INTERNAL REVENUE
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IRS

# HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2023–22
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**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

### Notice 2023-39, page 877.

This notice describes proposed amendments to the Income Tax Regulations (26 CFR part 1) under § 148 of the Internal Revenue Code (Code) that the Department of the Treasury and the Internal Revenue Service intend to issue (forthcoming proposed regulations) regarding an exception to the arbitrage investment restrictions under § 148 applicable to bonds the interest on which is excludable from gross income under § 103(a) (tax-exempt bonds). Specifically, the forthcoming proposed regulations will amend § 1.148-11(d)(1)(i)(F) regarding whether certain perpetual trust funds created and controlled by States that are pledged as credit enhancement to guarantee tax-exempt bonds will be treated as replacement proceeds of the guaranteed bonds for purposes of the arbitrage investment restrictions on tax-exempt bonds under § 148.

### Rev. Proc. 2023-23, page 883.

This revenue procedure provides the 2024 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

## EMPLOYEE PLANS

### Notice 2023-40, page 879.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for May 2023 used under § 417(e)(3)(D), the 24-month average segment rates applicable for May 2023, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

## INCOME TAX

### Notice 2023-38, page 872.

The notice provides the general rules taxpayers must satisfy to qualify for the domestic content bonus credit amounts. In addition to providing the general rules, it describes the manufactured product adjusted percentage rule under which all manufactured products of an applicable project are deemed to meet the domestic content requirement applicable to manufactured products. The notice also provides a safe harbor for the classification of certain components in representative types of qualified facilities, energy projects, or energy storage. Finally, the notice provides that certain retrofitted projects are eligible for the domestic content bonus credit amounts.

**Finding Lists begin on page ii.**

# The IRS Mission

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

# Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

# Part III

## Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E

## Notice 2023-38

### SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations (forthcoming proposed regulations) addressing the application of the rules that taxpayers must satisfy to qualify for the domestic content bonus credit amounts under §§ 45, 45Y, 48, and 48E of the Internal Revenue Code (Code).[1] Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amends §§ 45 and 48 to provide a domestic content bonus credit amount for certain qualified facilities or energy projects placed in service after December 31, 2022, and adds new §§ 45Y and 48E, which include a domestic content bonus credit amount for certain investments in qualified facilities or energy storage technologies placed in service after December 31, 2024.[2] This notice describes certain rules that the Treasury Department and the IRS intend to include in the forthcoming proposed regulations regarding the domestic content bonus credit requirements and related recordkeeping and certification requirements. This notice also describes a safe harbor regarding the classification of certain components in representative types of qualified facilities, energy projects, or energy storage technologies. The Treasury Department and the IRS intend to propose that the forthcoming proposed regulations will apply to taxable years ending after May 12, 2023. Taxpayers may rely on the rules described in sections 3 through 6 of this notice for the domestic content bonus credit requirements for any qualified facility, energy project, or energy storage technology the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations in the *Federal Register*.

### SECTION 2. BACKGROUND

.01 *Domestic Content Bonus Credit Amounts*. For purposes of this notice, an "Applicable Project" refers to: (i) a qualified facility under §§ 45 or 45Y; (ii) an energy project under § 48, which may include qualified property for which a valid irrevocable election under § 48(a)(5) has been made to treat such qualified property as energy property under § 48; or (iii) a qualified investment with respect to a qualified facility or energy storage technology under § 48E.

Domestic content bonus credit amounts are available under §§ 45(b)(9), 45Y(g)(11), 48(a)(12), and 48E(a)(3)(B) to increase the amount of a credit determined under § 45 (§ 45 credit), § 45Y (§ 45Y credit), § 48 (§ 48 credit), and § 48E (§ 48E credit), respectively, for a taxpayer whose Applicable Project satisfies the domestic content requirement set forth in § 45(b)(9)(B)(i) (incorporated by cross-reference in § 48(a)(12), which is incorporated by cross-reference in § 48E(a)(3)(B)) and in § 45Y(g)(11)(B)(i) (Domestic Content Requirement). A taxpayer establishes that the Domestic Content Requirement is satisfied with respect to an Applicable Project by certifying to the Secretary of the Treasury or her delegate (Secretary) (at such time, and in such form and manner, as the Secretary may prescribe) that "any steel, iron, or manufactured product which is a component of [the Applicable Project] (upon completion of construction) was produced in the United States (as determined under section [sic] 661 of title 49, Code of Federal Regulations)." See §§ 45(b)(9)(B)(i) and 45Y(g)(11)(B)(i). Sections 661.1 through 661.21 of title 49 of the Code of Federal Regulations, which are known as the Buy America Requirements, that are administered by the Federal Transit Administration (FTA), Department of Transportation.

Section 45(b)(9)(A) provides that in the case of any § 45 qualified facility, the amount of the § 45 credit (determined after application of § 45(b)(1) through (8)) is increased by 10 percent (not 10 percentage points) if the Domestic Content Requirement is satisfied. Similarly, for any § 45Y qualified facility placed in service after December 31, 2024, § 45Y(g)(11)(A) provides that the amount of the § 45Y credit (determined without application of § 45(g)(7)) is increased by 10 percent (not 10 percentage points) if the Domestic Content Requirement is satisfied.

Section 48(a)(12)(C) provides a domestic content bonus credit amount for a § 48 energy project by increasing the "energy percentage" provided in § 48(a)(2), which is used to determine the amount of the § 48 credit, by 10 percentage points if (1) the Domestic Content Requirement is satisfied and (2) any one of the following requirements is satisfied (and by 2 percentage points if the Domestic Content Requirement is satisfied and none of the following requirements are satisfied): (i) the energy project has a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy; (ii) construction of the energy project began before January 29, 2023;[3] or (iii) the energy project satisfies the prevailing wage and apprenticeship requirements in §§ 48(a)(10)(A) and (11).

If the Domestic Content Requirement is satisfied for any § 48E qualified investment with respect to a qualified facility or energy storage technology placed in ser-

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

[2] See § 13101(g) of the IRA for the domestic content bonus credit under § 45(b)(9), § 13701(a) of the IRA for the domestic content bonus credit under § 45Y(g)(11), § 13102(l) of the IRA for the domestic content bonus credit under § 48(a)(12), and § 13702(a) of the IRA for the domestic content bonus credit under § 48E(a)(3)(B).

[3] January 29, 2023 is the date 60 days after the November 30, 2022, publication date of Notice 2022-61, 2022-52 I.R.B. 560 (87 F.R. 73580 as corrected in 87 F.R. 75141), which provides initial guidance regarding the prevailing wage and apprenticeship requirements in § 48(a)(10)(A) and (11) and other sections of the Code.

vice after December 31, 2024, § 48E(a)(3)(B) provides that rules similar to the rules of § 48(a)(12) apply for determining whether the domestic content bonus credit amount increases the "applicable percentage" provided in § 48E(a)(2) by 10 percentage points or 2 percentage points.

Sections 45(b)(12) and 48(a)(16) authorize the Secretary to issue such regulations or other guidance as the Secretary determines necessary to carry out the purposes of §§ 45(b) and 48(a) (and therefore the domestic content bonus credit rules in §§ 45(b)(9), 48(a)(12), and 48E(a)(3)(B) (by cross-reference to § 48(a)(12)), including regulations or other guidance that provide requirements for recordkeeping or information reporting for purposes of administering the requirements of §§ 45(b) and 48(a). Similarly, § 45Y(f) authorizes the Secretary to issue guidance regarding the implementation of § 45Y (and therefore § 45Y(g)(11)), including the determination of the amount of § 45Y credits.

.02 *Steel, Iron, or Manufactured Products*. In general, the Domestic Content Requirement applies to any steel, iron, or Manufactured Product (as defined in section 3.01(2)(c) of this notice) that is a component of an Applicable Project. Sections 45(b)(9)(B)(ii) and 45Y(g)(11)(B)(ii) provide that the Domestic Content Requirement for steel or iron applies in a manner consistent with section 661.5 of title 49, Code of Federal Regulations.

Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that "manufactured products which are components of a qualified facility upon completion of construction shall be deemed to have been produced in the United States if not less than the adjusted percentage . . . of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) which are mined, produced, or manufactured in the United States" (Adjusted Percentage Rule).

Section 45(b)(9)(C) provides that, for purposes of § 45(b)(9)(B)(iii), the adjusted percentage is 40 percent, or 20 percent in the case of a qualified facility that is an offshore wind facility. Under § 45Y(g)(11)(C) the adjusted percentage increases from 40 percent for qualified facilities the construction of which begins before 2025 to 55 percent for qualified facilities the construction of which begins after 2026, and from 20 percent for a qualified facility that is an offshore wind facility the construction of which begins before 2025 to 55 percent in the case of a qualified facility that is an offshore wind facility the construction of which begins after 2027.

As provided in section 2.01 of this notice, § 48(a)(12)(B) provides that rules similar to the rules of § 45(b)(9)(B) apply for purposes of determining the domestic content bonus credit amount under § 48. Similarly, § 48E(a)(3)(B) provides that rules similar to the rules of § 48(a)(12) apply for purposes of determining the domestic content bonus credit amount under § 48E.

## SECTION 3. GUIDANCE WITH RESPECT TO THE DOMESTIC CONTENT REQUIREMENT

.01 *Domestic Content Requirement*.

(1) *In general*. An Applicable Project is eligible for a domestic content bonus credit amount if the Applicable Project satisfies the Domestic Content Requirement and the taxpayer timely submits to the IRS the certification described in section 5 of this notice. An Applicable Project satisfies the Domestic Content Requirement if the Steel or Iron Requirement described in section 3.02 of this notice and the Manufactured Products Requirement described in section 3.03 of this notice are satisfied.

(2) *Definitions*. The following definitions apply for purposes of the Domestic Content Requirement.

(a) *Applicable Project Component*. "Applicable Project Component" means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project. An Applicable Project Component may qualify as steel, iron, or a Manufactured Product.

(b) *Manufactured*. "Manufactured" means produced as a result of the manufacturing process.

(c) *Manufactured Product*. "Manufactured Product" means an item produced as a result of the manufacturing process.

(d) *Manufactured Product Component*. "Manufactured Product Component" means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project Component that is a Manufactured Product.

(e) *Manufacturing Process*. "Manufacturing process" means the application of processes to alter the form or function of materials or of elements of a product in a manner adding value and transforming those materials or elements so that they represent a new item functionally different from that which would result from mere assembly of the elements or materials.

(f) *Mined*. "Mined" means derived from the extraction of ores or minerals from the ground or from the waste or residue of prior mining.

(g) *Produced*. "Produced," with respect to a Manufactured Product Component, has the same meaning as the term "manufactured" as defined in section 3.01(2)(b) of this notice.

(h) *United States*. "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

.02 *Steel or Iron Requirement*.

The Domestic Content Requirement with respect to steel or iron (Steel or Iron Requirement) applies in a manner consistent with 49 CFR § 661.5(b) and (c). See §§ 45(b)(9)(B)(ii) and 45Y(g)(11)(B)(ii). The Steel or Iron Requirement is met if, consistent with 49 CFR § 661.5(b) and (c), all manufacturing processes with respect to any steel or iron items that are Applicable Project Components take place in the United States, except metallurgical processes involving refinement of steel additives. The Steel or Iron Requirement applies to Applicable Project Components that are construction materials made primarily of steel or iron and are structural in function. The Steel or Iron Requirement does not apply to steel or iron used in Manufactured Product Components or subcomponents of Manufactured Product Components. For example, items such as nuts, bolts, screws, washers, cabinets, covers, shelves, clamps, fittings, sleeves, adapters, tie wire, spacers, door hinges, and similar items that are made primar-

ily of steel or iron but are not structural in function are not subject to the Steel or Iron Requirement.

.03 *Manufactured Products Requirement*.

(1) *In General*. The Domestic Content Requirement with respect to Manufactured Products (Manufactured Products Requirement) applies in a manner consistent with 49 CFR § 661.5(d). See §§ 45(b)(9)(B)(i) and 45Y(g)(11)(B)(i). The Manufactured Products Requirement is met if all Applicable Project Components that are Manufactured Products are produced in the United States or are deemed to be produced in the United States. All Applicable Project Components that are Manufactured Products are deemed to be produced in the United States if the Adjusted Percentage Rule described in section 3.03(2) of this notice is satisfied.

A Manufactured Product is considered to be produced in the United States (U.S. Manufactured Product) if: (1) all of the manufacturing processes for the Manufactured Product take place in the United States; and (2) all of the Manufactured Product Components of the Manufactured Product are of U.S. origin. A Manufactured Product Component is considered to be of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. See 49 CFR § 661.5(d). This notice refers to a Manufactured Product that is not a U.S. Manufactured Product as a "Non-U.S. Manufactured Product."

(2) *Adjusted Percentage Rule.*

(a) *In general*. For purposes of the Adjusted Percentage Rule, the percentage produced by dividing the Domestic Manufactured Products and Components Cost (as described in section 3.03(2)(b) of this notice) by the Total Manufactured Products Cost (as described in section 3.03(2)(c) of this notice) is the "Domestic Cost Percentage" calculated for an Applicable Project. If the Domestic Cost Percentage for an Applicable Project equals or exceeds the adjusted percentage that applies to the Applicable Project, then the Applicable Project satisfies the Adjusted Percentage Rule.

(b) *Domestic Manufactured Products and Components Cost*. The Domestic Manufactured Products and Components Cost is the sum of the costs of an Applicable Project's (1) U.S. Manufactured Products that are Applicable Project Components and (2) Manufactured Product Components of Non-U.S. Manufactured Products that are Applicable Project Components if the Manufactured Product Components are mined, produced, or manufactured in the United States (U.S. Component). Consistent with 49 CFR § 661.5(d), a Manufactured Product Component that is manufactured is a U.S. Component if it is manufactured or produced in the United States, regardless of the origin of its subcomponents. A Manufactured Product Component that is not manufactured is a U.S. Component if it is mined in the United States.

For purposes of determining the Domestic Manufactured Products and Components Cost for an Applicable Project, the cost of a U.S. Manufactured Product or U.S. Component includes only direct costs as defined in § 1.263A-1(e)(2)(i), that is, direct materials and direct labor costs, that are paid or incurred within the meaning of § 461 by the U.S. Manufactured Product's manufacturer to produce the U.S. Manufactured Product or by the Non-U.S. Manufactured Product's manufacturer to produce or acquire the U.S. Component. The Domestic Manufactured Products and Components Cost does not include the direct materials or direct labor costs that are paid or incurred within the meaning of § 461 by the Non-U.S. Manufactured Product's manufacturer to produce the Non-U.S. Manufactured Product. Direct costs, including direct labor costs, of incorporating the Applicable Project Components into the Applicable Project are not counted in the Domestic Manufactured Products and Components Cost.

For purposes of this notice, the manufacturer of a U.S. Manufactured Product or a Non-U.S. Manufactured Product is the person that performed the manufacturing process that produced the U.S. Manufactured Product or the Non-U.S. Manufactured Product. The rules under § 263A that are used to determine whether a taxpayer is engaged in production or resale activities for purposes of § 263A do not apply for purposes of this notice.

(c) *Total Manufactured Products Cost*. The Total Manufactured Products Cost for an Applicable Project is the sum of the costs of each Applicable Project Component that is a Manufactured Product. For purposes of determining the Total Manufactured Products Cost for an Applicable Project, the cost of an Applicable Project Component that is a Manufactured Product includes only direct costs as defined in § 1.263A-1(e)(2)(i) that are paid or incurred within the meaning of § 461 by the manufacturer of the Manufactured Product to produce the Manufactured Product. For purposes of this notice, the manufacturer of a U.S. Manufactured Product or a Non-U.S. Manufactured Product is the person that performed the manufacturing process that produced the U.S. Manufactured Product or the Non-U.S. Manufactured Product. The rules under § 263A that are used to determine whether a taxpayer is engaged in production or resale activities for purposes of § 263A do not apply for purposes of this notice.

(d) *Adjusted Percentage Rule Example*.

Taxpayer purchases Applicable Project A from Contractor under an engineering, procurement, and construction contract and places Applicable Project A in service. Applicable Project A has two Applicable Project Components that are Manufactured Products.

Contractor performed the manufacturing process that produced Applicable Project A's first manufactured product (Manufactured Product 1). Manufactured Product 1 is manufactured in the United States and has two Manufactured Product Components (Components 1A and 1B) that are manufactured in the United States. Manufactured Product 1 is a U.S. Manufactured Product because it and both of its Manufactured Product Components are produced in the United States.

Supplier performed the manufacturing process that produced Applicable Project A's second manufactured product (Manufactured Product 2). Contractor purchased Manufactured Product 2 from Supplier. Manufactured Product 2 is manufactured in the United States and has three Manufactured Product Components. Manufactured Product 2's first Manufactured Product Component

(Component 2A) is manufactured in the United States, its second Manufactured Product Component (Component 2B) is manufactured in the United States, and its third Manufactured Product Component (Component 2C) is manufactured outside of the United States. Manufactured Product 2 is a Non-U.S. Manufactured Product because Component 2C is manufactured outside of the United States. Components 2A and 2B are U.S. Components because they are manufactured in the United States.

All costs shown in the table below are the direct costs (as defined in § 1.263A-1(e)(2)(i)) of producing the Manufactured Product or producing or acquiring the Manufactured Product Component that were paid or incurred within the meaning of § 461 by the manufacturer of the Manufactured Product. Contractor is the manufacturer of Manufactured Product 1, and Supplier is the manufacturer of Manufactured Product 2.

**Table 1 – Direct Costs of Manufactured Products 1 and 2**

| Asset | Cost |
|---|---|
| Manufactured Product 1 | $100 |
| Component 1A | 30 |
| Component 1B | 45 |
| | |
| Manufactured Product 2 | $200 |
| Component 2A | 30 |
| Component 2B | 50 |
| Component 2C | 100 |

Applicable Project A's Domestic Manufactured Products and Components Cost consists of the cost of Manufactured Product 1 ($100), Component 2A ($30), and Component 2B ($50) for a total of $180. Applicable Project A's Total Manufactured Products Cost consists of the cost of Manufactured Product 1 ($100) and Manufactured Product 2 ($200) for a total of $300. Applicable Project A's Domestic Cost Percentage is 60% ($180 divided by $300). Applicable Project A satisfies the Adjusted Percentage Rule because its Domestic Cost Percentage of 60% exceeds the adjusted percentage. Thus, Manufactured Products 1 and 2 are both deemed to have been produced in the United States under the Adjusted Percentage Rule.

.04 *Safe Harbor for Classifications of Certain Applicable Project Components*. The Treasury Department and the IRS identified certain Applicable Project Components that may be found in utility-scale photovoltaic systems, land-based wind facilities, offshore wind facilities, and battery energy storage technologies. The FTA provided assistance in evaluating the classification of the identified Applicable Project Components. The categorization of each item described in Table 2 of this notice as subject to either the Steel or Iron Requirement or Manufactured Product Requirement is based on the FTA's analysis and will be accepted by the IRS for those Applicable Project Components and Manufactured Product Components. In conducting this analysis, which involves energy technologies that the FTA would not ordinarily analyze under its regulations with respect to public transportation projects, the FTA has relied on the expert technical assistance of the Department of Energy (DOE), particularly with respect to the function of Applicable Project Components identified by the Treasury Department and the IRS, the manufacturing processes involved in producing them, and the identification of certain Manufactured Product Components of specified Manufactured Products. The technologies analyzed are different from public transportation, and the IRA includes specific rules on domestic content (such as a minimum required percentage for manufactured products) that are different from those in the FTA's Buy America statute and regulations. Thus, conclusions about how the items described in Table 2 are classified under the IRA do not constitute precedent for future the FTA implementation of its Buy America requirements to federally funded public transportation projects.

The Applicable Project Components described in Table 2 of this notice may not be an exhaustive set of all Applicable Project Components for those types of Applicable Projects. The Applicable Projects and Applicable Project Components described in Table 2 must meet the statutory requirements for the relevant credit under §§ 45, 45Y, 48, or 48E to be eligible for such credit and a domestic content bonus credit amount.

**Table 2 – Categorization of Applicable Project Components**

| Applicable Project | Applicable Project Component | Categorization |
|---|---|---|
| Utility-scale photovoltaic system | Steel photovoltaic module racking | Steel/Iron |
| | Pile or ground screw | Steel/Iron |
| | Steel or iron rebar in foundation (e.g., concrete pad) | Steel/Iron |
| | Photovoltaic tracker | Manufactured Product |
| | Photovoltaic module (which includes the following Manufactured Product Components, if applicable: photovoltaic cells, mounting frame or backrail, glass, encapsulant, backsheet, junction box (including pigtails and connectors), edge seals, pottants, adhesives, bus ribbons, and bypass diodes) | Manufactured Product |
| | Inverter | Manufactured Product |
| Land-based wind facility | Tower | Steel/Iron |
| | Steel or iron rebar in foundation (e.g., spread footing) | Steel/Iron |
| | Wind turbine (which includes the following Manufactured Product Components, if applicable: the nacelle, blades, rotor hub, and power converter) | Manufactured Product |
| | Wind tower flanges | Manufactured Product |
| Offshore wind facility | Tower | Steel/Iron |
| | Jacket foundation | Steel/Iron |
| | Wind tower flanges | Manufactured Product |
| | Wind turbine (which includes the following Manufactured Product Components, if applicable: the nacelle, blades, rotor hub, and power converter) | Manufactured Product |
| | Transition piece | Manufactured Product |
| | Monopile | Manufactured Product |
| | Inter-array cable | Manufactured Product |
| | Offshore substation | Manufactured Product |
| | Export cable | Manufactured Product |
| Battery energy storage technology | Steel or iron rebar in foundation (e.g., concrete pad) | Steel/Iron |
| | Battery pack (which includes the following Manufactured Product Components, if applicable: cells, packaging, thermal management system, and battery management system) | Manufactured Product |
| | Battery container/housing | Manufactured Product |
| | Inverter | Manufactured Product |

## SECTION 4. RETROFITTED PROJECTS

.01 *In General*. An Applicable Project may qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the Applicable Project's total value calculated by adding the cost of the new property to the value of the used property (80/20 Rule). See Rev. Rul. 94-31, 1994-1 C.B. 16; Notice 2008-60, 2008-2 C.B. 178. The cost of new property includes all costs properly included in the depreciable basis of the new property. See Notice 2017-4, 2017-3 I.R.B. 541.

.02 *Application to the Domestic Content Requirement*. An Applicable Project that is placed in service after December 31, 2022, and meets the 80/20 Rule is eligible for a domestic content bonus credit amount if the new property in the Applicable Project meets the Domestic Content Requirement and the taxpayer complies with the requirements described in this notice.

## SECTION 5. CERTIFICATION REQUIREMENTS

.01 *Certification Statement*.

(1) *In General*. Sections 45(b)(9)(B)(i), 45Y(g)(11)(B)(i), 48(a)(12)(B), and 48E(a)(3)(B) authorize the Secretary to prescribe the time, form, and manner for certifying compliance with the Domestic Content Requirement.

(2) *Certification Procedures*.

(a) A taxpayer must submit to the IRS a statement certifying for each Applicable

Project for which the taxpayer is reporting a domestic content bonus credit amount under §§ 45, 45Y, 48, or 48E that any steel or iron items subject to the Steel or Iron Requirement or Manufactured Product that is a component of the Applicable Project upon completion of construction was produced in the United States (Domestic Content Certification Statement).

(b) The Domestic Content Certification Statement must be attached to Form 8835, *Renewable Electricity Product Credit*; Form 3468, *Investment Credit*; or other applicable form for reporting domestic content bonus credit amounts under §§ 45, 45Y, 48, or 48E filed with the taxpayer's annual return submitted to the IRS for the first taxable year in which the taxpayer reports a domestic content bonus credit amount for such Applicable Project. For each taxable year after the first taxable year in which a taxpayer initially reports a domestic content bonus credit amount under §§ 45 or 45Y for an Applicable Project, a taxpayer must attach a copy of the Domestic Content Certification Statement that was initially submitted to the IRS with the annual return for the first taxable year.

(c) The Domestic Content Certification Statement must also include the following information for each Applicable Project:

(i) Whether the Applicable Project is a qualified facility, energy project, or energy storage technology;

(ii) The specific type of Applicable Project (for example, Utility-Scale Photovoltaic System or Battery Energy Storage Technology);

(iii) The geographic coordinates of an Applicable Project and the address of the Applicable Project, if applicable;

(iv) The date the Applicable Project was placed in service;

(v) The total domestic content bonus credit amount determined under §§ 45(b)(9), 45Y(g)(11), 48(a)(12), or 48E(a)(3)(B) with respect to the Applicable Project in the first taxable year in which the taxpayer reports a domestic content bonus credit amount for such Applicable Project; and

(vi) Any additional information with respect to the Applicable Project that is required by the applicable forms and instructions for reporting domestic content bonus credit amounts determined under §§ 45, 45Y, 48, or 48E.

(vii) The Domestic Content Certification Statement must be signed by a person with legal authority to bind the taxpayer and contain the following statement: "Under penalties of perjury I declare that I have examined the information contained in this Domestic Content Certification Statement and to the best of my knowledge and belief, it is true, correct, and complete."

.02 *Timing of Certification*. A taxpayer must certify that an Applicable Project meets the Domestic Content Requirement as of the date the Applicable Project is placed in service. The date an Applicable Project is considered placed in service for purposes of this notice is the date on which such property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

**SECTION 6. SUBSTANTIATION**

A taxpayer reporting a domestic content bonus credit amount for meeting the Domestic Content Requirement must meet the general recordkeeping requirements under § 6001 in order to substantiate that the Domestic Content Requirement has been met. Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records as the Secretary may from time to time prescribe. Section 1.6001-1(a) provides that any person subject to income tax must keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax. Section 1.6001-1(e) provides that the books and records required by § 1.6001-1 must be retained so long as the contents thereof may become material in the administration of any internal revenue law. See also §§ 45(b)(12), 48(a)(16), 48E(a)(3)(B) (by cross-reference to § 48(a)(12)), and 45Y(f).

**SECTION 7. PAPERWORK REDUCTION ACT**

Any collection burden associated with this notice is accounted for in Office of Management and Budget (OMB) control numbers 1545-0123 and 1545-0047. The collections of information associated with the IRA-related changes to Form 3468 and Form 8835 were approved, and will continue to be approved, under OMB control numbers 1545-0123 and 1545-0047. This notice does not alter any previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

**SECTION 8. DRAFTING INFORMATION**

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free call).

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# Arbitrage Treatment of Certain Guarantee Funds

# Notice 2023-39

**SECTION 1. PURPOSE**

This notice describes proposed amendments to the Income Tax Regulations (26 CFR part 1) under § 148 of the Internal Revenue Code (Code)[1] that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue (forthcoming proposed regulations) regarding an exception to the arbitrage investment restrictions under § 148 applicable to bonds the interest on which is excludable from gross income under § 103(a) (tax-exempt bonds). Specifically, the forthcoming proposed

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

regulations will amend § 1.148-11(d)(1)(i)(F) regarding whether certain perpetual trust funds created and controlled by States that are pledged as credit enhancement to guarantee tax-exempt bonds will be treated as replacement proceeds of the guaranteed bonds for purposes of the arbitrage investment restrictions on tax-exempt bonds under § 148.

## SECTION 2. BACKGROUND

.01 *Arbitrage restrictions generally*

In general, the interest on bonds issued by State and local governments is excludable from gross income under § 103(a) if certain requirements are met. Section 148 imposes arbitrage investment restrictions on tax-exempt bonds that limit the investment of proceeds of tax-exempt bonds in higher-yielding investments and that require issuers to rebate certain excess earnings above the yield on tax-exempt bonds to the United States Government.[2] The arbitrage restrictions apply to ordinary proceeds derived from the sale of tax-exempt bonds and investment earnings thereon. In addition, the arbitrage restrictions apply to a special type of tax-exempt bond proceeds, known as "replacement proceeds," as a result of their use as security for tax-exempt bonds or other nexus to tax-exempt bonds. These special replacement proceeds include, among other things, certain "pledged funds" that are pledged to secure repayment of tax-exempt bonds with a reasonable assurance of availability for such purpose. One special exception to the treatment of pledged funds as replacement proceeds covers certain perpetual trust funds under certain parameters and under a specified size limitation, as described further in section 2.03 of this notice.

.02 *Statutory and regulatory arbitrage restriction rules*

Section 148(a) defines an "arbitrage bond" as any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly (1) to acquire higher yielding investments or (2) to replace funds which were used directly or indirectly to acquire higher yielding investments. Section 148(a) further provides that a bond is an arbitrage bond if an issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments. In addition, § 148(f) requires that issuers rebate certain excess earnings on proceeds of tax-exempt bonds to the United States Government. Under §§ 1.148-2(a) and 1.148-3(a), "proceeds" for these purposes means "gross proceeds" of an issue. Section 1.148-1(b) defines "gross proceeds" to include proceeds and replacement proceeds of an issue.

Section 1.148-1(c)(1) defines "replacement proceeds" as amounts that have a sufficiently direct nexus to a tax-exempt bond issue or to the governmental purpose of a tax-exempt bond issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the bond issue were not used or to be used for that governmental purpose. Section 1.148-1(c)(1) further provides that replacement proceeds include, but are not limited to, sinking funds, pledged funds, and other replacement proceeds described in § 1.148-1(c)(4) to the extent that those funds or amounts are held by or derived from a substantial beneficiary of the issue. Section 1.148-1(c)(1) defines a "substantial beneficiary" of an issue to include the issuer of such issue, any related party to the issuer and, if the issuer is not a State, the State in which the issuer is located. Section 1.148-1(c)(1) further provides, however, that a person is not a substantial beneficiary of an issue solely because it is a guarantor under a qualified guarantee.

Section 1.148-1(c)(3)(i) defines a "pledged fund" as any amount that is directly or indirectly pledged to pay principal or interest on the issue. Although a pledge need not be cast in any particular form, it must, in substance, provide reasonable assurance that the amount will be available to pay principal or interest on the issue even if the issuer encounters financial difficulties.

.03 *Exception for certain perpetual trust funds*

Section § 1.148-11(d)(1)(i) provides a special exception to the treatment of funds as pledged funds for arbitrage purposes for certain perpetual trust funds if the requirements and limitations enumerated in §§ 1.148-11(d)(1)(i)(A) through (F) are satisfied. Specifically, § 1.148-11(d)(1)(i) provides that a guarantee by a fund created and controlled by a State and established pursuant to its constitution does not cause the amounts in the fund to be pledged funds treated as replacement proceeds if: (A) substantially all of the corpus of the fund consists of nonfinancial assets, revenues derived from these assets, gifts, and bequests; (B) the corpus of the guarantee fund may be invaded only to support specifically designated essential governmental functions (designated functions) carried on by political subdivisions with general taxing powers or public elementary and public secondary schools; (C) substantially all of the available income of the fund is required to be applied annually to support designated functions; (D) the issue guaranteed consists of obligations that are not private activity bonds (other than qualified 501(c)(3) bonds) substantially all of the proceeds of which are to be used for designated functions; (E) the fund satisfied each of the requirements in §§ 1.148-11(d)(1)(i) through (iii) on August 16, 1986; and (F) as of the sale date of the bonds to be guaranteed, the amount of the bonds to be guaranteed by the fund plus the then-outstanding amount of bonds previously guaranteed by the fund does not exceed a total amount equal to 500 percent of the total costs of the assets held by the fund as of December 16, 2009. (The references in (E) to §§ 1.148-11(d)(1)(i) through (iii) should be to §§ 1.148-11(d)(1)(i)(A) through (C).)

Bond guarantees enable issuers to obtain lower bond interest rates. The

[2] Under § 1.148-3(g), rebate payments (1) must be paid no later than 60 days after the computation date to which the payment relates, (2) are considered paid when the payment is filed with the IRS as designated by the Commissioner of Internal Revenue (Commissioner), and (3) must be accompanied by the form provided by the Commissioner for this purpose (currently, Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*).

demand for public school bond guarantees continues to grow as student populations expand and existing school buildings age. As a result, certain perpetual trust funds that otherwise could provide credit enhancement under the special exception to the arbitrage restrictions for eligible pledged funds under § 1.148-11(d)(1)(i) will soon be limited in their capacity to provide guarantees for tax-exempt bonds at a time when there is a significant need for such guarantees.

**SECTION 3. SCOPE AND APPLICATION**

The Treasury Department and the IRS intend to issue the forthcoming proposed regulations to amend § 1.148-11(d)(1)(i)(F) to provide that, as of the sale date of the bonds to be guaranteed, the amount of the bonds to be guaranteed by the fund plus the then-outstanding amount of bonds previously guaranteed by the fund does not exceed a total amount equal to 500 percent of the total costs of the assets held by the fund.

**SECTION 4. RELIANCE ON THIS NOTICE**

This notice may be relied upon for bonds sold on or after May 10, 2023, and before the applicability date of future regulations or other published guidance under § 148 addressing or otherwise affecting funds described in § 1.148-11(d)(1)(i) and this notice.

**SECTION 5. REQUEST FOR COMMENTS**

.01 *Comments Regarding Guidance in this Notice*. The Treasury Department and the IRS request comments on any questions arising from the interim guidance set forth in this notice.

.02 *Procedures for Submitting Comments*.

(1) *Deadline*. Written comments should be submitted by July 31, 2023. Consideration will be given, however, to any written comment submitted after July 31, 2023, if such consideration will not delay the issuance of the forthcoming proposed regulations.

(2) *Form and manner*. The subject line for the comments should include a reference to Notice 2023-39. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at *www.regulations.gov* (type IRS-2023-0020 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-39), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) *Publication of comments*. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov*.

**SECTION 6. DRAFTING INFORMATION**

The principal author of this notice is Johanna Som de Cerff, Office of the Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Johanna Som de Cerff at (202) 317-6980 (not a toll-free number).

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# Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

## Notice 2023-40

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from April 2023 data is in Table 2023-4 at the end of this notice. The spot first, second, and third segment rates for the month of April 2023 are, respectively, 4.77, 4.97, and 5.13.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2022 and 2023 were

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

published in Notice 2021-54, 2021-41 I.R.B. 457, and Notice 2022-40, 2022-40 I.R.B. 266, respectively. The applicable minimum and maximum percentages are 95% and 105% for a plan year beginning in 2022 or 2023.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for May 2023 without adjustment for the 25-year average segment rate limits are as follows:

*24-Month Average Segment Rates Without 25-Year Average Adjustment*

| Applicable Month | First Segment | Second Segment | Third Segment |
|---|---|---|---|
| May 2023 | 2.85 | 4.02 | 4.19 |

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The 24-month averages applicable for May 2023, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

*Adjusted 24-Month Average Segment Rates*

| For Plan Years Beginning In | Applicable Month | First Segment | Second Segment | Third Segment |
|---|---|---|---|---|
| 2022 | May 2023 | 4.75 | 5.18 | 5.92 |
| 2023 | May 2023 | 4.75 | 5.00 | 5.74 |

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for April 2023 is 3.68 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in February 2053. For plan years beginning in May 2023, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

*Treasury Weighted Average Rates*

| For Plan Years Beginning In | 30-Year Treasury Weighted Average | Permissible Range 90% to 105% |
|---|---|---|
| May 2023 | 2.62 | 2.36 to 2.75 |

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for April 2023 are as follows:

*Minimum Present Value Segment Rates*

| Month | First Segment | Second Segment | Third Segment |
|---|---|---|---|
| April 2023 | 4.77 | 4.97 | 5.13 |

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 (not toll-free numbers).

**Table 2023-4**
Monthly Yield Curve for April 2023
Derived from April 2023 Data

| *Maturity* | *Yield* | *Maturity* | *Yield* | *Maturity* | *Yield* | *Maturity* | *Yield* | *Maturity* | *Yield* |
|---|---|---|---|---|---|---|---|---|---|
| 0.5 | 5.29 | 20.5 | 5.12 | 40.5 | 5.13 | 60.5 | 5.14 | 80.5 | 5.14 |
| 1.0 | 5.09 | 21.0 | 5.12 | 41.0 | 5.13 | 61.0 | 5.14 | 81.0 | 5.14 |
| 1.5 | 4.91 | 21.5 | 5.12 | 41.5 | 5.13 | 61.5 | 5.14 | 81.5 | 5.14 |
| 2.0 | 4.77 | 22.0 | 5.12 | 42.0 | 5.13 | 62.0 | 5.14 | 82.0 | 5.14 |
| 2.5 | 4.68 | 22.5 | 5.12 | 42.5 | 5.13 | 62.5 | 5.14 | 82.5 | 5.14 |
| 3.0 | 4.62 | 23.0 | 5.12 | 43.0 | 5.13 | 63.0 | 5.14 | 83.0 | 5.14 |
| 3.5 | 4.58 | 23.5 | 5.12 | 43.5 | 5.13 | 63.5 | 5.14 | 83.5 | 5.14 |
| 4.0 | 4.57 | 24.0 | 5.12 | 44.0 | 5.13 | 64.0 | 5.14 | 84.0 | 5.14 |
| 4.5 | 4.57 | 24.5 | 5.12 | 44.5 | 5.13 | 64.5 | 5.14 | 84.5 | 5.14 |
| 5.0 | 4.59 | 25.0 | 5.12 | 45.0 | 5.13 | 65.0 | 5.14 | 85.0 | 5.14 |
| 5.5 | 4.61 | 25.5 | 5.12 | 45.5 | 5.13 | 65.5 | 5.14 | 85.5 | 5.14 |
| 6.0 | 4.64 | 26.0 | 5.12 | 46.0 | 5.13 | 66.0 | 5.14 | 86.0 | 5.14 |
| 6.5 | 4.67 | 26.5 | 5.12 | 46.5 | 5.13 | 66.5 | 5.14 | 86.5 | 5.14 |
| 7.0 | 4.71 | 27.0 | 5.12 | 47.0 | 5.13 | 67.0 | 5.14 | 87.0 | 5.14 |
| 7.5 | 4.75 | 27.5 | 5.12 | 47.5 | 5.13 | 67.5 | 5.14 | 87.5 | 5.14 |
| 8.0 | 4.78 | 28.0 | 5.12 | 48.0 | 5.13 | 68.0 | 5.14 | 88.0 | 5.14 |
| 8.5 | 4.82 | 28.5 | 5.12 | 48.5 | 5.13 | 68.5 | 5.14 | 88.5 | 5.14 |
| 9.0 | 4.86 | 29.0 | 5.12 | 49.0 | 5.13 | 69.0 | 5.14 | 89.0 | 5.14 |
| 9.5 | 4.89 | 29.5 | 5.12 | 49.5 | 5.13 | 69.5 | 5.14 | 89.5 | 5.14 |
| 10.0 | 4.92 | 30.0 | 5.12 | 50.0 | 5.13 | 70.0 | 5.14 | 90.0 | 5.14 |
| 10.5 | 4.95 | 30.5 | 5.12 | 50.5 | 5.13 | 70.5 | 5.14 | 90.5 | 5.14 |
| 11.0 | 4.98 | 31.0 | 5.12 | 51.0 | 5.14 | 71.0 | 5.14 | 91.0 | 5.14 |
| 11.5 | 5.00 | 31.5 | 5.12 | 51.5 | 5.14 | 71.5 | 5.14 | 91.5 | 5.14 |
| 12.0 | 5.02 | 32.0 | 5.12 | 52.0 | 5.14 | 72.0 | 5.14 | 92.0 | 5.14 |
| 12.5 | 5.04 | 32.5 | 5.13 | 52.5 | 5.14 | 72.5 | 5.14 | 92.5 | 5.14 |
| 13.0 | 5.05 | 33.0 | 5.13 | 53.0 | 5.14 | 73.0 | 5.14 | 93.0 | 5.14 |
| 13.5 | 5.07 | 33.5 | 5.13 | 53.5 | 5.14 | 73.5 | 5.14 | 93.5 | 5.14 |
| 14.0 | 5.08 | 34.0 | 5.13 | 54.0 | 5.14 | 74.0 | 5.14 | 94.0 | 5.14 |
| 14.5 | 5.09 | 34.5 | 5.13 | 54.5 | 5.14 | 74.5 | 5.14 | 94.5 | 5.14 |
| 15.0 | 5.09 | 35.0 | 5.13 | 55.0 | 5.14 | 75.0 | 5.14 | 95.0 | 5.14 |
| 15.5 | 5.10 | 35.5 | 5.13 | 55.5 | 5.14 | 75.5 | 5.14 | 95.5 | 5.14 |
| 16.0 | 5.11 | 36.0 | 5.13 | 56.0 | 5.14 | 76.0 | 5.14 | 96.0 | 5.14 |
| 16.5 | 5.11 | 36.5 | 5.13 | 56.5 | 5.14 | 76.5 | 5.14 | 96.5 | 5.14 |
| 17.0 | 5.11 | 37.0 | 5.13 | 57.0 | 5.14 | 77.0 | 5.14 | 97.0 | 5.14 |
| 17.5 | 5.11 | 37.5 | 5.13 | 57.5 | 5.14 | 77.5 | 5.14 | 97.5 | 5.14 |
| 18.0 | 5.12 | 38.0 | 5.13 | 58.0 | 5.14 | 78.0 | 5.14 | 98.0 | 5.14 |
| 18.5 | 5.12 | 38.5 | 5.13 | 58.5 | 5.14 | 78.5 | 5.14 | 98.5 | 5.14 |
| 19.0 | 5.12 | 39.0 | 5.13 | 59.0 | 5.14 | 79.0 | 5.14 | 99.0 | 5.14 |
| 19.5 | 5.12 | 39.5 | 5.13 | 59.5 | 5.14 | 79.5 | 5.14 | 99.5 | 5.14 |
| 20.0 | 5.12 | 40.0 | 5.13 | 60.0 | 5.14 | 80.0 | 5.14 | 100.0 | 5.14 |

*26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 223; Part III § 54.9831-1)*

# Rev. Proc. 2023-23

## SECTION 1. PURPOSE

This revenue procedure provides the 2024 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

## SECTION 2. 2023 INFLATION ADJUSTED ITEMS

.01 *HSA Inflation Adjusted Items*.

(1) *Annual contribution limitation*. For calendar year 2024, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $4,150. For calendar year 2024, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $8,300.

(2) *High deductible health plan*. For calendar year 2024, a "high deductible health plan" is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,600 for self-only coverage or $3,200 for family coverage, and for which the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $8,050 for self-only coverage or $16,100 for family coverage.

.02 *HRA Inflation Adjusted Item*.

For plan years beginning in 2024, the maximum amount that may be made newly available for the plan year for an excepted benefit HRA under § 54.9831-1(c)(3)(viii) is $2,100. See § 54.9831-1(c)(3)(viii)(B)(1) for further explanation of this calculation.

## SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for HSAs for calendar year 2024 and for excepted benefit HRAs for plan years beginning in 2024.

## SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Kyle Walker of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding § 223, HSAs, and excepted benefit HRAs, contact Jason Sandoval at (202) 317-5500 (not a toll-free number). For further information regarding the calculation of the inflation adjustments in this revenue procedure, contact Mr. Walker at (202) 317-4718 (not a toll-free number).

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

## Numerical Finding List[1]

Bulletin 2023–22

### Announcements:



### AOD:



### Notices:



### Notices:—Continued



### Proposed Regulations:



### Revenue Procedures:



### Revenue Rulings:



### Treasury Decisions:



[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.

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

Bulletin 2023–22

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.

**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.