applicable, the Secretary of the Treasury. Section 432(c)(1) requires, for the first plan year that a multiemployer plan is in endangered status, that the plan sponsor adopt a funding improvement plan providing one or more schedules of revised benefit structures, revised contribution structures, or both, no later than 240 days following the required date for the actuarial certification of endangered status and notify the bargaining parties of the schedules within 30 days after their adoption. Section 432(c)(6) requires the plan sponsor to update the funding improvement plan and schedules annually and attach that update to the Form 5500 filed for the plan year. Section 432(e)(1)(A) and (3)(B) impose similar adoption, notification, and update requirements with respect to a rehabilitation plan for a multiemployer plan that is certified to be in critical status.

Section 433 provides special funding rules for cooperative and small employer charity pension (CSEC) plans as defined under section 414(y), including rules for certification of funded status and the adoption of a funding restoration plan.

Sections 302, 305 and 306 of ERISA contain provisions that are parallel to sections 412, 432 and 433 of the Code, respectively.

2. *Form 5330, Return of Excise Taxes Related to Employee Benefit Plans*

The Form 5330 is used to report and pay a variety of excise taxes with respect to employee benefit arrangements and tax-exempt entities. See Table 1 of the Instructions for Form 5330 for a list of filing deadlines for those excise taxes.

3. Certain Tax Exempt and Government Entities/Employee Plans programs

a. Initial remedial amendment period for section 403(b) plans

Section 21.02 of Rev. Proc. 2013-22, 2013-18 IRB 985, as modified by Rev. Proc. 2014-28, 2014-16 IRB 944, and Rev. Proc. 2015-22, 2015-11 IRB 754, and clarified by Rev. Proc. 2017-18, 2017-5 IRB 743, establishes a remedial amendment period that permits an eligible employer to retroactively correct form defects in its written section 403(b) plan by timely adopting a section 403(b) pre-approved plan or by otherwise timely amending its section 403(b) individually designed plan. Rev. Proc. 2017-18 provides that March 31, 2020, is the last day of this initial remedial amendment period.

Rev. Proc. 2019-39, 2019-42 IRB 945, sets forth a system of recurring remedial amendment periods for correcting form defects in section 403(b) individually designed plans and section 403(b) pre-approved plans first occurring after the initial remedial amendment period ends, and

provides a limited extension of the initial remedial amendment period for certain form defects that is based, in part, on the initial March 31, 2020, deadline. Rev. Proc. 2019-39 also provides deadlines for the adoption of plan amendments for section 403(b) individually designed plans and section 403(b) pre-approved plans with respect to a form defect first occurring after the end of the initial remedial amendment period.

b. Pre-approved defined benefit plans

Rev. Proc. 2016-37, 2016-29 IRB 136, provides a regular six-year remedial amendment cycle that applies for pre-approved plans. Section 15.03(1) of Rev. Proc. 2016-37 provides that the remedial amendment period for a disqualifying provision will not end before the last day of a plan's first applicable remedial amendment cycle in which an application for an opinion or advisory letter that considers the disqualifying provision may be submitted.

Announcement 2018-05, 2018-13 IRB 461, provides that an adopting employer who adopts, by April 30, 2020, a master and prototype (M&P) or volume submitter (VS) defined benefit plan that was approved based on Notice 2012-76, 2012-52 IRB 775 (2012 Cumulative List), will be considered to have adopted the plan within the second six-year remedial amendment cycle. Announcement 2018-05 also provides that an adopting employer of an M&P or VS plan may apply for an individual determination letter (if otherwise eligible) during the period beginning on May 1, 2018, and ending April 30, 2020. Announcement 2018-05 further provides that April 30, 2020, is the end of the second six-year remedial amendment cycle for pre-approved defined benefit plans. Rev. Proc. 2020-10, 2020-2 IRB 295, provides that the third six-year remedial amendment cycle for pre-approved defined benefit plans begins on the following day, and ends on January 31, 2025.

c. Deadlines for voluntary correction under EPCRS

Rev. Proc. 2019-19, 2019-19 IRB 1086, sets forth a system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of section 401(a), 403(a), 403(b), 408(k), or 408(p). The Employee Plans Compliance Resolution System (EPCRS) permits employers sponsoring these plans to correct certain failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP).

Under VCP, a plan sponsor may, at any time before audit, pay a limited fee and receive the IRS's approval for correction of a plan failure that has been identified to the IRS, in writing, by the plan sponsor. Once agreement has been reached with the plan sponsor as to the appropriate corrective action to be undertaken, the IRS will send the plan sponsor a compliance statement specifying the corrective action required. Pursuant to section 10.06(9) of Rev. Proc. 2019-19, the plan sponsor must implement the corrective action set forth in the compliance statement within 150 days of the date of the compliance statement. In addition, if the corrective action specified in the compliance statement includes the adoption of a corrective plan amendment, the corrective amendment must be adopted no later than 150 days after the date of the compliance statement (with a later deadline in the case of a governmental plan described in section 414(d)).

d. Substitute mortality tables

Rev. Proc. 2017–55, 2017–43 IRB 373, provides guidance with respect to the use of a substitute mortality table in accordance with section 430(h)(3)(C). Section 4 of Rev. Proc. 2017-55 notes that, under section 430(h)(3)(C)(v)(I), a request for approval to use substitute mortality tables generally must be submitted at least 7 months before the first day of the first plan year for which the substitute mortality tables are to apply.

D. Exempt organizations

1. *Form 990-N electronic notice requirement for certain small exempt organizations*

Section 6033(i) requires organizations that are excused from filing an annual information return (Form 990 series) by reason of normally having annual gross receipts below a certain specified amount (currently $50,000) to furnish an annual electronic notification. The annual electronic notification (Form 990-N, e-Postcard) is due by the 15th day of the fifth month after the close of the organization's tax year.

2. *Time for filing suit for declaratory judgment*

Section 7428 provides that an organization may file, within a specified period, an appropriate pleading for declaratory judgment with the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia, involving the IRS's determination, or failure to make a determination, with respect to the organization's initial or continuing qualification or classification as an exempt organization described in section 501(c) or (d) and exempt from tax under section 501(a), an organization described in section 170(c)(2), a private foundation under section 509(a), a private operating foundation under section 4942(j)(3), or a cooperative described in section 521(b). Although Notice 2020-23 postponed the time to commence an action for declaratory judgment with the United States Tax Court, it did not cover similar suits filed with the Court of Federal Claims or the district court of the United States for the District of Columbia.

E. *Forms 5498, -ESA, -SA*

Form 5498, IRA Contribution Information, Form 5498-ESA, Coverdell ESA Contribution Information, and Form 5498-SA, HSA, Archer MSA, or Medicare Advantage MSA Information, must be filed with the IRS and furnished to participants and beneficiaries by the times specified in the instructions to these forms.

III. RELIEF GRANTED

This notice amplifies the definition of Affected Taxpayer as provided in Notice 2020-23 to include Affected Taxpayers as defined in section III.A of this notice. This notice also amplifies the definition

of Specified Time-Sensitive Actions as provided in Notice 2020-23 to include the Time-Sensitive Actions described in section III.B of this notice that are due to be performed on or after March 30, 2020, and before July 15, 2020. These amplified definitions, rather than the definitions in Notice 2020-23, apply for purposes of the relief described in this section III.

Pursuant to this notice, the revised deadline for an Affected Taxpayer to perform a Time-Sensitive Action described in section III.B of this notice is July 15, 2020, unless a different revised deadline is specified under section III.B.2(e) or III.B.4 of this notice. In the case of Time-Sensitive Actions with respect to provisions of the Code for which there are parallel provisions in ERISA, the relief provided under this section III also applies for purposes of those provisions under ERISA.

This notice also provides a temporary waiver of the requirement under § 31.3511-1(g)(2) that CPEOs file certain employment tax returns, and their accompanying schedules, on magnetic media (including electronic filing). This temporary waiver is extended to all CPEOs; individual requests for waiver do not need to be submitted. The waiver applies only to Forms 941 filed for the second, third, and fourth quarter of 2020 and only to Forms 943 filed for calendar year 2020, and their accompanying schedules. Accordingly, CPEOs are permitted, but not required, to file a paper Form 941, and its accompanying schedules, in lieu of electronic submission for the second, third, and fourth quarters of calendar year 2020. In addition, CPEOs are permitted, but not required, to file a paper Form 943, and its accompanying schedules, in lieu of electronic submission for calendar year 2020.

A. Affected Taxpayers

For purposes of the relief provided with respect to Time-Sensitive Actions described in section III.B of this notice, Affected Taxpayers include:

1. With respect to employment taxes, employers who perform a Time-Sensitive Action described in section III.B.1 of this notice.
2. With respect to employee benefit plans, the plan (including a section 403(b) plan, a governmental section 457(b) plan, a SEP plan described in section 408(k), or a SIMPLE IRA plan described in section 408(p)), or any sponsor, administrator, participant, beneficiary, disqualified person, or other person with respect to such a plan who performs a Time-Sensitive Action described in section III.B.2 of this notice.
3. With respect to exempt organizations, those persons performing a Time-Sensitive Action described in section III.B.3 of this notice.
4. Filers of a Form 5498, Form 5498-SA, or 5498-ESA for whom filing the form is a Time-Sensitive Action described in section III.B.4 of this notice.

B. Time-Sensitive Actions

The Time-Sensitive Actions to which the relief under this section III applies are:

1. *Correction of employment tax reporting errors using the interest-free adjustment process under sections 6205 and 6413*
   Actions to correct underpayments or overpayments pursuant to sections 6205 and 6413, respectively.
2. *Qualified retirement plans*
   a. *Funding waiver*
      Application for a funding waiver under section 412(c) for a defined benefit pension plan that is not a multiemployer plan.
   b. *Multiemployer plan funding*
      With respect to a multiemployer defined benefit pension plan, actions due to be performed on or before the dates described in:
      - Section 432(b)(3) for the certification of funded status and the notice to interested parties of that certification.
      - Sections 432(c)(1) and 432(e)(1) for the adoption of, and the notification to the bargaining parties of the schedules under, a funding improvement plan or rehabilitation plan.
      - Sections 432(c)(6) and 432(e)(3) for the annual update of a funding improvement plan and its contribution schedules, or rehabilitation plan and its contribution schedules, and the filing of those updates with the Form 5500 annual return.
   c. *CSEC plans*
      With respect to a CSEC plan, actions to be performed on or before the date described in:
      - Section 433(c)(9) for making the contribution required to be made for the plan year.
      - Section 433(f)(3)(B) for making required quarterly installments.
      - Section 433(j)(3) for the adoption of a funding restoration plan.
      - Section 433(j)(4) for the certification of funded status.
   d. *Form 5330*
      Filing of Form 5330 and payment of the associated excise taxes. The period beginning on March 30, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest or penalty for failure to file the Form 5330 or to pay the excise tax postponed by this notice. Interest and penalties with respect to such postponed filing and payment obligations will begin to accrue on July 16, 2020.
   e. *Tax Exempt and Government Entities Division, Employee Plans programs*
      - *Extension of initial remedial amendment period for section 403(b) plans.* With respect to the remedial amendment period and plan amendment rules for section 403(b) plans described in Rev. Proc. 2017-18 and Rev. Proc. 2019-39, actions that are otherwise required to be performed on or before March 31, 2020, with respect to form defects or plan amendments. The deadline for those actions is postponed to June 30, 2020 (and "June 30, 2020" should be

substituted for all references to "March 31, 2020" in Rev. Proc. 2017-18 and in Rev. Proc. 2019-39).

- *Pre-approved defined benefit plans*. With respect to pre-approved defined benefit plans, the deadline for the following actions is postponed until July 31, 2020:
  - o Adoption of a pre-approved defined benefit plan that was approved based on the 2012 Cumulative List;
  - o Submission of a determination letter application under the second six-year remedial amendment cycle; and
  - o Actions that are otherwise required to be performed with respect to disqualifying provisions during the remedial amendment period that would otherwise end on April 30, 2020.
- *EPCRS*. With respect to a compliance statement issued under VCP, implementation of all corrective actions, including adoption of corrective amendments, required by the compliance statement.
- *Substitute mortality table*. Request for approval of a substitute mortality table in accordance with section 430(h)(3)(C).

3. *Exempt organizations*
   a. *Form 990-N electronic notice requirement for certain small exempt organizations*
   Electronic submissions of Form 990-N under section 6033(i).
   b. *Time for Commencing a Suit for Declaratory Judgment Pursuant to Section 7428*
   Filings by organizations listed in section 7428(a)(1) of an appropriate pleading for declaratory judgment with the United States Court of Federal Claims or the district court of the United States for the District of Columbia, within the period specified in section 7428(b)(3).
4. *Form 5498 series*
   With respect to the Form 5498, IRA Contribution Information, Form 5498-ESA, Coverdell ESA Contribution Information, and the Form 5498-SA, HSA, Archer MSA, or Medicare Advantage MSA Information, the due date for filing and furnishing the forms is postponed to August 31, 2020. The period beginning on the original due date of those forms and ending on August 31, 2020, will be disregarded in the calculation of any penalty for failure to file those forms. Penalties with respect to such a postponed filing will begin to accrue on September 1, 2020.

IV. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2017-18, Rev. Proc. 2017-55, Announcement 2018-05, Rev. Proc. 2019-19, Rev. Proc. 2019-39, and Rev. Proc. 2020-10 are modified, and Notice 2020-18, Notice 2020-20, and Notice 2020-23 are amplified.

V. DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Office of Associate Chief Counsel, Employee Plans, Exempt Organizations, and Employment Taxes, with the participation of staff from other offices. For further information regarding the guidance related to employment taxes under this notice, please contact Lynne A. Camillo at (202) 317-4774 or Nina Roca at (202) 317-6798. For further information regarding the guidance related to qualified retirement plans under this notice, please contact Diane S. Bloom at (202) 317-6700. For further information regarding the guidance related to exempt organizations under this notice, please contact Ingrid M. Vatamanu at (202) 317-4541. These telephone calls are not toll-free.

Credit for Carbon Oxide Sequestration 2020 Section 45Q Inflation Adjustment Factor

Notice 2020-40

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon oxide sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2020. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q.

SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765, 3829 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended by § 1131 of the American Recovery and Reinvestment Tax Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115 (February 17, 2009) and more recently by section 41119 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018). As a result of the modifications made by the BBA amendment, the credit under § 45Q now applies to the sequestration of "qualified carbon oxide," a broader term than qualified carbon dioxide. The amount of the credit is also increased for carbon oxide captured with equipment originally placed in service on or after the date of enactment of BBA.

Section 45Q(a)(1) allows a credit of $20 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, (ii) disposed of by the taxpayer in secure geological storage, and (iii) not used by the taxpayer as a tertiary injectant

in a qualified enhanced oil or natural gas recovery project.

Section 45Q(a)(2) allows a credit of $10 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized by the taxpayer in a manner described in § 45Q(f)(5).

Section 45Q(a)(3) allows a credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA during the 12-year period beginning on the date the equipment was originally placed in service, (ii) disposed of by the taxpayer in secure geological storage, and (iii) neither used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project nor utilized in a manner described in § 45Q(f)(5).

Section 45Q(a)(4) allows credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA, during the 12-year period beginning on the date the equipment was originally placed in service, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized in a manner described in § 45Q(f)(5).

For purposes of determining the carbon oxide sequestration credit under § 45Q, a taxpayer may elect under § 45Q(b)(3) to have the dollar amounts applicable under § 45Q(a)(1) or (2) apply in lieu of the dollar amounts applicable under § 45Q(a)(3) or (4) for each metric ton of qualified carbon oxide which is captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA.

Section 45Q(c) defines the term "qualified carbon oxide" as (i) any carbon dioxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; (ii) any carbon dioxide or other carbon oxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; or (iii) in the case of a direct air capture facility, any carbon dioxide which (I) is captured directly from the ambient air, and (II) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

Section 45Q(d) defines the term "qualified facility" as any industrial facility or direct air capture facility (i) the construction of which begins before January 1, 2024, and (I) construction of carbon capture equipment begins before such date, or (II) the original planning and design for such facility includes installation of carbon capture equipment; and (ii) which captures (I) in the case of a facility which emits not more than 500,000 metric tons of carbon oxide into the atmosphere during the taxable year, not less than 25,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in § 45Q(f)(5), (II) in the case of an electricity generating facility which is not described in § 45Q(d)(2)(A), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or (III) in the case of a direct air capture facility or any facility not described in § 45Q(d)(2)(A) or (B), not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

Under § 45Q(f)(7), for taxable years beginning in a calendar year after 2009, the dollar amounts contained in § 45Q(a)(1) and (2) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting "2008" for "1990."

Section 43(b)(3)(B) defines the term "inflation adjustment factor" as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(f)(7), for the 2020 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2019 (112.257) and the denominator of which is the GNP implicit price deflator for 2008 (94.268).

Section 45Q(g) provides that in the case of any carbon capture equipment placed in service before the date of the enactment of BBA, the credit under § 45Q shall apply with respect to qualified carbon oxide captured using such equipment before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with (i) § 45Q(a), as in effect on the day before the date of the enactment of BBA, and (ii) § 45Q(a)(1) and (2).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2020 is 1.1908. The § 45Q credit for calendar year 2020 is $23.82 per metric ton of qualified carbon oxide under § 45Q(a)(1) and $11.91 per metric ton of qualified carbon oxide under § 45Q(a)(2).

SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83 requires taxpayers to file annual reports that provide (among other information) the amount (in metric tons) of qualified carbon oxide for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service

not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the most recent annual reports filed with the Internal Revenue Service, the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q is 72,087,903 metric tons.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Maggie Stehn at (202) 317-6853 (not a toll-free number).

Beginning of Construction for Sections 45 and 48; Extension of Continuity Safe Harbor to Address Delays Related to COVID-19

Notice 2020-41

SECTION 1. PURPOSE

This notice modifies the prior Internal Revenue Service (IRS) notices[2] addressing the beginning of construction requirement for both the production tax credit for renewable energy facilities under section 45 of the Internal Revenue Code (Code) and the investment tax credit for energy property under § 48. In response to the Coronavirus Disease 2019 (COVID-19) pandemic, this notice provides that the Continuity Safe Harbor provided and extended by the prior IRS notices is further extended for projects that began construction in either calendar year 2016 or 2017. This notice also provides a 3½ Month Safe Harbor for services or property paid for by the taxpayer on or after September 16, 2019 and received by October 15, 2020.

SECTION 2. BACKGROUND

Section 38 allows certain business credits against the tax imposed by chapter 1 of the Code. Among the credits allowed by § 38 are the investment tax credit determined under § 46 and the renewable electricity production tax credit under § 45. The investment tax credit includes the energy credit under § 48. The credits under §§ 45 and 48 generally are referred to as the production tax credit (PTC) and the investment tax credit (ITC), respectively.

To qualify for the PTC, electricity must, among other things, be produced by the taxpayer at a qualified facility as defined in § 45(d).[3] The PTC for any taxable year is calculated by multiplying an inflation-adjusted credit rate by kilowatt hours of electricity produced and sold by the taxpayer to an unrelated person. The ITC is calculated as a percentage of the basis of energy property (as defined in § 48(a)(3)) placed in service during the taxable year. Additionally, under § 48(a)(5), a taxpayer may elect to treat certain renewable energy facilities that otherwise qualify under § 45(d) as energy property to claim the ITC in lieu of the PTC with respect to the facility. Both the PTC and the ITC have a beginning of construction requirement.

On December 20, 2019, the Further Consolidated Appropriations Act of 2020, Pub. L. 116-94, Div. Q, 133 Stat. 2534 (FCAA), enacted significant amendments to the PTC and the ITC. The FCAA amended the PTC by extending the beginning of construction deadline for certain qualifying facilities to December 31, 2020. This modification retroactively extended the beginning of construction deadline to qualify for the PTC by three years for closed-loop biomass facilities, open loop biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities. Additionally, the FCAA extended the beginning of construction deadline for the PTC for wind facilities by one year to December 31, 2020, and reduced the credit rate applicable to such facilities by 40-percent for facilities the construction of which begins after December 31, 2019, and before January 1, 2021. Under the FCAA, the 40-percent phaseout also applies to such wind facilities treated as energy property for purposes of the ITC. The FCAA also retroactively extended the election to claim the ITC in lieu of the PTC by three years with respect to certain renewable energy facilities if construction of such facility begins before January 1, 2021.

Notice 2013-29 provides two methods to establish that the beginning of construction requirement under §§ 45 and 48(a)(5) has been satisfied with respect to a facility: the Physical Work Test and the Five Percent Safe Harbor. Both methods require a taxpayer to make continuous progress towards completion of the facility once construction has begun (Continuity Requirement).

Section 4 of Notice 2013-29 provides the Physical Work Test. Section 4.01 of Notice 2013-29 provides:

> Construction of a qualified facility begins when physical work of a significant nature begins. . . . Whether a taxpayer has begun construction of a facility before [the statutory deadline], will depend on the relevant facts and circumstances. The Internal Revenue Service will closely scrutinize a facility, and may determine that construction has not begun on a facility before [the statutory deadline], if a taxpayer does not maintain a continuous program of construction as determined under section 4.06.

Section 4.06(1) of Notice 2013-29 provides that a continuous program of construction involves continuing physical work of a significant nature. Further, section 4.06(1) of Notice 2013-29 provides that whether the taxpayer has maintained a continuous program of construction will

[2] Notice 2013-29, 2013-1 C.B. 1085; Notice 2013-60, 2013-2 C.B. 431; Notice 2014-46, 2014-2 C.B. 520; Notice 2015-25, 2015-13 I.R.B. 814; Notice 2016-31, 2016-1 C.B. 1025; Notice 2017-04, 2017-4 I.R.B. 541; Notice 2018-59, 2018-28 I.R.B. 196; and Notice 2019-43, 2019-31 I.R.B. 487 (collectively, prior IRS notices).

[3] Section 45 also provides a PTC for refined coal, steel industry fuel, and Indian coal, which is calculated based on the tons of coal sold to an unrelated party. However, the beginning of construction requirement does not apply to these facilities.

be determined by the relevant facts and circumstances.

Section 5.01 of Notice 2013-29 provides the Five Percent Safe Harbor:

> Construction of a facility will be considered as having begun before [the statutory deadline], if (1) a taxpayer pays or incurs (within the meaning of Treas. Reg. § 1.461-1(a)(1) and (2)) five percent or more of the total cost of the facility, except as provided in section 5.01(2), before [the statutory deadline], and (2) thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility (as determined under section 5.02).

Section 5.01(2) of Notice 2013-29 allows a look-through for economic performance for purposes of the Five Percent Safe Harbor:

> Solely for purposes of this notice, for property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of section 461.

Section 5.02(1) of Notice 2013-29 provides that whether a taxpayer makes continuous efforts to advance towards completion of the facility will be determined by the relevant facts and circumstances. This section also provides that facts and circumstances indicating continuous efforts to advance towards completion of the facility may include, but are not limited to:

(a) paying or incurring additional amounts included in the total cost of the facility;
(b) entering into binding written contracts for components or future work on construction of the facility;
(c) obtaining necessary permits; and
(d) performing physical work of a significant nature.

Notice 2013-60 clarifies certain concepts provided in Notice 2013-29. Notice 2013-60 provides a Continuity Safe Harbor that allows a facility to be deemed to have satisfied the Continuity Requirement. Section 3.02 of Notice 2013-60 provides that if a facility is placed in service before January 1, 2016, the facility will be considered to satisfy the Continuous Construction Test (for purposes of satisfying the Physical Work Test) or the Continuous Efforts Test (for purposes of satisfying the Five Percent Safe Harbor). Section 3.02 of Notice 2013-60 also provides that if a facility is not placed in service before January 1, 2016, whether the facility satisfies the Continuous Construction or Continuous Efforts Tests will be determined by the relevant facts and circumstances, as described in section 4.06 and section 5.02 of Notice 2013-29.

The Department of the Treasury (Treasury Department) and the IRS published several notices further extending and modifying the Continuity Safe Harbor. Notice 2015-25 extends the Continuity Safe Harbor for one year. Notice 2016-31 modifies the Continuity Safe Harbor originally provided in section 3.02 of Notice 2013-60 and extended by Notice 2015-25. Section 3 of Notice 2016-31 provides that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began or (2) December 31, 2016, the facility will be considered to satisfy the Continuity Safe Harbor. Notice 2017-04 further extends and modifies the Continuity Safe Harbor by providing that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began or (2) December 31, 2018, the facility will be considered to satisfy the Continuity Safe Harbor.

Notice 2018-59 provides methods to establish the beginning of construction (Physical Work Test and Five Percent Safe Harbor), a Continuity Requirement for both methods, rules for transferring energy property, and additional rules applicable to the beginning of construction requirement of § 48 with respect to "energy property" described in sections 2.02 and 2.03 of Notice 2018-59. Section 6.05 of Notice 2018-59 provides a Continuity Safe Harbor for energy property under § 48 that mirrors that provided for the PTC under § 45 in the prior IRS notices:

> Except as provided in this section, if a taxpayer places an energy property in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction of the energy property began (the Continuity Safe Harbor Deadline), the energy property will be considered to satisfy the Continuity Safe Harbor. The excusable disruption rules in section 6.03 do not apply for purposes of applying the Continuity Safe Harbor. However, if an energy property is not placed in service before the end of the fourth calendar year after the calendar year during which construction of the energy property began, whether the energy property satisfies the Continuity Requirement under either the Physical Work Test or the Five Percent Safe Harbor will be determined by the relevant facts and circumstances.

The Treasury Department and the IRS recognize that the COVID-19 pandemic is causing delays in the development of certain facilities eligible for the PTC and the ITC. As a result, many taxpayers will not place facilities in service in time to meet the Continuity Safe Harbor or may have difficulty demonstrating to investors that they have met the Continuity Requirement based on the relevant facts and circumstances. This situation is resulting in significant impacts on project financing and development. Thus, an extension of the Continuity Safe Harbor and the addition of a 3½ Month Safe Harbor are necessary to provide relief for taxpayers to satisfy the beginning of construction requirements under §§ 45 and 48. Except as otherwise specified in this notice, the guidance provided in the prior IRS notices continues to apply.

SECTION 3. EXTENSION OF THE CONTINUITY SAFE HARBOR FOR SECTIONS 45 and 48

This notice provides that for any qualified facility or energy property that began construction under the Physical Work Test or the Five Percent Safe Harbor in either calendar year 2016 or 2017, the Continuity Safe Harbor is satisfied if a taxpayer places the qualified facility or energy property in service by the end of a calendar year that is no more than five calendar years after the calendar year during which construction with respect to that qualified facility or energy property began.

SECTION 4. SAFE HARBOR FOR 3½ MONTH RULE

The Five Percent Safe Harbor treats construction as beginning with respect to any qualified facility or energy property when the taxpayer (or another person in the case of the look-through provision) pays or incurs five percent of total projects costs. Under the principles of § 461(h), the all events test for determining whether a liability has been incurred generally is not satisfied any earlier than when economic performance occurs with respect to the liability. Under § 1.461-4(d)(2)(i) of the Income Tax Regulations, if the liability of the taxpayer arises out of the provision of services or property, economic performance for the liability ordinarily occurs as such services or property is provided to the taxpayer. However, under the special rule set forth in § 1.461-4(d)(6)(ii) (3½ Month Rule), a taxpayer may treat services or property as provided to the taxpayer as the taxpayer makes payment to the person providing the services or property if the taxpayer can reasonably expect the person to provide the services or property within 3½ months after the date of payment. If the taxpayer's reasonable expectation at the time they made the payment was that the person would provide the ordered services or property within 3½ months, regardless of any subsequent events that prevent that reasonable expectation from actually occurring, the 3½ Month Rule is satisfied and the cost is treated as incurred when paid.

As noted, the taxpayer's reasonable expectation at time of payment is relevant for purposes of the 3½ Month Rule. However, to provide certainty and assurance, this notice further provides that for services or property paid for by the taxpayer on or after September 16, 2019, the taxpayer will be deemed to have had a reasonable expectation that the services or property would be received within 3½ months after the date of payment in the case of any services or property actually received by a taxpayer by October 15, 2020 (3½ Month Safe Harbor). Although this 3½ Month Safe Harbor will not apply to any services or property received by a taxpayer after October 15, 2020, the 3½ Month Rule may still be satisfied, as described above, based on reasonable expectations at the time of payment. The 3½ Month Safe Harbor applies only for purposes of the beginning of construction requirement for the PTC and the ITC.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2013-29, Notice 2013-60, Notice 2014-46, Notice 2015-25, Notice 2016-31, Notice 2017-04, Notice 2018-59, and Notice 2019-43 are modified.

SECTION 6. NO RULE

The IRS will not issue private letter rulings or determination letters to a taxpayer regarding the application of this notice, the prior IRS notices, or the beginning of construction requirement under §§ 45 and 48.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer Bernardini on (202) 317-6853 (not a toll-free number).

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26 CFR 601.601: Rules and Regulations.
(Also Part I, §§ 25, 143)

Rev. Proc. 2020-33

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the income requirements described in § 143(f).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of $250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term "applicable median family income"

means the greater of (A) the area median gross income for the area in which the residence is located, or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued, and nonissued bond amounts elected, after December 31, 1988. *See* § 4005(h) of the Technical and Miscellaneous Revenue Act of 1988, 1988-3 C.B. 1, 311 (1988).

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on April 01, 2020 and may be obtained by calling the HUD reference service at 1-800-245-2691. The income information is also available at HUD's World Wide Web site, *http://www.huduser.gov/portal/datasets/il.html*, which provides a menu from which you may select the year and type of data of interest.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on April 06, 2020, in Rev. Proc. 2020-18, 2020-15 I.R.B. 592.

SECTION 3. APPLICATION

.01 When computing the income requirements of § 143(f), issuers of qualified mortgage bonds and mortgage credit certificates must use either (1) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 24, 2019, or (2) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 01, 2020.

.02 If an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 24, 2019, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 24, 2019, for all purposes under § 143(f). Likewise, if an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 01, 2020, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on April 01, 2020, for all purposes under § 143(f).

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2019-21, 2019-21 I.R.B. 190, is obsolete except as provided in §§ 3.01, 3.02, or 5 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86-124, 1986-2 C.B. 27. Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86-124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

Issuers must use the United States and area median gross income figures specified in § 3.01 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on April 01, 2020, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

SECTION 6. REQUEST FOR COMMENTS

This revenue procedure provides that the United States and area median gross income figures specified in § 3.01 released by HUD may be relied upon until the Internal Revenue Service (IRS) publishes a revenue procedure in the Internal Revenue Bulletin indicating that HUD has released updated income limits. The Department of the Treasury and the IRS solicit public comments on whether, instead of publishing this revenue procedure annually, the IRS should publish permanent guidance that would allow issuers to rely on the United States and area median gross income figures immediately upon release of those figures by HUD. *See, e.g.,* Rev. Rul. 94-57, 1994-2 C.B. 5 (permitting taxpayers to rely on HUD income limits for certain purposes of § 42). The Department of the Treasury and the IRS also solicit public comments on whether such guidance should: (1) allow an issuer the choice to use the HUD figures for the current year or the HUD figures for the prior year or earlier years; and (2) provide a transition period that allows an issuer to rely on HUD figures from the prior year or earlier years and, if a transition period should be provided, the number of days in the transition period. Comments should be submitted in writing on or before October 13, 2020, and should contain a reference to this Rev. Proc. 2020-33.

All comments will be available for public inspection and copying. Commenters are strongly suggested to submit comments electronically, as access to mail may be limited. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS Rev. Proc. 2020-33 in the search field on the regulations.gov homepage to find this revenue procedure and submit comments).

(2) Alternatively, by mail to Internal Revenue Service, CC:PA:LPD:PR (Rev. Proc. 2020-33), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Timothy Jones and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. White at (202) 317-6980 (not a toll-free number).

Part IV

Third Six-Year Cycle Pre-Approved Defined Contribution Plans: Issuance of Opinion Letters; Plan Adoption Deadline; and Opening of Determination Letter Program

Announcement 2020-7

The Internal Revenue Service (IRS) intends to issue opinion letters for pre-approved defined contribution plans that were restated for changes in plan qualification requirements listed in Notice 2017-37, 2017-29 I.R.B. 89 (the 2017 Cumulative List) and that were filed with the IRS during the submission period for the third six-year remedial amendment cycle under Rev. Proc. 2016-37, 2016-29 I.R.B. 136 (newly approved plans). The IRS expects to issue the letters on June 30, 2020, or, in some cases, as soon as possible thereafter. An employer adopting a newly approved plan will be required to adopt the plan document by July 31, 2022. Starting August 1, 2020, and ending July 31, 2022, the IRS will accept from any employer eligible to submit a determination letter request an application for an individual determination letter under the third six-year remedial amendment cycle for pre-approved defined contribution plans.

Background

Rev. Proc. 2016-37 describes a staggered remedial amendment system for pre-approved plans that are qualified under § 401(a) of the Internal Revenue Code (Code). The revenue procedure provides separate six-year remedial amendment cycles for pre-approved defined benefit and pre-approved defined contribution plans.

Rev. Proc. 2017-41, 2017-29 I.R.B. 92, modifies the pre-approved letter program by combining the former master and prototype and volume submitter programs into a single opinion letter program. Under this program, providers of pre-approved plans may continue to apply for new opinion letters once every six years. Rev. Proc. 2017-41 sets forth the procedures for providers to obtain opinion letters for qualified pre-approved plans submitted with respect to the third (and subsequent) six-year remedial amendment cycles.

The on-cycle submission period for providers of pre-approved defined contribution plans to submit opinion letter requests under the third six-year remedial amendment cycle (set forth in Rev. Proc. 2016-37, and extended by Rev. Proc. 2017-41 and Rev. Proc. 2018-42, 2018-36 I.R.B. 424) was October 2, 2017, through December 31, 2018. Rev. Proc. 2017-41 required pre-approved plan providers to restate their pre-approved defined contribution plans for the qualification requirements included on the 2017 Cumulative List and to apply for new opinion letters during this submission period.

Rev. Proc. 2016-37 and Rev. Proc. 2017-41 provide that the IRS will review plans that have been submitted during the applicable on-cycle submission period for a six-year remedial amendment cycle, taking into account the applicable Cumulative List of Changes in Plan Qualification Requirements that identifies changes in the qualification requirements of the Code. When the review process for a cycle of pre-approved plans has neared completion, the IRS will announce the date by which an adopting employer must adopt a newly approved plan. Depending on the date the review process is completed, employers will have approximately two years to adopt the newly approved plans and, if eligible, to apply for an individual determination letter.

Deadline for Employer Adoption of Pre-approved Defined Contribution Plans

The end of the third six-year remedial amendment cycle for pre-approved defined contribution plans is January 31, 2023. An adopting employer whose defined contribution plan is eligible for the six-year remedial amendment cycle and who adopts, by July 31, 2022, a newly approved plan, will be considered to have adopted the plan within the third six-year remedial amendment cycle.

Opening of Individual Determination Letter Program for Pre-approved Defined Contribution Plans

An adopting employer of a pre-approved defined contribution plan may apply for an individual determination letter (if otherwise eligible) during the period beginning August 1, 2020, and ending July 31, 2022. See Rev. Proc. 2020-4, 2020-1 I.R.B. 148, for additional information regarding determination letter application procedures for adopting employers of pre-approved plans with respect to the third six-year remedial amendment cycle, including sections 8 and 12B of the revenue procedure, relating to the circumstances under which an employer may apply for a determination letter.

Effective Date

This announcement is effective as of June 1, 2020.

Paperwork Reduction Act

The collection of information contained in Rev. Proc. 2017-41 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1674.

Drafting Information

The principal author of this announcement is Arslan Malik of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this announcement contact Employee Plans at (513) 975-6319 (not a toll-free number).

Notice of Proposed Rulemaking

Income Tax Withholding on Certain Periodic Retirement and Annuity Payments Under Section 3405(a)

REG-100320-20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth a proposed regulation that provides rules for Federal income tax withholding on certain periodic retirement and annuity payments to implement an amendment made by the Tax Cuts and Jobs Act. This proposed regulation would affect payors of certain periodic payments, plan administrators that are required to withhold on such payments, and payees who receive such payments.

DATES: Written or electronic comments and requests for a public hearing must be received by July 27, 2020**.** Requests for a public hearing must be submitted as prescribed in the "**Comments and Requests for a Public Hearing**" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100320-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–100320-20), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Kara M. Soderstrom of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-5234; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth a proposed amendment to the Employment Tax Regulations (26 CFR Parts 31 and 35) under section 3405 of the Internal Revenue Code (Code). This proposed regulation would update certain provisions of §35.3405-1T to conform to a change to section 3405(a)(4) made by section 11041(c)(2)(G) of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (TCJA). Prior to amendment by TCJA, section 3405(a)(4) provided that, in the case of any periodic payment for which a withholding certificate is not in effect, the amount withheld from the periodic payment (the default rate of withholding) is determined by treating the payee as a married individual claiming three withholding exemptions. As amended by TCJA, section 3405(a)(4) provides that the default rate of withholding on periodic payments is determined under rules prescribed by the Secretary. Section 35.3405-1T reflects the rule under section 3405(a)(4) prior to amendment by TCJA.

1. *Statutory and Regulatory Framework*

Section 3405 provides Federal income tax withholding rules for payments of pensions, annuities, and certain other deferred income (retirement and annuity payments). Retirement and annuity payments that are subject to withholding under section 3405 include periodic payments, nonperiodic distributions, and eligible rollover distributions.

The Treasury Department and the IRS have issued several sets of regulations under section 3405 that provide guidance regarding withholding on periodic payments, nonperiodic distributions, and eligible rollover distributions. On October 14, 1982, the Treasury Department and the IRS issued §35.3405-1T (TD 7839) (47 FR 45868), which provides general rules addressing withholding requirements and specific rules addressing withholding on periodic payments and nonperiodic distributions (other than eligible rollover distributions), notice and election procedures, and reporting and recordkeeping requirements. On September 22, 1995, the Treasury Department and the IRS issued §31.3405(c)-1 (TD 8619) (60 FR 49215), which provides rules for withholding on eligible rollover distributions, as defined in section 402(f)(2)(A) (generally referring to distributions from plans qualified under section 401(a), section 403(a) plans, section 403(b) tax-sheltered annuity plans, or section 457(b) plans maintained by a governmental employer that are eligible to be rolled over to an IRA (an individual retirement account or individual retirement annuity) or another eligible retirement plan). On February 8, 2000, the Treasury Department and the IRS issued §35.3405-1 (TD 8873) (65 FR 6007), which provides rules regarding the medium through which notices required under section 3405 may be provided. On May 31, 2019, proposed §31.3405(e)-1 was published in the **Federal Register** (84 FR 25209) to propose rules applicable to periodic payments and nonperiodic distributions (other than eligible rollover distributions) that are to be delivered outside the United States and its possessions.

2. *Definition of Periodic Payment*

While the guidance described in Section 1 of this Background relates to all types of payments and distributions subject to withholding under section 3405, this proposed regulation addresses only the change made by section 11041(c)(2)(G) of TCJA to section 3405(a)(4), and

therefore applies only to certain periodic payments.

A periodic payment is defined in section 3405(e)(2) as "a designated distribution which is an annuity or similar periodic payment." Subject to certain exceptions,[1] a designated distribution generally is defined in section 3405(e)(1)(A) as any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. For this purpose, an employer deferred compensation plan is defined in section 3405(e)(5) as any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation, and a commercial annuity is defined in section 3405(e)(6) as an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. Section 35.3405-1T, Q&A a-9, provides that a periodic payment includes an annuity or similar periodic payment, whether paid by a licensed life insurance company, a financial institution, or a plan, and that an "annuity" is a series of payments payable over a period greater than one year and taxable under section 72 as amounts received as an annuity, whether or not the payments are variable in amount.

3. *Withholding on Periodic Payments*

Section 3405(a) requires the payor of any periodic payment to withhold from the payment as if the payment were wages paid by an employer to an employee, unless an individual has elected under section 3405(a)(2) not to have withholding apply, subject to the following exceptions. First, section 3405(c)(1)(A) provides that section 3405(a) does not apply in the case of any designated distribution that is an eligible rollover distribution (as defined in section 402(f)(2)(A)). Second, section 3405(e)(12) provides that no election under section 3405(a)(2) will be treated as in effect (and the provisions of section 3405(a)(4) for determining the default rate of withholding will not apply) if a payee fails to furnish the payee's Taxpayer Identification Number (TIN) to the payor in the manner required by the Secretary or the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect. Third, under section 3405(e)(13), no election under section 3405(a)(2) may be made with respect to certain periodic payments to be delivered outside of the United States and its possessions.

4. *Default Rate of Withholding on Periodic Payments and TCJA Amendment*

Before amendment by TCJA, section 3405(a)(4) provided that, in the case of any periodic payment with respect to which a withholding certificate is not in effect, the amount withheld from the periodic payment is "determined by treating the payee as a married individual claiming 3 withholding exemptions." TCJA amended section 3405(a)(4) to eliminate the requirement that the payee be treated as a married individual claiming three withholding exemptions and to provide instead that, in the case of any periodic payment with respect to which a withholding certificate is not in effect, the amount withheld from the periodic payment will be "determined under rules prescribed by the Secretary."

5. *Guidance Regarding the Default Rate of Withholding on Periodic Payments*

Following enactment of TCJA, the Treasury Department and the IRS issued guidance addressing the change to section 3405(a)(4). Section V of Notice 2018-14, 2018-7 I.R.B. 353, and section 10 of Notice 2018-92, 2018-51 I.R.B. 1038, provided that, for 2018 and 2019, respectively, the rules for withholding when no withholding certificate is furnished with respect to periodic payments under section 3405(a) would parallel the rules for prior years and would be based on treating the payee as a married individual claiming three withholding allowances. Similarly, section IV of Notice 2020-3, 2020-3 I.R.B. 330, provides that, for 2020, the default rate of withholding from periodic payments under section 3405(a) is based on treating the payee as a married individual claiming three withholding allowances and applying that status when referring to the applicable withholding tables and related computational procedures in the 2020 Publication 15-T, "Federal Income Tax Withholding Methods."[2]

Explanation of Provisions

1. *Default Rate of Withholding on Periodic Payments*

As indicated in the Background section of the preamble, certain provisions of §35.3405-1T reflect the rule under section 3405(a)(4) prior to amendment by TCJA.[3] Specifically, Q&As a-10, b-3, and b-4 of §35.3405-1T each provide that the default rate of withholding on periodic payments is determined by treating the payee as married and claiming three withholding allowances. The proposed regulation would remove these three Q&As from §35.3405-1T because they prescribe the substantive default rate of withholding rule under section 3405(a)(4) prior to amendment by TCJA. The proposed regulation would not remove other Q&As in §35.3405-1T that reference the pre-TCJA rule under section 3405(a)(4) but do not

[1] Under section 3405(e)(1)(B), a designated distribution does not include any amount that is wages without regard to section 3405; the portion of a distribution or payment (excluding any distribution or payment from or under an individual retirement plan, other than a Roth IRA) which it is reasonable to believe is not includible in gross income; any amount that is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty; or any distribution described in section 404(k)(2) (relating to distributions of "applicable dividends" by an employee stock ownership plan).

[2] Notice 2020-3 also provides that the Treasury Department and the IRS are considering whether the default rate of withholding from periodic payments that is in effect for 2020 will continue to be appropriate for calendar years after 2020, and requests comments on whether the adoption of a new default rate of withholding on periodic payments that applies prospectively would present any administrative challenges. One comment was received on this issue (available at: https://www.regulations.gov/document?D=IRS-2019-0051-0004). The commenter provides suggestions regarding the effective date and prospective application of any change to the default rate of withholding on periodic payments and suggestions regarding the applicable withholding tables for periodic payments for calendar years after 2020.

[3] In addition to the amendment made by section 11041(c)(2)(G) of TCJA, described in the Background section of the preamble, section 11041(c)(2)(F) of TCJA amended section 3405(a)(3) and (4) (and the heading for paragraph (4)) to replace each reference to "exemption" with "allowance," effectively replacing references to "withholding exemption certificate" with "withholding allowance certificate." However, the Treasury Department and the IRS have determined that no updates to §35.3405-1T are required to implement section 11041(c)(2)(F) of TCJA because §35.3405-1T refers to a "withholding certificate."

require payors to withhold based upon that pre-TCJA rule (for example, the sample notice in §35.3405-1T, Q&A d-21).[4] The proposed regulation would update and replace the provisions of Q&As a-10, b-3, and b-4 in new §31.3405(a)-1, which provides that the default rate of withholding on periodic payments is determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.

This proposed §31.3405(a)-1 provides a flexible and administrable rule that leaves the communication and mechanical details of the default rate of withholding on periodic payments to be provided in applicable forms, instructions, publications, and other guidance. These materials can be updated quickly as needed (for legislative changes or other reasons) to provide payors and plan administrators processing payments adequate time to program their systems to withhold the proper amount of income tax. Currently, withholding on periodic payments, including the default rate of withholding, is explained in the instructions to the 2020 Form W-4P, "Withholding Certificate for Pension or Annuity Payments," the 2020 Publication 15-T, and related publications. The 2020 Publication 15-T also provides the tables that payors use to calculate withholding on periodic payments (and the tables that employers use to calculate withholding on taxable wages).

Proposed §31.3405(a)-1 would also generally update Q&As a-10, b-3, and b-4 of §35.3405-1T to reflect relevant statutory changes and provide clarifications. Notably, in accordance with section 3405(a)(3), proposed §31.3405(a)-1 would update the rules for determining the effective date of a payee's Form W-4P by referencing the rules under section 3402(f)(3) and the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner.[5] Section 3402(f)(3) provides different withholding certificate effective date rules for cases in which there is no previous withholding certificate in effect and cases in which a previous withholding certificate is in effect. Form W-4P effective date information is provided in the 2019 Publication 505, "Tax Withholding and Estimated Tax."

2. *Other Provisions of §35.3405-1T*

Proposed §31.3405(a)-1 refers taxpayers to §35.3405-1T, among other regulations under section 3405, for additional guidance regarding Federal income tax withholding on periodic payments, and is intended to be read in conjunction with those other regulations. For example, proposed §31.3405(a)-1(b) provides general guidance regarding Federal income tax withholding on periodic payments, but an election of no withholding under section 3405(a)(2) may be available as described in §35.3405-1T, Q&A d-1.

While this proposed regulation would update certain Q&As in §35.3405-1T, it would not update all of the Q&As, including several Q&As that do not reflect legislative changes that became effective after the publication of §35.3405-1T. For example, the description in §35.3405-1T, Q&A d-1, of an election of no withholding has not been updated to reflect that an election may not be available due to the restrictions set forth in section 3405(e)(12) (failure to provide correct TIN) or 3405(e)(13) (certain payments to be delivered outside of the United States and its possessions). The current priority of the Treasury Department and the IRS is to address the provisions of §35.3405-1T that were impacted by TCJA. In the future, the Treasury Department and the IRS intend to update the provisions of §35.3405-1T to reflect all statutory changes since the initial promulgation of the temporary regulation.

Proposed Applicability Date

This regulation is proposed to apply to periodic payments made after December 31, 2020. Notwithstanding §35.3405-1T, taxpayers may rely on the rules set forth in this notice of proposed rulemaking, in their entirety, until the date of publication of a Treasury Decision adopting this proposed rule as a final regulation.

Special Analyses

1. *Regulatory Planning and Review*

This regulation is 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.

2. *Paperwork Reduction Act*

Any collection of information associated with this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under OMB control number 1545-0074 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In general, the collection of information is required under section 3405 of the Code. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to this proposed regulation, including estimates for how much time it would take to comply with the paperwork burdens described in OMB control number 1545-0074 and ways for the IRS to minimize the paperwork burden. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

3. *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities that are directly affected by the proposed regulation. The proposed regulation will apply to all payors of periodic payments, including small entities, and is likely to affect a substantial number of small entities. The economic impact, however, will not be significant. The primary change is to effect a TCJA legislative amendment to remove the reference in section 3405(a)(4) to a married individ-

[4] As described in Section 2 of this Explanation of Provisions, the Treasury Department and the IRS intend to update other Q&As in §35.3405-1T in the future.

[5] Thus, proposed §31.3405(a)-1 addresses the amendment of section 3402(f)(3)(B) by section 10302(a) of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987). The amendment to section 3402(f)(3)(B) affected the rules in Q&A b-3 of §35.3405-1T for determining the effective date of a payee's Form W-4P.

ual claiming three exemptions as the default withholding rate and to provide, in its place, that the amount to be withheld is determined in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. Accordingly, this rule would conform the current regulation to the statute and will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities.

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

Statement of Availability of IRS Documents

IRS Notices cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS web site at *http://www.irs.gov*.

Comments and Requests for a Public Hearing

Before this proposed amendment to the regulations is adopted as a final regulation, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the "**ADDRESSES**" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Kara M. Soderstrom, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these proposed regulations.

List of Subjects

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35

Employment taxes, Income taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 35 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry for §31.3405(a)-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 31.3405(a)-1 also issued under 26 U.S.C. 3405(a)(4).

* * * * *

Par. 2. Section 31.3405(a)-1 is added to read as follows:

§31.3405(a)-1 Questions and answers relating to Federal income tax withholding on periodic retirement and annuity payments

(a) The following questions and answers relate to Federal income tax withholding on periodic payments under section 3405(a), as amended by section 11041(c)(2)(G) of the Tax Cuts and Jobs Act (Public Law 115-97, 131 Stat. 2054 (2017)). The withholding rules of section 3405(a) do not apply to periodic payments that are eligible rollover distributions (as defined in section 402(f)(2)(A)). See generally section 3405(c) and §31.3405(c)-1 for Federal income tax withholding rules applicable to eligible rollover distributions. See section 3405(e)(13) for additional rules applicable to certain periodic payments under section 3405(a) and nonperiodic distributions under section 3405(b) that are to be delivered outside the United States and its possessions. For additional guidance regarding periodic payments, see §§35.3405-1 and 35.3405-1T of this chapter.

(b)(1) Q-1: How will Federal income tax be withheld from a periodic payment?

(2) A-1: In the case of a periodic payment that is subject to withholding under section 3405(a), amounts are withheld as if the payment were a payment of wages by an employer to the employee for the appropriate payroll period. If the payee has not furnished a withholding certificate, the amount to be withheld is determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. The rules for withholding when the payee has not furnished a withholding certificate apply regardless of whether the payor is aware of the payee's actual marital status or actual Federal income tax filing status.

(c)(1) Q-2: Do rules similar to those for wage withholding apply to the furnishing of a withholding certificate for periodic payments?

(2) A-2: Yes. Unless the rules of section 3405 specifically conflict with the rules of section 3402, the rules for withholding on periodic payments that are not eligible rollover distributions will parallel the rules for wage withholding. Thus, if a withholding certificate is furnished by a payee, it will generally take effect in accordance with section 3402(f)(3) and as provided in applicable forms, instructions, publications, and other guidance prescribed by the Commissioner. If no withholding certificate is furnished, the amount with-

held must be determined in the manner described in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner for withholding on periodic payments when no withholding certificate is furnished.

(d)(1) Q-3: What is the applicability date of this section?

(2) A-3: This section applies with respect to periodic payments made after December 31, 2020.

PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 3. The authority citation for part 35 continues to read in part as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97-248 (96 Stat. 623)* * *

§35.3405-1T [Amended]

Par. 4. Section 35.3405-1T is amended by removing and reserving Q&A a-10, Q&A b-3, and Q&A b-4.

Sunita Lough
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on May 26, 2020, 8:45 a.m., and published in the issue of the Federal Register for May 27, 2020, 85 F.R. 31714)

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]

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Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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

Bulletin 2020–25

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 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/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page *www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.