

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

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, SPECIAL ANNOUNCEMENT

### **Notice 2024-28, page 720.**

This notice requests recommendations for the 2024-2025 Priority Guidance Plan.

## EMPLOYMENT TAX

### **Rev. Proc. 2024-11, page 721.**

General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.

This revenue procedure provides general rules and specifications from the IRS for paper and computer-generated substitutes for Form 941; Schedule B (Form 941); Schedule D (Form 941); Schedule R (Form 941); and Form 8974. This revenue procedure supersedes Revenue Procedure 2023-13, 2023-13 I.R.B. 581.

**Bulletin No. 2024-13**  
**March 25, 2024**

## INCOME TAX

### **REG-101552-24, page 741.**

The proposed regulations would provide certain exceptions to the existing regulations regarding elections by certain unincorporated organizations to be excluded from the application of otherwise applicable partnership tax rules. These exceptions would apply to certain unincorporated organizations owned, in full or in part, by one or more tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives or certain agencies or instrumentalities. Such owners would be permitted to make elective payment elections under section 6417(a) with respect to certain property held by the unincorporated organization, provided that certain requirements are met.

# 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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

# Part III

## Public Recommendations Invited on Items to be Included on the 2024-2025 Priority Guidance Plan

### Notice 2024-28

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) invite the public to submit recommendations for items to be included on the 2024-2025 Priority Guidance Plan.

The Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2024-2025 Priority Guidance Plan will identify guidance projects that the Treasury Department and the IRS intend to actively work on as priorities during the period from July 1, 2024, through June 30, 2025.

The Treasury Department and the IRS recognize the importance of public input in formulating a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law. The published guidance process is most successful if the Treasury Department and the IRS have the benefit of the experience and knowledge of taxpayers and practitioners who must apply the rules implementing the tax laws.

This solicitation reflects an emphasis on taxpayer engagement with the Treasury Department and the IRS through a variety of channels, consistent with the directive of the Taxpayer First Act, Pub. L. 116-25, 133 Stat. 981.

In reviewing recommendations and selecting additional projects for inclusion on the 2024-2025 Priority Guidance Plan, the Treasury Department and the IRS will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to a broad class of taxpayers;
2. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the IRS;
3. Whether the recommended guidance relates to recently enacted legislation, such as the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (August 16, 2022);
4. Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn;
5. Whether the recommended guidance promotes sound tax administration;
6. Whether the IRS can administer the recommended guidance on a uniform basis; and
7. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Please submit recommendations for guidance by Friday, May 31, 2024, for possible inclusion on the original 2024-2025 Priority Guidance Plan. Taxpayers may, however, submit recommendations for guidance at any time during the year. The Treasury Department and the IRS will update the 2024-2025 Priority Guidance Plan periodically to reflect additional guidance that the Treasury Department and the IRS intend to publish or have published during the plan year. The periodic updates allow the Treasury Department and the IRS to respond in a timely manner to the need for additional guidance that may arise during the plan year.

Taxpayers are not required to submit recommendations for guidance in any

particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. For recommendations to modify, streamline, or withdraw existing regulations or other guidance, taxpayers should explain how the changes would reduce taxpayer cost and/or burden or benefit tax administration. It would be helpful if taxpayers suggesting more than one guidance project prioritize the projects by order of importance. If a large number of projects are being suggested, it would be helpful if the projects were grouped by subject matter and then in terms of high, medium, or low priority. Requests for guidance in the form of petitions for rulemaking will be considered with other recommendations for guidance in accordance with the considerations described in this notice.

Taxpayers are strongly encouraged to submit recommendations for guidance electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2024-0009 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit recommendations). Taxpayers submitting recommendations by mail should send them to:

Internal Revenue Service  
Attn: CC:PA:01:PR (Notice 2024-28)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. For further information regarding this notice, contact Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-5409 (not a toll-free number).

**NOTE.** This revenue procedure will be reproduced as the next revision of IRS Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974.

## **Rev. Proc. 2024-11**

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## Part 1

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### Section 1.1 – Purpose

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**.01** The purpose of this revenue procedure is to provide general rules and specifications from the IRS for paper and computer-generated substitutes for Form 941, Employer’s QUARTERLY Federal Tax Return; Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors (referred to in this revenue procedure as “Schedule B”); Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations (referred to in this revenue procedure as “Schedule D”); Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers (referred to in this revenue procedure as “Schedule R”); and Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities.

**Caution.** Before creating a substitute Form 941, see Pub. 1167, General Rules and Specifications for Substitute Forms and Schedules, for additional rules and specifications for payment vouchers (Vouchers), printing in margins (Marginal Printing), and additional instructions (Additional Instructions for All Forms).

**Note.** Substitute Spanish-language forms (for example, Form 941 (sp) and Schedule B (Form 941) (sp)) should also generally conform to the specifications outlined in this revenue procedure. However, some of the measurements provided in the exhibits, later, may need to be adjusted for substitute Spanish-language forms.

**.02** This revenue procedure provides information for substitute Form 941, Schedule B, Schedule D, Schedule R, and Form 8974. If you need more in-depth information on who must complete these forms and how to complete them, see the Instructions for Form 941, the Instructions for Schedule B, the Instructions for Schedule D, the Instructions for Schedule R, the Instructions for Form 8974, and Pub. 15, Employer’s Tax Guide, or go to [IRS.gov](https://www.irs.gov).

**Note.** Failure to produce acceptable substitutes of the forms and schedules listed in this revenue procedure may result in delays in processing. This may result in penalties.

**.03** Forms that completely follow the guidelines in this revenue procedure and are exact replicas of the official IRS forms do not need to be submitted to the IRS for specific approval. Substitute forms and schedules need to be scanned using IRS scanning equipment.

If you are uncertain of any specification and want clarification, do the following.

1. Submit a letter citing the specification.
2. State your understanding of the specification.
3. Enclose an example (if appropriate) of how the form would appear if produced using your understanding.

4. Be sure to include your name, complete address, phone number, and, if applicable, your email address with your correspondence. Send your request to [SCRIPS@IRS.gov](mailto:SCRIPS@IRS.gov) or [Substitute-Forms@IRS.gov](mailto:Substitute-Forms@IRS.gov), or use the following address.

Internal Revenue Service  
Attn: Substitute Forms Program  
SE:W:CAR:MP:P:TP:TP ATSC  
4800 Buford Highway, Mail Stop 061-N  
Chamblee, GA 30341

**Note.** Allow at least 30 days for the IRS to respond.

**.04** However, software developers and form producers should send a blank copy of their substitute Form 941, Schedule B, and Schedule R in Portable Document Format (PDF) to [SCRIPS@IRS.gov](mailto:SCRIPS@IRS.gov). The purpose is not specifically for approval but to assist the IRS in preparing to scan these forms. Submitters will only receive comments if a significant problem is discovered through this process. Submitters are not expected to delay marketing their forms in order to receive feedback. Submitters must not include any “live” taxpayer data on any substitute form submitted for review.

**.05** Form 941, Schedule B, Schedule R, and Form 8974 have a six-digit form ID code in the upper right-hand corner. The first two digits of the form ID code represent whether the form is an official paper form or a substitute 6x10 grid. The third and fourth digits of the form ID code are a unique identifier that is subject to change each quarter when changes are made to a page of the form. The fifth and six digits of the form ID code generally represent the year in which the IRS made major formatting changes to the layout of a page of the form. The following six-digit form ID codes, some of which have been updated for the first quarter of 2024, are currently used on Form 941, Schedule B, Schedule R, and Form 8974.

- **Official paper forms:** 950124 (Form 941, page 1); 950224 (Form 941, page 2); 960311 (Schedule B); 950424 (Schedule R, page 1); 950524 (Schedule R, page 2); and 951823 (Form 8974).
- **Substitute 6x10 grids:** 970124 (Form 941, page 1); 970224 (Form 941, page 2); 970311 (Schedule B); 970424 (Schedule R, page 1); 970524 (Schedule R, page 2); and 971823 (Form 8974).

You must always use the form ID code provided on the current form for the applicable quarter for which you are creating a substitute form, even if this revenue procedure is not superseded to reflect a change to a form ID code.

**.06** This revenue procedure will be updated only if there are major formatting changes to the layout of the forms (that is, changes to the measurements provided in the exhibits at the end of this revenue procedure) or there are other changes that impact the processing of substitute forms. This revenue procedure won't be updated solely because a line is changed to “Reserved for future use” or solely because a form ID code changes without major formatting changes.

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## Section 1.2 – What’s New

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**.01** Form 941 was revised to delete all lines related to the credit for qualified sick and family leave wages, as enacted under the Families First Coronavirus Response Act (FFCRA) and amended and extended by the COVID-related Tax Relief Act of 2020, for leave taken after March 31, 2020, and before April 1, 2021, and the credit for qualified sick and family leave wages under sections 3131, 3132, and 3133 of the Internal Revenue Code, as enacted under the American Rescue Plan Act of 2021 (the ARP), for leave taken after March 31, 2021, and before October 1, 2021. Additionally, all lines that were previously “Reserved for future use” have been deleted. Form 941 is now a two-page form instead of a three-page form.

**.02** The Privacy Act and Paperwork Reduction Act Notice was removed from Form 941. The Privacy Act and Paperwork Reduction Act Notice is now in the Instructions for Form 941.

**.03** Forms 941-SS and 941-PR were discontinued after 2023. Employers in the U.S. territories will file Form 941, or if they prefer their form in Spanish, they can file new Form 941 (sp).

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### Section 1.3 – Reminders

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**.01 Draft forms.** Draft forms can be found at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms).

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### Section 1.4 – General Requirements for Reproducing IRS Official Form 941, Schedule B, Schedule D, Schedule R, and Form 8974

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**.01** Submit substitute Form 941, Schedule B, Schedule D, Schedule R, and Form 8974 to the IRS for specifications review. Substitute Form 941, Schedule B, Schedule D, Schedule R, and Form 8974 that **completely conform** to the specifications contained in this revenue procedure do not require prior approval from the IRS, but should be submitted to [SCRIPS@IRS.gov](mailto:SCRIPS@IRS.gov) to ensure that they conform to IRS format and scanning specifications.

**.02** Print the form on standard 8.5-inch wide by 11-inch paper.

**.03** Use white paper that meets generally accepted weight, color, and quality standards (minimum 20 lb. white bond paper).

**Note.** Reclaimed fiber in any percentage is permitted provided that the requirements of this standard are met.

**.04** The IRS prefers printing Form 941 on both sides of a single sheet of paper, but it is acceptable to print on one side of each of two separate sheets of paper.

**.05** Make the substitute paper form as identical to the official form as possible.

**.06** Print the substitute form using nonreflective black (not blue or other-colored) ink. Printing in an ink color other than black may reduce readability in the scanning process. This may result in figures being too faint to be recognizable.

**.07** Use typefaces that are substantially identical in size and shape to the official form and use rules and shading (if used) that are substantially identical to those on the official form. Use font size as large as possible within the fields.

**.08** In the same location as shown on the official IRS forms, print the six-digit form ID code (if one exists on the official form) on each form using nonreflective black, carbon-based, 12-point font. The use of non-OCR-A font may reduce readability for scanning. Use the official form to develop your substitute form.

**Note.** Maintain as much white space as possible around the form ID code. Do not allow character strings to print adjacent to the code.

The following six-digit form ID codes are used on Form 941, Schedule B, Schedule R, and Form 8974 for the first quarter of 2024. Print “950124” on Form 941, page 1; “950224” on Form 941, page 2; “960311” on Schedule B; “950424” on Schedule R, page 1; “950524” on Schedule R, page 2; and “951823” on Form 8974. You must always use the form ID code provided on the current form for the applicable quarter for which you are creating a substitute form, even if this revenue procedure is not superseded to reflect a change to a form ID code. See [Section 1.5](#) for information on form ID codes for software-generated forms.

**.09** Print the OMB number in the same location as on the official form. Be sure to include the OMB number on Form 941, Schedule B, Schedule D, Schedule R, and Form 8974.

**.10** Print all entry boxes and checkboxes exactly as shown (**location and size**) on the official forms.

**Note.** Instead of a four-sided checkbox for the entry, just the bottom line of the box can be used as long as the location and size remain the same.

**.11** Print “For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.” at the bottom of page 1 of Form 941.

**.12** Print “For Paperwork Reduction Act Notice, see separate instructions.” at the bottom of Schedule B and Schedule D.

**.13** Print “For Paperwork Reduction Act Notice, see the separate instructions.” at the bottom of Schedule R.

**.14** Print “For Paperwork Reduction Act Notice, see the separate instructions.” at the bottom of Form 8974.

**.15 Do not** print the form catalog number (“Cat. No.”) at the bottom of the forms or instructions. Instead, print your IRS-issued three-letter substitute form source code in place of the catalog number on the left at the bottom of page 1 of Form 941, Schedule B, Schedule D, Schedule R, and Form 8974.



**Note.** You can obtain a three-letter substitute form source code by requesting it by email at [SubstituteForms@IRS.gov](mailto:SubstituteForms@IRS.gov). Enter “Substitute Forms” on the subject line.

**.16 Do not** print the Government Publishing Office (GPO) symbol at the bottom of the forms or instructions.

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## Section 1.5 – Reproducing Form 941, Schedule B, Schedule D, Schedule R, and Form 8974 for Software-Generated Paper Forms

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**.01** You may use the PDF files to develop the layout for your forms. Draft forms found at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) can be used to develop interim formats until the forms are finalized. When forms become finalized, they are posted and can be found at [IRS.gov/Forms](https://www.irs.gov/Forms). You may use 6x10 grid formats to develop software versions of Form 941, Schedule B, Schedule D, Schedule R, and Form 8974.

Please follow the specifications exactly to develop the fields.

**.02** If you are developing software using the 6x10 grid, the following six-digit form ID codes are used on Form 941, Schedule B, Schedule R, and Form 8974 for the first quarter of 2024.

- “970124” for Form 941, page 1; “970224” for Form 941, page 2; “970311” for Schedule B; “970424” for Schedule R, page 1; “970524” for Schedule R, page 2; and “971823” for Form 8974.

You must always use the form ID code provided on the current form, with the first two digits changed to “97” when using a 6x10 grid, for the applicable quarter for which you are creating a substitute form, even if this revenue procedure is not superseded to reflect a change to a form ID code.

**Note.** Maintain as much white space as possible around the form ID code. Do not allow character strings to print adjacent to the code.

- Place all 6x10 grid boxes and entry spaces in the same field locations as indicated on the official forms.
- Use single lines for “Employer Identification Number (EIN)” and other entry areas in the entity section of Form 941, pages 1 and 2; Schedule B; Schedule R, pages 1 and 2; and Form 8974.
- Reverse type is not needed as shown on the official form.
- **Do not** pre-print decimal points in the data boxes. However, where the amounts are required, the amounts should be printed with decimal points and place holders for cents.
- Delete the pre-printed formatting in any “date” boxes.
- Use a single box for “Personal Identification Number (PIN)” on Form 941.
- You may delete all shading when using the 6x10 grid format.

**.03** If producing both the form and the data or the form only, print your three-letter source code at the bottom of Form 941, page 1; Schedule B; Schedule D; Schedule R, page 1; or Form 8974. See *Section 1.4.15*.

**.04** If producing only the data on the form, print your four-digit software industry vendor code on Form 941. The four-digit vendor code preceded by four zeros and a slash (0000/9876) must be pre-printed. If you have a valid vendor code issued to you through the National Association of Computerized Tax Processors (NACTP), you should use that code. If you do not have a valid vendor code, contact the NACTP via email at [president@nactp.org](mailto:president@nactp.org) for information on these codes.

**.05** Print “For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.” at the bottom of Form 941, page 1.

**.06** Print “For Paperwork Reduction Act Notice, see separate instructions.” at the bottom of Schedule B and Schedule D.

**.07** Print “For Paperwork Reduction Act Notice, see the separate instructions.” at the bottom of Schedule R, page 1.

**.08** Print “For Paperwork Reduction Act Notice, see the separate instructions.” at the bottom of Form 8974.

**.09** Be sure to print the OMB number in the same location as on the official forms on substitute Form 941, Schedule B, Schedule D, Schedule R, and Form 8974.

**.10 Do not** print the form catalog number (“Cat. No.”) at the bottom of the forms or instructions.

**.11 Do not** print the Government Publishing Office (GPO) symbol at the bottom of the forms or instructions.

**.12** To ensure accurate scanning and processing, enter data on Form 941, Schedule B, Schedule D, Schedule R, and Form 8974 as follows.

- Display/print the name and EIN on all pages and attachments in the proper associated fields.
- Use 12-point (minimum 10-point) Courier font (where possible).
- Omit dollar signs. Commas are optional.
- Except for Form 941, lines 1, 2, and 12, leave blank any data field with a value of zero. However, employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico may leave line 2 blank, unless they have employees who are subject to U.S. income tax withholding.
- Enter negative amounts with a minus sign. For example, report “-10.59” instead of “(10.59).”

**Note.** The IRS prefers that you use a minus sign for negative amounts instead of parentheses or some other means. However, if your software only allows for parentheses in reporting negative amounts, you may use them.

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## Section 1.6 – Specific Instructions for Schedule D

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**.01** To properly file and to reduce delays and contact from the IRS, Schedule D must be produced as close as possible to the official form.

**.02** Use Schedule D to explain why you have certain discrepancies. See the Instructions for Schedule D for more information. In many cases, the information on Schedule D helps the IRS resolve discrepancies without contacting you.

**.03** If a substitute Schedule D is not submitted in similar format to the official IRS schedule, the substitutes may be returned, you may be contacted by the IRS, delays in processing may occur, and you may be subject to penalties.

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## Section 1.7 – Specific Instructions for Schedule R

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**.01** To properly file and to reduce delays and contact from the IRS, Schedule R and Continuation Sheets for Schedule R must be produced as close as possible to the official form.

**Note. Do not** present the information in spreadsheet or similar format. We may not be able to properly process nonconforming documents with an excessive number of entries. Complete as many Continuation Sheets for Schedule R (Schedule R, page 2) as necessary. If Continuation Sheets are not used or they vary in form from the official form, processing may be delayed and you may be subject to penalties.

**.02** Use Schedule R to allocate the aggregate information reported on Form 941 to each client. If you have more than 5 clients, complete as many Continuation Sheets for Schedule R as necessary. Attach Schedule R, including any Continuation Sheets, to your aggregate Form 941 and file it with your return.

Enter your business information carefully.

Make sure all information exactly matches the information shown on the aggregate Form 941. Compare the total of each column on Schedule R, line 9 (including your information on line 8), to the amounts reported on the aggregate Form 941. For each column total of Schedule R, the relevant line from Form 941 is noted in the column heading. The March 2024 revision of Schedule R now has some columns that are used only when Schedule R is attached to Form 941-X. If the totals on Schedule R, line 9, do not match the totals on Form 941, there is an error that must be corrected before submitting Form 941 and Schedule R.

**.03 Do:**

- Develop and submit only conforming Schedules R;
- Follow the format and fields exactly as on the official Schedule R, even if this revenue procedure is not superseded to reflect a change in a column heading on Schedule R; and
- Maintain the same number of entry lines on the substitute Schedule R as on the official form.

**.04 Do not:**

- Add or delete entry lines;
- Submit spreadsheets, database printouts, or similar formatted documents instead of using the Schedule R format to report data; and
- Reduce or expand font size to add or delete extra data or lines.

**.05** If substitute Schedules R and Continuation Sheets for Schedule R are not submitted in similar format to the official schedule, the substitutes may be returned, you may be contacted by the IRS, delays in processing may occur, and you may be subject to penalties.

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**Section 1.8 – Specific Instructions for Form 8974**

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**.01** To properly file and to reduce delays and contact from the IRS, Form 8974 must be produced as close as possible to the official form.

**.02** Use Form 8974 only if you are claiming the qualified small business payroll tax credit for increasing research activities.

**.03** If a substitute Form 8974 is not submitted in similar format to the official IRS form, the substitutes may be returned, you may be contacted by the IRS, delays in processing may occur, and you may be subject to penalties.

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**Section 1.9 – Office of Management and Budget (OMB) Requirements for Substitute Forms**

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**.01** The Paperwork Reduction Act (the Act) of 1995 (P.L. 104-13) requires the following.

- OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains the OMB approval number, if assigned. The official OMB numbers may be found on the official IRS-printed forms.
- Each IRS form (or its instructions) states:

1. Why the IRS needs the information,
2. How it will be used, and
3. Whether or not the information is required to be furnished to the IRS.

**.02** This information must be provided to any users of official or substitute IRS forms or instructions.

**.03** The OMB requirements for substitute IRS forms are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official form.
- For Form 941, Schedule B, Schedule D, Schedule R, and Form 8974, the OMB number (1545-0029) must appear exactly as shown on the official form.
- For Form 941, Schedule B, Schedule D, Schedule R, and Form 8974, the OMB number must use one of the following formats.
  1. OMB No. 1545-0029 (preferred).
  2. OMB # 1545-0029 (acceptable).

**.04** If no instructions are provided to users of your forms, you must furnish to them the exact text of the Privacy Act and Paperwork Reduction Act Notice.

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### **Section 1.10 – Order Forms and Instructions**

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**.01** You can order forms and instructions at [IRS.gov/OrderForms](https://www.irs.gov/OrderForms).

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### **Section 1.11 – Effect on Other Documents**

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**.01** Revenue Procedure 2023-13, 2023-13 I.R.B. 581, dated March 27, 2023, is superseded.

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### **Section 1.12 – Helpful Information**

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**.01** Please follow the specifications and guidelines to produce substitute Form 941, Schedule B, Schedule D, Schedule R, and Form 8974.

.02 These forms are subject to review and possible changes, as required. Therefore, employers are cautioned against overstocking supplies of privately printed substitutes.

.03 Here is a review of references that were listed throughout this document.

- Form 941, Employer’s QUARTERLY Federal Tax Return.
- Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors (referred to in this revenue procedure as “Schedule B”).
- Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations (referred to in this revenue procedure as “Schedule D”).
- Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers (referred to in this revenue procedure as “Schedule R”).
- Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities.
- Instructions for Form 941.
- Instructions for Schedule B (Form 941).
- Instructions for Schedule D (Form 941).
- Instructions for Schedule R (Form 941).
- Instructions for Form 8974.
- Pub. 15, Employer’s Tax Guide.
- [SCRIPS@IRS.gov](mailto:SCRIPS@IRS.gov) for submissions.
- [SubstituteForms@IRS.gov](mailto:SubstituteForms@IRS.gov) for questions.
- For questions:

Internal Revenue Service  
Attn: Substitute Forms Program  
SE:W:CAR:MP:P:TP:TP ATSC  
4800 Buford Highway, Mail Stop 061-N  
Chamblee, GA 30341

- [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) for draft forms.
- [IRS.gov/Forms](https://www.irs.gov/Forms) for final forms.

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**Section 1.13 – Exhibits**

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Exhibit A

Form **941 for 2024: Employer's QUARTERLY Federal Tax Return** (Rev. March 2024) Department of the Treasury — Internal Revenue Service 950124 OMB No. 1545-0029

**Report for this Quarter of 2024 (Check one.)**

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Go to [www.irs.gov/Form941](http://www.irs.gov/Form941) for instructions and the latest information.

Head the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter. Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico can skip lines 2 and 3, unless you have employees who are subject to U.S. income tax withholding.**

1 Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)

2 Wages, tips, and other compensation

3 Federal income tax withheld from wages, tips, and other compensation

4 If no wages, tips, and other compensation are subject to social security or Medicare tax  Check here and go to line 6.

	Column 1	Column 2
5a Taxable social security wages	$\times 0.124 =$	
5b Taxable social security tips	$\times 0.124 =$	
5c Taxable Medicare wages & tips	$\times 0.029 =$	
5d Taxable wages & tips subject to Additional Medicare Tax withholding	$\times 0.009 =$	
5e Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, and 5d		

5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)

6 Total taxes before adjustments. Add lines 3, 5e, and 5f

7 Current quarter's adjustment for fractions of cents

8 Current quarter's adjustment for sick pay

9 Current quarter's adjustments for tips and group-term life insurance

10 Total taxes after adjustments. Combine lines 6 through 9

11 Qualified small business payroll tax credit for increasing research activities. Attach Form 8974

12 Total taxes after adjustments and nonrefundable credits. Subtract line 11 from line 10

13 Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), or 944-X filed in the current quarter

14 Balance due. If line 12 is more than line 13, enter the difference and see instructions

15 Overpayment. If line 13 is more than line 12, enter the difference  Apply to next return.  Send a refund.

You MUST complete both pages of Form 941 and SIGN it.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 17001Z Form **941** (Rev. 3-2024)

950224

Name (not your trade name) Employer identification number (EIN)

5.00 in .50 in 1.90 in .33 in

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**Part 2: Tell us about your deposit schedule and tax liability for this quarter.**

If you're unsure about whether you're a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

16 Check one:  Line 12 on this return is less than \$2,500 or line 12 on the return for the prior quarter was less than \$2,500, and you didn't incur a \$100,000 next-day deposit obligation during the current quarter. If line 12 for the prior quarter was less than \$2,500 but line 12 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you're a monthly schedule depositor, complete the deposit schedule below; if you're a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

.53 in

You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

1.02 in

Tax liability: Month 1  .10 in 3.00 in

Month 2

Month 3

Total liability for quarter  .40 in Total must equal line 12.

1.44 in

You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941. Go to Part 3.

---

**Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.**

17 If your business has closed or you stopped paying wages  Check here and enter the final date you paid wages  1.10 in; also attach a statement to your return. See instructions. .44 in

2.40 in

18 If you're a seasonal employer and you don't have to file a return for every quarter of the year  Check here. 1.65 in

---

**Part 4: May we speak with your third-party designee?**

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. 3.10 in

Yes. Designee's name and phone number  2.40 in  .40 in  1.50 in

.44 in

Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

.30 in

No.

---

**Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign your name here  3.00 in Print your name here  2.50 in

Date  1.10 in Print your title here

Best daytime phone  2.00 in

---

**Paid Preparer Use Only** Check if you're self-employed

Preparer's name  3.60 in PTIN  1.70 in

Preparer's signature  Date  1.20 in

Firm's name (or yours if self-employed)  EIN

Address  Phone

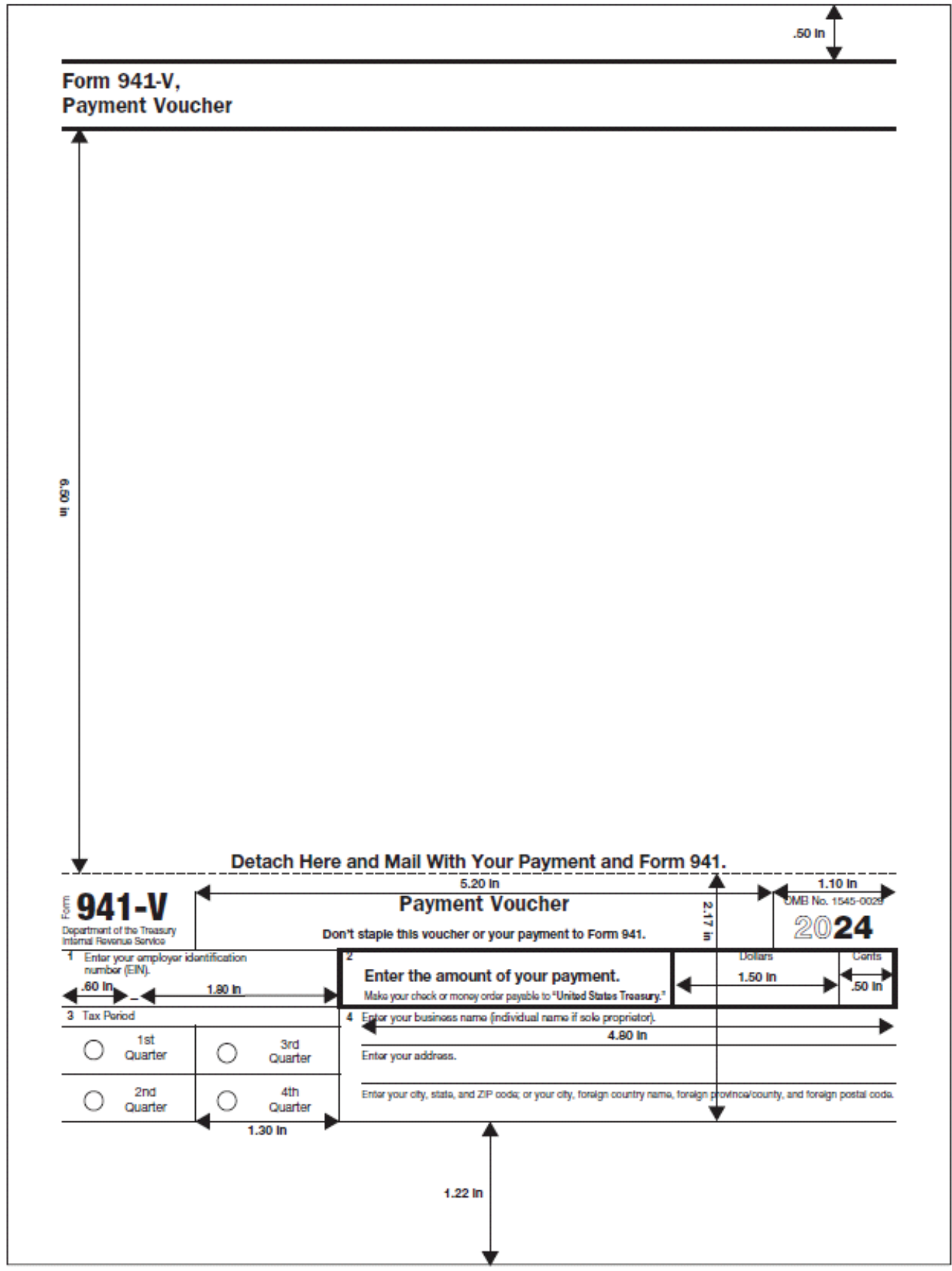
City  2.50 in State  .50 in ZIP code

Page 2 Form 941 (Rev. 3-2024)



# Exhibit C

Form 941-V



# Exhibit D

## Schedule B (Form 941)

### Schedule B (Form 941): Report of Tax Liability for Semiweekly Schedule Depositors

(Rev. March 2024)

Department of the Treasury — Internal Revenue Service

Employer identification number (EIN) 3.27 In

Name (not your trade name) 3.50 In

Calendar year 1.33 In (Also check quarter)

OMB No. 1545-0029

**Report for this Quarter...**  
(Check one.)

1: January, February, March 2.20 In

2: April, May, June

3: July, August, September 2.50 In

4: October, November, December

Use this schedule to show your **TAX LIABILITY** for the quarter; don't use it to show your deposits. When you file this schedule with Form 941, don't change your tax liability by adjustments reported on any Forms 941-X or 944-X. You must fill out this schedule and attach it to Form 941 if you're a semiweekly schedule depositor or became one because your accumulated tax liability on any day was \$100,000 or more. Write your daily tax liability on the numbered space that corresponds to the date wages were paid. See Section 11 in Pub. 15 for details.

Month 1		Month 2		Month 3		Total liability for the quarter	
1	9	1	9	1	9	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <b>Tax liability for Month 1</b> 1.80 In                 </div> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <b>Tax liability for Month 2</b> 6.30 In                 </div> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <b>Tax liability for Month 3</b> 1.41 In                 </div> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <b>Total liability for the quarter</b> 9.51 In                 </div>	
2	10	2	10	2	10		
3	11	3	11	3	11		
4	12	4	12	4	12		
5	13	5	13	5	13		
6	14	6	14	6	14		
7	15	7	15	7	15		
8	16	8	16	8	16		
9	17	9	17	9	17		
10	18	10	18	10	18		
11	19	11	19	11	19		
12	20	12	20	12	20		
13	21	13	21	13	21		
14	22	14	22	14	22		
15	23	15	23	15	23		
16	24	16	24	16	24		
17	25	17	25	17	25		
18	26	18	26	18	26		
19	27	19	27	19	27		
20	28	20	28	20	28		
21	29	21	29	21	29		
22	30	22	30	22	30		
23	31	23	31	23	31		
24		24		24			

Fill in your total liability for the quarter (Month 1 + Month 2 + Month 3). Total must equal line 12 on Form 941.

www.irs.gov/Form941      Cat. No. 11967Q      Schedule B (Form 941) (Rev. 3-2024)



# Exhibit F

Your EIN - 2.86 In

Name (not your trade name)  3.60 In

Other party's EIN -

**Tax Year of Discrepancies (Fill in)**  .80 In  
Format: YYYY 2.20 In

**Part 2: Tell us about the discrepancies with your returns.**

	Column A	Column B	Column C
	Amount you reported to IRS for the tax year	- Amount you reported to SSA for the tax year	= The difference
	Totals from Forms 941 as corrected by any Forms 941-X	Totals from Forms W-2 (Copy A) as corrected by any Forms W-2c (Copy A)	
4. Social security wages	1.80 In	.20 In	=
5. Medicare wages and tips		-	=
6. Social security tips		-	=
7. Federal Income tax withheld		-	=
8. Advance earned income credit (EIC) payments (for tax years ending before January 1, 2011)		-	=

If you are filing for one transaction only, STOP here. If you are filing for more than one transaction, go to Part 3.

**Part 3: Fill this part out ONLY if you are filing more than one Schedule D (Form 941) for any calendar year.**

9. File one Schedule D (Form 941) for each separate transaction. This is schedule  of . (Example: This is schedule 1 of 3.)

7.09 In

	Column A	Column B	Column C
	Amount you reported to IRS for the tax year for the employees affected by the transaction reported on this Schedule D (Form 941)	- Amount you reported to SSA for the tax year for the employees affected by the transaction reported on this Schedule D (Form 941)	= The difference
	Totals from Forms 941 as corrected by any Forms 941-X	Totals from Forms W-2 (Copy A) as corrected by any Forms W-2c (Copy A)	
10. Social security wages		5.80 In	=
11. Medicare wages and tips		-	=
12. Social security tips		-	=
13. Federal Income tax withheld		-	=
14. Advance earned income credit (EIC) payments (for tax years ending before January 1, 2011)		-	=

1.51 In  
.50 In

**Schedule R (Form 941): Allocation Schedule for Aggregate Form 941 Filers**  
(Rev. March 2024) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN)

Name as shown on Form 941

Type of filer (check one):  Section 501(c)(3) organization  CPEO  Other Third Party

Report for calendar year:  2024

Check the quarter (same as Form 941):  
 1: January, February, March  
 2: April, May, June  
 3: July, August, September  
 4: October, November, December

This Schedule R is headed by:  
 Form 941  
 Form 941-X

Read the instructions before you complete Schedule R. Type or print within the boxes. Complete a separate line for the amounts allocated to each of your clients. The term "client" as used on this form includes the term "customer." See the instructions.

	(a) Client's EIN	(b) Type of wages (CPEO only)	(c) Form 941, line 1	(d) Form 941, line 2	(e) Form 941, line 3	(f) Form 941-X, lines 9 and 10, column 1, total	(g) Form 941, lines 5a and 5b, column 2, total	(h) Form 941, line 5c, column 2	(i) Form 941, line 5e
1									
2									
3									
4									
5									
6	Subtotals for clients. Add lines 1 through 5								
7	Enter the combined subtotal from line 9 of all Continuation Sheets for Schedule R								
8	Enter Form 941 amounts for your employees								
9	Totals. Add lines 6, 7, and 8.								
	(k) Form 941, line 5f	(l) Form 941, line 11	(m) Form 941-X, lines 17 and 25, column 1, total	(n) Form 941-X, lines 19b and 26b, column 1, total	(o) Form 941-X, lines 18c and 26c, column 1, total	(p) Form 941-X, line 18d, column 1	(q) Form 941, line 12		
1									
2									
3									
4									
5									
6									
7									
8									
9									
1	(r) Form 941, line 13	(s) Reserved for future use	(t) Reserved for future use	(u) Form 941-X, lines 28 and 29, column 1, total	(v) Reserved for future use	(w) Form 941-X, lines 35 and 37, column 1, total	(x) Form 941-X, lines 36 and 38, column 1, total	(y) Form 941-X, lines 36 and 40, column 1, total	
1									
2									
3									
4									
5									
6									
7									
8									
9									

For Paperwork Reduction Act Notice, see the separate instructions.

www.irs.gov/Form941 Cat. No. 49301K Schedule R (Form 941) (Rev. 3-2024)

950524

Report for calendar year:

Check the quarter (same as Form 941):

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

This Schedule R is attached to:

Form 941

Form 941-X

Page \_\_\_\_\_ of \_\_\_\_\_

.50 in

Continuation Sheet for Schedule R (Form 941)

Rev. March 2024

Employer identification number (EIN)  -

Name as shown on Form 941

Type of filer (check one):  Section 504 Agent  C/PEO  Other Third Party

(a) Client's EIN	(b) Type of wages (C/PEO only)	(c) Form 941, line 1	(d) Form 941, line 2	(e) Form 941, line 3	(f) Form 941-X, lines 9 and 10, column 1, total and 5b, column 2, total	(g) Form 941, lines 5a and 5b, column 2, total	(h) Form 941, line 5c, column 2	(i) Form 941, line 5e
1								
2								
3								
4								
5								
6								
7								
8								
9	Subtotals for clients. Add lines 1 through 8. Include the subtotals from this line on Schedule R, Page 1, line 7.							
(j) Form 941, line 5f	(k) Form 941, line 11	(l) Form 941-X, lines 17 and 25, column 1, total	(m) Reserved for future use	(n) Form 941-X, lines 18b and 26b, column 1, total	(o) Form 941-X, lines 18c and 26c, column 1, total	(p) Form 941-X, line 18d, column 1	(q) Form 941, line 12	
1								
2								
3								
4								
5								
6								
7								
8								
9								
(r) Form 941, line 13	(s) Reserved for future use	(t) Form 941-X, lines 28 and 39, column 1, total	(u) Form 941-X, lines 35 and 37, column 1, total	(v) Reserved for future use	(w) Form 941-X, lines 35 and 37, column 1, total	(x) Form 941-X, lines 35 and 39, column 1, total	(y) Form 941-X, lines 38 and 40, column 1, total	
1								
2								
3								
4								
5								
6								
7								
8								
9								

Schedule R (Form 941) (Rev. 3-2024)

# Exhibit I

Form 8974

**8974: Qualified Small Business Payroll Tax Credit for Increasing Research Activities** 951823

(Rev. December 2023) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

**Report for this quarter...**  
 Check only one box.  
 1: January, February, March  
 2: April, May, June  
 3: July, August, September  
 4: October, November, December

**Part 1: Tell us about your income tax return.**

	(a) Ending date of income tax period	(b) Income tax return filed that included Form 6765	(c) Date income tax return was filed	(d) EIN used on Form 6765	(e) Amount from Form 6765, line 44 or, if applicable, the amount that was allocated to your EIN	(f) Amount of credit from column (e) taken on a previous period(s)	(g) Remaining credit (subtract column (f) from column (e))
1	1.20 in	.70 in	1.20 in	.80 in	1.10 in	1.10 in	1.10 in
2	/ /	.25 in	/ /		.	.	.
3	/ /		/ /		7.25 in	.	.
4	/ /		/ /		.	.	.
5	/ /		/ /		.	.	.
6	Add lines 1(g) through 5(g) and enter the total here						6.10 in

**Part 2: Determine the credit that you can use this period.**

7 Enter the amount from Part 1, line 6(g) 1.80 in

8 Enter the amount from Form 941, line 5a, column 2; Form 943, line 3; or Form 944, line 4a, column 2 .

9 Enter the amount from Form 941, line 5b, column 2; or Form 944, line 4b, column 2 .

10 Add lines 8 and 9 .04 in

11 Multiply line 10 by 50% (0.50). Check this box  if you're a third-party payer of sick pay or check this box  if you received a Section 3121(q) Notice and Demand. See the instructions before completing line 11 1.25 in

12 Credit against the employer share of social security tax. Enter the smaller of line 7 or 11, but not more than \$250,000. See the instructions before entering an amount if you file Form 943 or Form 944. If you entered the amount from line 7, stop here and also enter this amount on Form 941, line 11a; Form 943, line 12a; or Form 944, line 8a 2.66 in

13 Subtract line 12 from line 7 2.83 in

14 Enter the amount from Form 941, line 5c, column 2; Form 943, line 5; or Form 944, line 4c, column 2 .

15 Multiply line 14 by 50% (0.50). If you're a third-party payer of sick pay or you received a Section 3121(q) Notice and Demand, see the instructions before completing line 15 .

16 Credit against the employer share of Medicare tax. Enter the smaller of line 13 or 15 .

17 Total credit. Add lines 12 and 16. Also, enter this amount on Form 941, line 11a; Form 943, line 12a; or Form 944, line 8a .20 in

For Paperwork Reduction Act Notice, see the separate Instructions. www.irs.gov/Form8974 Cat. No. 37797C Form 8974 (Rev. 12-2023)

# Part IV

## Notice of Proposed Rulemaking

### Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from Application of the Rules on Partners and Partnerships

#### REG-101552-24

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that would modify existing regulations to allow certain unincorporated organizations that are organized exclusively to produce electricity from certain property to be excluded from the application of partnership tax rules. These proposed regulations would affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. The proposed regulations would also update certain outdated language in the existing regulations. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by May 10, 2024. A public hearing on these proposed regulations has been scheduled for May 20, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 10, 2024. If no outlines are received by May 10, 2024, the public hearing will be cancelled.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments

electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-101552-24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket.

*Send paper submissions to:* CC:PA:01:PR (REG-101552-24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### FOR FURTHER INFORMATION

**CONTACT:** Concerning the proposed regulations, contact Cameron Williamson at (202) 317-6684 (not a toll-free number); and concerning submissions of comments and requests for a public hearing, contact Vivian Hayes at (202) 317-6901 (not a toll-free number) or by email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 761(a) of the Internal Revenue Code (Code) to carry out the purposes of section 6417 of the Code (proposed regulations). This document also provides notice of a public hearing on the proposed regulations.

##### I. *Elective payment of applicable credits*

Section 6417 was added to the Code by section 13801(a) of Public Law 117–169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an “applicable entity” (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments,

Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an “applicable credit” (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary of the Treasury or her delegate (Secretary) to provide rules for making elections under section 6417. Section 6417(h) requires the Secretary to issue regulations or other guidance as may be necessary to carry out the purposes of section 6417. Generally, this includes issuing guidance to ensure that applicable entities that comply with the terms of section 6417 can benefit from its provisions. Section 13801(g) of the IRA provides that section 6417 applies to taxable years beginning after December 31, 2022.

On June 21, 2023, the Treasury Department and the IRS published in the *Federal Register* (88 FR 40528) proposed regulations (REG-101607-23) providing guidance on the section 6417 elective payment election (section 6417 proposed regulations). Proposed §1.6417-2(a)(1)(iv) provided that partnerships are not applicable entities described in section 6417(d)(1)(A) or proposed §1.6417-1(c), regardless of how many of their partners are themselves applicable entities. Accordingly, any partnership making an elective payment election must be an electing taxpayer (as defined in proposed §1.6417-1(g)), and, as such, the only applicable credits with respect to which the partnership could make an elective payment election would be credits determined under sections 45Q, 45V, and 45X for the time periods allowed in section 6417(d). However, proposed §1.6417-2(a)(1)(iii) provided that if an applicable entity is a co-owner in an applicable credit property through an organization that has made a valid election under section 761(a) to be excluded from the application of the partnership



tax rules of subchapter K of chapter 1 of the Code (subchapter K), then the applicable entity's undivided ownership share of the applicable credit property would be treated as a separate applicable credit property owned by such applicable entity. As a result, the applicable entity may make an elective payment election for the applicable credit(s) determined with respect to such share of the applicable credit property.

Comments were received in response to the section 6417 proposed regulations requesting that the Treasury Department and the IRS provide additional guidance as to the types of applicable credit property co-ownership arrangements that could validly elect under section 761(a) to be excluded from the application of subchapter K. Specifically, stakeholders stated that certain facts and circumstances common to jointly owned and operated renewable energy projects appear to violate certain provisions of §1.761-2(a). Stakeholders requested that the Treasury Department and the IRS provide that applicable credit property indirectly owned via ownership of an interest in an entity (other than an entity required to be treated as a corporation under the Code) would still be considered owned as co-owners for purposes of §1.761-2(a)(3)(i). Stakeholders also requested that parties to a joint ownership arrangement of applicable credit property producing electricity be permitted to delegate the authority to enter into multi-year power purchase agreements (PPAs).

## II. Overview of section 761(a) and §1.761-2(a)(3)

Section 761(a) provides, in part, that under regulations the Secretary may, at the election of all of the members of an unincorporated organization, exclude such organization from the application of all or part of subchapter K if the income of the members of the organization may be adequately determined without the computation of partnership taxable income and the organization is availed of: (1) for investment purposes only and not for the active conduct of a business, (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (3)

by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities.

The Treasury Department and the IRS understand that unincorporated organizations seeking to be excluded from the application of subchapter K so that one or more of their members can make an election under section 6417 are likely to be formed for the joint production of property, but not for the purpose of jointly selling services or property produced or extracted. Section 1.761-2(a)(3) provides additional requirements for such unincorporated organizations to elect to be excluded from the application of subchapter K. These additional requirements include that the participants in such unincorporated organizations: (1) own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights (co-ownership requirement), (2) reserve the right separately to take in kind or dispose of their shares of any property produced, extracted, or used (severance requirement), and (3) do not jointly sell services or the property produced or extracted (joint marketing requirement), although each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year. When an electing organization is no longer eligible to elect to be excluded from subchapter K, its existing election automatically terminates, and the organization must begin complying with the requirements of subchapter K.

## III. Reason for proposed regulations

### A. Co-ownership and Severance Requirements

Under the current regulations, the requirements of §1.761-2(a)(3) are met only in situations in which interests in the property of an electing unincorporated organization are owned directly by its members, rather than indirectly through ownership of interests in an entity that would otherwise be treated as a partnership under section 7701 and §301.7701-3

(for example, a limited liability company with multiple owners).

Stakeholders have requested that co-ownership arrangements of applicable credit property through an entity (other than one required to be treated as a corporation under the Code) be treated as satisfying the co-ownership and severance requirements. As support for this request, stakeholders have pointed out that pre-IRA guidance allowing for the use of partnership structures is widely used as a basis for structuring projects within the renewable energy industry and is well understood by all parties involved in the industry. However, direct co-ownership of renewable energy projects that meet the co-ownership and severance requirements is generally limited to projects directly including a utility or an off-taker as a co-owner. Stakeholders have argued that requiring renewable energy investments to be made directly, rather than through an entity, will make it more difficult for parties to such arrangements to obtain financing with respect to the investments or negotiate contracts.

In response to the concerns raised by stakeholders, the Treasury Department and the IRS agree that ownership of certain applicable credit property through an entity (other than one required to be treated as a corporation under the Code) is appropriate for purposes of satisfying the co-ownership and severance requirements in the context of an entity owned by one or more applicable entities seeking to make elections under section 6417, provided that the other requirements of section 761(a) and §1.761-2, as it would be modified by these proposed regulations, are met. As previously described, arrangements treated as partnerships for Federal income tax purposes are not treated as applicable entities and cannot make elective payment elections except in the case of credits determined under sections 45V, 45Q, and 45X. Thus, the Treasury Department and the IRS agree with stakeholders that to further the intent of Congress to encourage applicable entities to build, operate, and own renewable energy projects, it is necessary to expand the circumstances in which joint ownership arrangements of applicable credit property can be excluded from the application of subchapter K.

## B. Joint Marketing Requirement

Under the current regulations, the joint marketing requirement provides that members of an unincorporated organization making an election under section 761(a) may not jointly sell services or the property produced or extracted by the unincorporated organization, except that each separate participant may delegate authority to sell the participant's share of the property produced or extracted for the time being for the participant's account, but not for a period of time in excess of the minimum needs of the industry, and in no event for more than one year.

Some stakeholders have requested that the current regulations under section 761(a) be modified to provide that multi-year PPAs entered into alongside other members of an unincorporated organization will not violate the joint marketing requirement. In support of this position, stakeholders have raised that utilities and other potential counterparties may be averse to negotiating with multiple owners of a single renewable energy project, especially if any such owners lack relevant renewable energy expertise. If applicable entities are at a disadvantage to negotiating with utilities and other potential counterparties because of the requirements under section 761(a)(2) and §1.761-2, investments in applicable credit property are unlikely to materialize in the manner intended by Congress. Likewise, if applicable entities cannot delegate authority to conduct such negotiations with respect to long-term projects—as is anticipated to be necessary for PPAs and similar arrangements—investments in applicable credit property are unlikely to materialize in the manner intended by Congress.

### Explanation of Provisions

To carry out the purposes of section 6417 as intended by Congress, the proposed regulations contained in this notice of proposed rulemaking would amend the regulations under section 761(a) to provide an exception to certain rules in §1.761-2(a)(3) in the case of an unincorporated organization that meets four requirements. First, the unincorporated organization must be owned, in part or

in full, by one or more applicable entities (as defined in section 6417(d)(1) and §1.6417-1(c)). Second, the unincorporated organization's members must enter into a joint operating agreement with respect to the applicable credit property in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, or any associated renewable energy credits or similar credits. Third, the unincorporated organization must, pursuant to a joint operating agreement, be organized exclusively to jointly produce electricity from its applicable credit property (as defined in §1.6417-1(e)) and for which one or more of the applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined. This requirement may be satisfied prior to the applicable credit property being placed in service (if necessary), provided the unincorporated organization is in the process of completing the applicable credit property and will operate the applicable credit property once it is placed in service. Fourth, one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property.

Solely for purposes of an election under section 761(a) by an unincorporated organization meeting those four requirements as well as the other requirements applicable under §1.761-2 (an applicable unincorporated organization), the proposed regulations would modify the co-ownership and joint marketing requirements under §1.761-2(a)(3) as follows.

The proposed regulations would modify the co-ownership requirement in §1.761-2(a)(3)(i) to permit the participants in the unincorporated organization to own the applicable credit property through an organization that is an entity (other than an entity that is required to be treated as a corporation under the Code).

The proposed regulations would modify the joint marketing requirement in §1.761-2(a)(3)(iii) to provide that a delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contracts that exceed the minimum needs of the industry and may be for longer than one year,

provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year. In other words, a participant would not be permitted to enter into an agreement binding the participant to an agency relationship for longer than one year, but an agent of a participant may enter into a PPA that binds a participant to sell electricity generated by the participant's share of the applicable credit property for longer than one year. The proposed regulations would include an example illustrating this proposed rule.

The proposed regulations would also update certain outdated references to §1.6031-1 and internal revenue officers. The Treasury Department and the IRS are considering additional updates to modernize the section 761(a) regulations, including rules addressing section 761(a) elections made by dealers in securities described in section 761(a)(3). The Treasury Department and the IRS are also considering changes to the revocation procedures described in §1.761-2(b)(3). Comments are requested regarding these considerations and any other potential updates to the section 761(a) regulations.

Comments are requested regarding the scope and requirements of these proposed regulations, including whether similar exceptions are necessary for applicable entities that own applicable credit properties that do not produce electricity. The Treasury Department and the IRS are considering a rule that would terminate a section 761(a) election made by an applicable unincorporated organization relying on an exception in proposed §1.761-2(a)(4)(iii) if any interest in the applicable unincorporated organization is sold or exchanged unless the resulting members in the unincorporated organization make a new section 761(a) election within a specified time period. In addition, the Treasury Department and the IRS are considering a rule that would prevent the deemed election rules in §1.761-2(b)(2)(ii) from applying to any unincorporated organization relying on an exception in proposed §1.761-2(a)(4)(iii). Comments are requested regarding these considerations and other potential means of preventing abuse of the exceptions in proposed §1.761-2(a)(4)(iii).

## Proposed Applicability Dates

Proposed §1.761-2(a)(4), which would be applicable to elections under section 761(a) by applicable unincorporated organizations to be excluded from the application of all of subchapter K, is proposed to apply to taxable years ending on or after the date these proposed regulations are published in the *Federal Register*.

## Special Analyses

### I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This proposed regulation mentions reporting and recordkeeping requirements that must be satisfied for unincorporated organizations to elect out of subchapter K. These collections of information are generally used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping. The likely respondents to these collections are businesses and tax-exempt organizations.

Unincorporated entities meeting the requirements outlined in §1.761-2(a)(4) of this proposed regulation satisfy relevant reporting requirements by submitting a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, containing, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under paragraphs (1) and either (2) or (3) of paragraph (a) of this section; a statement that all of the mem-

bers of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained). These requirements and associated forms are already approved by OMB under 1545-0123 for business filers. These proposed regulations are not changing or creating new collection requirements not already approved by OMB.

The recordkeeping requirements mentioned in this proposed regulation are considered general tax records under §1.6001-1(e). These records are required for the IRS to validate that electing taxpayers have consistently met the regulatory requirements outlined in §1.761-2. For PRA purposes, general tax records are already approved by OMB under 1545-0123 for business filers and 1545-0047 for tax-exempt organizations.

### II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

These proposed regulations would affect unincorporated organizations that elect out of subchapter K in connection with an election under section 6417, as well as the members of such organizations.

Data is not readily available about these organizations. Such organizations could not have made an election out of subchapter K under the current regulations, so information about existing organizations that have made section 761(a) elections is not instructive.

Even if these proposed regulations affect a substantial number of small entities, such impact will not be significant. The proposed regulations do not make it more costly to make or maintain an election under section 761(a).

These proposed regulations do not change the procedural requirements under current §1.761-2(b) for making an election under section 761(a). Other than to conform to modern formatting conven-

tions, the proposed regulations would amend §1.761-2(b) only by adding a parenthetical to clarify that in making a valid section 761 election, which requires attaching certain statements to a Form 1065 as required in accordance with the current regulations, proposed §1.761-2(a)(4) should be taken into account, as applicable, with regard to the required statement that the organization qualifies under §1.761-2(a)(1) and either §1.761-2(a)(2) or (a)(3) “(taking into account §1.761-2(a)(4), as applicable)”. Otherwise, an unincorporated organization making an election under these proposed regulations would not be required to submit anything additional or different than required under current §1.761-2(b).

These proposed regulations impose no new ongoing compliance costs. Though any unincorporated organization that has made an election under section 761(a) should ensure that it remains qualified under §1.761-2(a)(1) and either §1.761-2(a)(2) or (3) (taking into account proposed §1.761-2(a)(4), as applicable), the proposed regulations do not add to this obligation. In fact, these proposed regulations could make it simpler for certain unincorporated organizations to stay qualified, given their joint operating agreements that satisfy the modified co-ownership and severance requirements and multi-year PPAs that satisfy the modified joint marketing requirement.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the number of entities affected and the impact of the proposed regulations on small entities.

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

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandate Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expen-

ditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

#### IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

#### V. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

Nevertheless, on July 17, 2023, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing questions related to the section 6417 proposed rules published on June 14, 2023, which informed the development of these proposed regulations.

#### VI. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking 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 regulations. All comments will be made available at <https://www.regulations.gov>. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for May 20, 2024, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 10, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by May 10, 2024, the public hearing will be cancelled. If the public hearing is can-

celled, a notice of cancellation of the public hearing will be published in the *Federal Register*.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG-101552-24 and the language “TESTIFY In Person.” For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-101552-24.

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-101552-24 and the language “TESTIFY Telephonically.” For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-101552-24.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG-101552-24 and the language “ATTEND In Person.” For example, the subject line may say: Request to ATTEND Hearing In Person for REG-101552-24. Requests to attend the public hearing must be received by 5:00 p.m. ET on May 16, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-101552-24 and the language “ATTEND Hearing Telephonically.” For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-101552-24. Requests to attend the public hearing must be received by 5:00 p.m. ET on May 16, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by send-

ing an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by May 15, 2024.

## Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble 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 <https://www.irs.gov>.

## Drafting Information

The principal author of these proposed regulations is Cameron Williamson. However, other personnel from the Treasury Department and the IRS participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

## Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

### PART 1--INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by revising the entry for §1.761-2 to read in part as follows:

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

Section 1.761-2 also issued under 26 U.S.C. 6417(h).

\* \* \* \* \*

**Par. 2.** Section 1.761-2 is amended by:

- Revising and republishing paragraphs (a)(1), (a)(2)(i), and (a)(3)(i);
- Adding paragraph (a)(4);
- Revising and republishing paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (c), and (e); and
- Adding paragraph (f).

The revisions and additions read as follows:

### §1.761-2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) \* \* \*(1) *In general.* Under conditions set forth in this section, an unincorporated organization described in paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) may be excluded from the application of all or a part of the provisions of subchapter K of chapter 1 of the Code. Such organization must be availed of (i) for investment purposes only and not for the active conduct of a business, or (ii) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted. The members of such organization must be able to compute their income without the necessity of computing partnership taxable income. Any syndicate, group, pool, or joint venture which is classifiable as an association, or any group operating under an agreement which creates an organization classifiable as an association, does not fall within these provisions.

(2) \* \* \*

(i) Own the property as co-owners,  
\* \* \*

(3) \* \* \*

(i) Own the property as co-owners, either in fee or under lease or other form of contract granting exclusive operating rights, and  
\* \* \*

(4) *Exception for certain joint ownership arrangements of applicable credit property--(i) Scope.* Paragraph (a)(4)(iii) of this section provides certain exceptions to specified rules in paragraph (a)(3) of this section in the case of an applicable unincorporated organization meeting the requirements of paragraph (a)(4)(ii) of this section.

(ii) *Applicable unincorporated organization.* For purposes of this section, an applicable unincorporated organization is an unincorporated organization described in paragraph (a)(1) of this section:

(A) That is owned, in part or in whole, by one or more applicable entities, as defined in section 6417(d)(1) and §1.6417-1(c),

(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, or any associated renewable energy credits or similar credits,

(C) That, pursuant to the joint operating agreement, is organized exclusively to produce electricity from its applicable credit property (as defined in §1.6417-1(e)) and with respect to which one or more of the applicable credits listed in section 6417(b)(2), (4), (8), (10), and (12) is determined, and

(D) For which one or more of the applicable entities will make an elective payment election under section 6417(a) for the applicable credits determined with respect to its share of the applicable credit property.

(iii) *Specified exceptions for applicable unincorporated organizations.* Solely for purposes of an election under section 761(a) by an applicable unincorporated organization that meets the requirements of paragraphs (b) and (e) of this section:

(A) The requirement in paragraph (a)(3)(i) of this section is modified such that the participants are permitted to own the applicable credit property through an unincorporated organization that is an entity, other than one required to be treated as a corporation under any provision of the Code; and

(B) The requirement in paragraph (a)(3)(iii) of this section is modified such that the delegation of authority to sell the participant's share of the property produced may allow the delegee to enter into contracts the duration of which exceeds the minimum needs of the industry and may be for more than one year, provided that the delegation of authority to act on behalf of the participant may not be for a period of time that exceeds the minimum needs of the industry, and in no event for more than one year.

(vi) *Example.* This example illustrates the application of the specified exceptions for applicable unincorporated organizations described in paragraph (a)(4) of this section.

(A) *Facts.* T is an Indian tribal government as defined in §1.6417-1(c) and an applicable entity, and T and Y own an applicable credit property that will produce electricity through a limited liability com-

pany organized under T's tribal law (TLLC). No election under §301.7701-3 of this chapter has been made to treat TLLC as an association for Federal tax purposes. T and Y enter into a joint operating agreement with respect to the ownership and operation of the applicable credit property in which each of T and Y reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced and any associated renewable energy credits or similar credits. On January 1st of year 1, T and Y enter into delegation agreements with Q that delegate T's and Y's authority to Q to sell electricity generated by T's and Y's shares of the applicable credit property. The term of the delegation agreements is one year, which does not exceed the minimum needs of the industry. On June 1st of year 1, Q enters into a power purchase agreement with Utility on T's and Y's behalf that commits T and Y to sell the electricity produced from their shares of the applicable credit property to Utility for a term of 15 years. At the end of the day on December 31st of year 1, the delegation agreements terminate.

(B) *Analysis.* Because T and Y did not delegate authority for a period of more than one year to sell the electricity produced from their shares of the applicable credit property, the requirements of paragraph (a)(4)(iii)(B) of this section are met. Assuming that TLLC otherwise meets the requirements of paragraphs (a)(1) and (a)(4)(ii) of this section, TLLC is an organization described in paragraph (a)(4)(iii)(A) of this section and can make an election under paragraphs (b) and (c) of this section to be excluded from the application of all of subchapter K under section 761(a). As such, T can make an elective payment election for the applicable credits determined with respect to its share of the applicable credit property held by TLLC, assuming the requirements of section 6417 are otherwise met. The analysis in this example would be the same whether Y is also an Indian tribal government, another applicable entity, or some other person.

(b) \* \* \*(1) *Time for making election for exclusion.* Any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) not later than the time prescribed by paragraph (e) of §1.6031(a)-1 (including extensions thereof) for filing the partnership return for the first taxable year for which exclusion from subchapter K is desired. Notwithstanding the prior sentence such organization may be deemed to have made the election in the manner prescribed in paragraph (b)(2)(ii) of this section.

(2) *Method of making election.*

(i) Except as provided in paragraph (b)(2)(ii) of this section, any unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2)

or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) which wishes to be excluded from all of subchapter K must make the election provided in section 761(a) in a statement attached to, or incorporated in, a properly executed partnership return, Form 1065, which shall contain the information required in this paragraph (b)(2)(i). Such return must be filed with the Internal Revenue Service Center where the partnership return, Form 1065, would be required to be filed if no election were made. To determine the appropriate Internal Revenue Service Center, the principal office or place of business of the person filing the return will be considered the principal office or place of business of the organization. The partnership return must be filed not later than the time prescribed by paragraph (e) of §1.6031(a)-1 (including extensions thereof) for filing the partnership return with respect to the first taxable year for which exclusion from subchapter K is desired. Such partnership return shall contain, in lieu of the information required by Form 1065 and by the instructions relating thereto, only the name or other identification and the address of the organization together with information on the return, or in the statement attached to the return, showing the names, addresses, and identification numbers of all the members of the organization; a statement that the organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable); a statement that all of the members of the organization elect that it be excluded from all of subchapter K; and a statement indicating where a copy of the agreement under which the organization operates is available (or if the agreement is oral, from whom the provisions of the agreement may be obtained).

(ii) If an unincorporated organization described in paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable) does not make the election provided in section 761(a) in the manner prescribed by paragraph (b)(2)(i) of this section, it shall nevertheless be deemed to have made the election if it can be shown from all the surrounding facts and circumstances that it

was the intention of the members of such organization at the time of its formation to secure exclusion from all of subchapter K beginning with the first taxable year of the organization. Although the following facts are not exclusive, either one of such facts may indicate the requisite intent:

(A) At the time of the formation of the organization there is an agreement among the members that the organization be excluded from subchapter K beginning with the first taxable year of the organization, or

(B) The members of the organization owning substantially all of the capital interests report their respective shares of the items of income, deductions, and credits of the organization on their respective returns (making such elections as to individual items as may be appropriate) in a manner consistent with the exclusion of the organization from subchapter K beginning with the first taxable year of the organization.

(3) *Effect of election*—(i) *In general.* An election under this section to be excluded will be effective unless within 90 days after the formation of the organization (or by October 15, 1956, whichever is later) any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization, and also advises the Commissioner that the member has so notified all other members of the organization by registered or certified mail. Such election is irrevocable as long as the organization remains qualified under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), or unless approval of revocation of the election is secured from the Commissioner. Application for permission to revoke the election must be submitted to the Commissioner of Internal Revenue, Attention: T:I, Washington, DC 20224, no later than 30 days after the beginning of the first taxable year to which the revocation is to apply.

\* \* \*

(c) *Partial exclusion from subchapter K.* An unincorporated organization which wishes to be excluded from only certain sections of subchapter K must submit to the Commissioner, no later than 90 days after the beginning of the first taxable year

for which partial exclusion is desired, a request for permission to be excluded from certain provisions of subchapter K. The request shall set forth the sections of subchapter K from which exclusion is sought and shall state that such organization qualifies under paragraph (a)(1) of this section and either paragraph (a)(2) or (3) of this section (taking into account paragraph (a)(4) of this section, as applicable), and that the members of the orga-

nization elect to be excluded to the extent indicated. Such exclusion shall be effective only upon approval of the election by the Commissioner and subject to the conditions the Commissioner may impose.

\* \* \*

(e) *Cross reference.* For requirements with respect to the filing of a return on Form 1065 by a partnership, see §1.6031(a)-1.

\* \* \* \* \*

(f) *Applicability date.* Except as provided in paragraph (d) of this section, this section applies to taxable years ending on or after March 11, 2024.

*Douglas W. O'Donnell,  
Deputy Commissioner for Services and  
Enforcement.*

(Filed by the Office of the Federal Register March 5, 2024, 8:45 a.m., and published in the issue of the Federal Register for March 11, 2024, 89 FR 17613)

# 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.



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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

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