

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.

INCOME TAX

Rev. Rul. 2012-33, page 710.

Section 1274A – inflation adjusted numbers for 2013. This ruling provides the dollar amounts, increased by the 2013 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2011-27 supplemented and superseded.

Notice 2012-69, page 712.

Leave-based donations programs to aid victims of Hurricane Sandy. This notice provides guidance to employers and employees regarding employer sponsored leave-based donation programs under which employees elect to forgo vacation, sick, or personal leave in exchange for cash payments the employer makes to organizations described in section 170(c) of the Code for the relief of victims of Hurricane Sandy.

Notice 2012-73, page 713.

This notice announces that the Service and the Treasury Department expect to issue final regulations under section 263 of the code regarding the deduction and capitalization of expenditures related to tangible property in 2013 and anticipate that the final regulations will contain changes from the temporary regulations (T.D. 9564, 76 Fed. Reg. 81060-01 [2012-14 I.R.B. 614]). In addition, the Service and the Treasury Department will publish in the Federal Register a Treasury Decision amending the temporary regulations to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to apply the temporary regulations for taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

EMPLOYEE PLANS

Notice 2012-70, page 712.

This notice extends the deadline, as set forth in Notice 2011-96, 2011-52 I.R.B. 915, to amend a defined benefit plan to satisfy the requirements of section 436 of the Code and provides associated relief from the requirements of section 411(d)(6). Notice 2011-96 modified.

EMPLOYMENT TAX

Announcement 2012-43, page 723.

This document provides that the Service will not assert that any taxpayer has understated liability for taxes under the Federal Insurance Contributions Act by reason of a failure to treat services performed before January 1, 2015, in the Commonwealth of the Northern Mariana Islands by a resident of the Republic of the Philippines as employment under section 3121(b) of the Code.

Announcement 2012-45, page 724.

This announcement provides notice and information regarding the revised Voluntary Classification Settlement Program (VCSP) that provides partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat workers as employees.

(Continued on the next page)

Finding Lists begin on page ii.



Announcement 2012-46, page 725.

This document provides notice and information regarding a temporary expansion of eligibility for the Voluntary Classification Settlement Program (VCSP) that will be available through June 30, 2013. The temporary eligibility expansion makes a modified VCSP available to otherwise eligible taxpayers that have not filed all required Forms 1099 for the previous three years with respect to the workers to be reclassified. Eligible taxpayers that take advantage of this limited, temporary eligibility expansion agree to prospectively treat workers as employees and will receive partial relief from federal employment taxes.

EXCISE TAX

Notice 2012-74, page 714.

This notice provides guidance on the branded prescription drug fee under section 9008 of the ACA for the 2013 fee year related to (1) the submission of Form 8947, "*Report of Branded Prescription Drug Information*," (2) the time and manner for notifying covered entities of their preliminary fee calculation, (3) the time and manner for submitting error reports for the dispute resolution process, and (4) the time for notifying covered entities of their final fee calculation. Notice 2011-92 obsoleted.

ADMINISTRATIVE

Notice 2012-75, page 715.

Application of general welfare exclusion to Indian tribal government programs. This notice proposes a revenue procedure that would provide safe harbors under section 61 of the Code for applying the general welfare exclusion to Indian tribal government programs. Comments are requested by June 4, 2013.

Rev. Proc. 2012-51, page 719.

This procedure updates Rev. Proc. 2012-15, 2012-7 I.R.B. 369, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Code. Rev. Proc. 2012-15 updated.

Announcement 2012-48, page 729.

This announcement contains corrections and an addition to Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*. Rev. Proc. 2012-38 corrected.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force 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 and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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.

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

Section 168.—Accelerated Cost Recovery System

The Internal Revenue Service and the Treasury Department expect to issue final regulations regarding the deduction and capitalization of expenditures related to tangible property in 2013 and anticipate that the final regulations will contain changes from the temporary regulations (T.D. 9564, 76 Fed. Reg. 81060-01 [2012-14 I.R.B. 614]). In addition, the Service and the Treasury Department will publish in the Federal Register a Treasury Decision amending the temporary regulations to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to apply the temporary regulations for taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations. See Notice 2012-73, page 713.

Section 483.—Interest on Certain Deferred Payments

This ruling provides the dollar amounts, increased by the 2013 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2011-27 supplemented and superseded. See Rev. Rul. 2012-33, page 710.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

This ruling provides the dollar amounts, increased by the 2013 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2011-27 supplemented and superseded. See Rev. Rul. 2012-33, page 710.

Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed \$2,800,000

26 CFR 1.1274A-1: Special rules for certain transactions where stated principal amount does not exceed \$2,800,000.
(Also §§ 483, 1274.)

Section 1274A – inflation adjusted numbers for 2013. This ruling provides

the dollar amounts, increased by the 2013 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2011-27 supplemented and superseded.

Rev. Rul. 2012-33

This revenue ruling provides the dollar amounts, increased by the 2013 inflation adjustment, for § 1274A of the Internal Revenue Code.

BACKGROUND

In general, §§ 483 and 1274 determine the principal amount of a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a “qualified debt instrument,” the discount rate used for purposes of §§ 483 and 1274 may not exceed nine percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is \$2,800,000.

In the case of a “cash method debt instrument,” as defined in § 1274A(c), the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the

lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed \$2,000,000; (B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged; (C) § 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) an election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and the lender. Section 1.1274A-1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of \$100 (or, if the increase is a multiple of \$50 and not of \$100, the increase is increased to the nearest multiple of \$100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

INFLATION-ADJUSTED AMOUNTS UNDER § 1274A

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

Rev. Rul. 2012-33 Table 1

Inflation-Adjusted Amounts Under Section 1274A

Calendar Year of Sale or Exchange	1274A(b) Amount (qualified debt instrument)	1274A(c)(2)(A) Amount (cash method debt instrument)
1990	\$2,933,200	\$2,095,100
1991	\$3,079,600	\$2,199,700
1992	\$3,234,900	\$2,310,600
1993	\$3,332,400	\$2,380,300
1994	\$3,433,500	\$2,452,500
1995	\$3,523,600	\$2,516,900
1996	\$3,622,500	\$2,587,500
1997	\$3,723,800	\$2,659,900
1998	\$3,823,100	\$2,730,800
1999	\$3,885,500	\$2,775,400
2000	\$3,960,100	\$2,828,700
2001	\$4,085,900	\$2,918,500
2002	\$4,217,500	\$3,012,500
2003	\$4,280,800	\$3,057,700
2004	\$4,381,300	\$3,129,500
2005	\$4,483,000	\$3,202,100
2006	\$4,630,300	\$3,307,400
2007	\$4,800,800	\$3,429,100
2008	\$4,913,400	\$3,509,600
2009	\$5,131,700	\$3,665,500
2010	\$5,115,100	\$3,653,600
2011	\$5,201,300	\$3,715,200
2012	\$5,339,300	\$3,813,800
2013	\$5,468,200	\$3,905,900

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2011-27, 2011-48 I.R.B. 805, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Steven Harrison of the Office of Associate Chief Counsel (Financial Institutions

& Products). For further information regarding this revenue ruling, contact Mr. Harrison at (202) 622-3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Treatment of Certain Amounts Paid to Section 170(c) Organizations Under Certain Employer Leave-Based Donation Programs to Aid Victims of Hurricane Sandy

Notice 2012-69

In view of the extreme need for charitable relief in the aftermath of Hurricane Sandy, employers may have adopted or may be considering adopting leave-based donation programs to aid victims of this hurricane. Under these programs employees elect to forgo vacation, sick, or personal leave in exchange for cash payments an employer makes to organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations) for the relief of victims of Hurricane Sandy. This notice provides guidance on the treatment of these payments for income and employment tax purposes.

Notice 2005-68, 2005-2 C.B. 622, provided similar guidance in view of the extreme need for charitable relief following Hurricane Katrina. *See also* Notice 2001-69, 2001-2 C.B. 491, as modified and superseded by Notice 2003-1, 2003-1 C.B. 257, regarding charitable relief following the September 11, 2001, terrorist attacks. This guidance is provided in view of the extraordinary damage and destruction caused by Hurricane Sandy.

The Service will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the § 170(c) organizations for the relief of victims of Hurricane Sandy; and (2) paid to the § 170(c) organizations before January 1, 2014.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer will be only permitted to deduct

these cash payments under the rules of § 170 rather than the rules of § 162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of an employee's Form W-2, *Wage and Tax Statement*.

For further information, please contact Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4920 (not a toll-free call).

Notice 2012-70

I. Purpose

This notice extends the deadline, as set forth in Notice 2011-96, 2011-52 I.R.B. 915, to amend a defined benefit plan to satisfy the requirements of § 436 of the Internal Revenue Code and provides associated relief from the requirements of § 411(d)(6).

II. Background

Section 401(b) provides a period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 and Rev. Proc. 2007-44, 2007-2 C.B. 54, describe the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to extend the remedial amendment period.

Section 5.05 of Rev. Proc. 2007-44 provides that when there are statutory or regulatory changes to the plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment will generally be required by the later of the end of the plan year in which the change is first effective or the due date of the employer's tax return for the tax year that includes the date the change is first effective. Pursuant to section 5.02 of Rev. Proc. 2007-44, an interim amendment is an amendment with respect to a plan provision that is a disqualifying provision because the provision (1) causes the plan to fail to satisfy the qualification requirements of the Code by reason of a change in those require-

ments, or (2) is integral to a changed qualification requirement, but only if the provision is also integral to a plan provision that is a disqualifying provision under (1). A change in a qualification requirement includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. A disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code.

The filing of a determination letter application for an individually designed plan generally requires the plan to be restated to take into account changes in qualification requirements and guidance that are listed in the Cumulative List of Changes in Plan Qualification Requirements in effect at the time the application is filed. (See sections 4 and 12.03 of Rev. Proc. 2007-44.)

Section 411(d)(6) provides, generally, that a plan will not satisfy § 401(a) if an amendment to the plan decreases a participant's accrued benefit. For this purpose, a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits. Section 401(b) does not relieve a plan of the requirement to satisfy § 411(d)(6) with respect to any amendment.

Section 1.411(d)-4, A-2(b)(2)(i), provides that a plan may be amended to eliminate or reduce a § 411(d)(6) protected benefit, within the meaning of § 1.411(d)-4, A-1, if the following requirements are met: the amendment constitutes timely compliance with a change in law affecting plan qualification; there is an exercise of § 7805(b) relief by the Commissioner; and the elimination or reduction is made only to the extent necessary to enable the plan to continue to satisfy the requirements for qualified plans.

Notice 2011-96 provides a sample plan amendment that a sponsor of a single employer defined benefit plan may adopt to amend the terms of the plan to satisfy the requirements of § 436, relating to benefit restrictions that apply to underfunded

plans. Notice 2011-96 also provides that the deadline to adopt an interim amendment for § 436 is the latest of:

(1) the last day of the first plan year that begins on or after January 1, 2012,

(2) the last day of the plan year for which § 436 is first effective for the plan, or

(3) the due date (including extensions) of the employer's tax return for the tax year (determined in accordance with section 5.06(2) of Rev. Proc. 2007-44, in the case of a tax-exempt employer) that contains the first day of the plan year for which § 436 is first effective for the plan.

However, if an application for a determination letter for an individually designed plan is filed on or after February 1, 2012 (or, in the case of an eligible cooperative, charity, or PBGC settlement plan described in section 104 or 105 of the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, as amended, the first day of the plan year for which § 436 is first effective for the plan, if later), Notice 2011-96 requires the restated plan submitted with the application to incorporate an interim amendment with respect to § 436.

Pursuant to § 7805(b) and § 1.411(d)-4, A-2(b)(2)(i), Notice 2011-96 also provides that a plan amendment adopted with respect to § 436 that eliminates or reduces a § 411(d)(6) protected benefit does not cause a plan to fail to meet the anti-cutback requirements of § 411(d)(6) if the amendment is adopted by the deadline described above and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of § 436.

Notice 2011-97, 2011-52 I.R.B. 923, contains the Cumulative List of Changes in Plan Qualification Requirements, as described in section 4 of Rev. Proc. 2007-44, for 2011 (the "2011 Cumulative List"). The 2011 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning February 1, 2012, and ending January 31, 2013. The Service's review of plans submitted during this period will take into account the changes in law and guidance on the 2011 Cumulative List. Footnote 2 of Notice 2011-97 provides that the Service will not consider the requirements of § 436 in its review of any determination letter application submitted

during the period beginning February 1, 2012, and ending January 31, 2013.

III. Extension of Amendment Deadline and Associated Relief under § 411(d)(6)

As noted in section II of this notice, pursuant to Notice 2011-96, an interim amendment to satisfy the requirements of § 436 would generally be required to be adopted by the last day of the first plan year beginning on or after January 1, 2012. If an application for a determination letter for the plan were filed on or after February 1, 2012, an amendment for § 436 generally would need to be incorporated in the restated plan that is submitted with the application. However, an application for a determination letter that is filed during the 12-month submission period beginning on February 1, 2012, would not be reviewed with respect to the requirements of § 436.

To ensure that a plan amendment for § 436 is not required to be included in a plan that is filed for a determination letter with the Service when the Service will not consider such an amendment in its review of the determination letter application, Notice 2011-96 is modified. In particular, the deadline to adopt an interim amendment for § 436 is extended to the latest of:

(a) the last day of the first plan year that begins on or after January 1, 2013,

(b) the last day of the plan year for which § 436 is first effective for the plan, or

(c) the due date (including extensions) of the employer's tax return for the tax year (determined in accordance with section 5.06(2) of Rev. Proc. 2007-44, in the case of a tax-exempt employer) that contains the first day of the plan year for which § 436 is first effective for the plan.

However, if an application for a determination letter for an individually designed plan is filed on or after February 1, 2013 (or, in the case of a plan described in section 104 or 105 of PPA '06, as amended, the first day of the plan year for which § 436 is first effective for the plan, if later), the restated plan submitted with the application must incorporate an amendment with respect to § 436. As noted in section 12.03 of Rev. Proc. 2007-44, the filing of a determination letter application may accelerate the time by which the plan must be amended to satisfy the requirements of § 436.

In addition, pursuant to § 7805(b) and § 1.411(d)-4, A-2(b)(2)(i), this notice also provides that a plan amendment adopted with respect to § 436 that eliminates or reduces a § 411(d)(6) protected benefit does not cause the plan to fail to meet the anti-cutback requirements of § 411(d)(6) if the amendment is adopted by the deadline described above and the elimination or reduction is made only to the extent necessary to enable the plan to meet the requirements of § 436.

IV. Effect on Other Documents

Notice 2011-96 is modified.

Drafting Information

The principal author of this notice is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this revenue procedure may be sent via e-mail to retirementplanquestions@irs.gov.

Guidance on Regulations to be Issued Regarding the Deduction and Capitalization of Expenditures Related to Tangible Property

Notice 2012-73

PURPOSE

This notice alerts taxpayers that the Internal Revenue Service and the Treasury Department expect to issue final regulations regarding the deduction and capitalization of expenditures related to tangible property in 2013, and that the Service and the Treasury Department anticipate that the final regulations will contain changes from the temporary regulations (T.D. 9564, 76 Fed. Reg. 81060-01 [2012-14 I.R.B. 614]). The Service and the Treasury Department anticipate that the final regulations will apply to taxable years beginning on or after January 1, 2014, and will permit taxpayers to apply the final regulations to taxable years beginning on or after January 1, 2012. This notice also advises taxpayers that shortly after publication of this notice the Service and the Treasury Department will publish in the Federal Register a Treasury Decision

amending the temporary regulations to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to apply the temporary regulations for taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

BACKGROUND

On March 10, 2008, the Service and the Treasury Department issued proposed regulations regarding the deduction and capitalization of expenditures related to tangible property (2008 proposed regulations) in the **Federal Register** (REG-168745-03, 73 Fed. Reg. 12838-01 [2008-18 I.R.B. 871]). The Service and the Treasury Department received numerous written comments on the 2008 proposed regulations and held a public hearing on June 24, 2008.

On December 27, 2011, after considering the written comments and the statements at the public hearing, the Service and the Treasury Department published temporary regulations regarding the deduction and capitalization of expenditures related to tangible property in the **Federal Register** (T.D. 9564). The Service and the Treasury Department also withdrew the 2008 proposed regulations and published proposed regulations (REG-168745-03, 76 FR 81128-01 [2012-14 I.R.B. 718]) (the 2011 proposed regulations), which cross-referenced the text of the temporary regulations. The temporary regulations generally apply to taxable years beginning on or after January 1, 2012.

The Service and the Treasury Department received numerous written comments on the 2011 proposed regulations and held a public hearing on May 9, 2012. The Service and the Treasury Department are considering the written comments received as well as the statements from the public hearing.

DISCUSSION

In 2013, the Service and the Treasury Department expect to publish final regulations on the tax treatment of amounts paid to acquire, produce, or improve tangible property under sections 162 and 263(a), and on the accounting for, and disposition of, property subject to section 168. The Service and the Treasury Department expect the final regulations to apply to tax-

able years beginning on or after January 1, 2014, and to permit taxpayers to apply the provisions of the final regulations to taxable years beginning on or after January 1, 2012.

Recognizing that taxpayers are expending resources to comply with the temporary regulations, the Service and the Treasury Department are notifying taxpayers that certain sections of the temporary regulations, including the sections listed below, may be revised in a manner that might affect, and in certain cases simplify, taxpayers' implementation of the rules when the regulations are issued in final form.

- *De Minimis* Rule: § 1.263(a)-2T(g);
- Dispositions: §§ 1.168(i)-1T and 1.168(i)-8T; and
- Safe Harbor for Routine Maintenance: § 1.263(a)-3T(g).

The revisions being contemplated by the Service and the Treasury Department take into consideration all comments received, including comments requesting relief for small businesses.

Shortly after publication of this notice, the Service and the Treasury Department will publish in the Federal Register a Treasury Decision amending the temporary regulations to apply to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

Taxpayers choosing to apply the provisions of the temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations may continue to obtain the automatic consent of the Commissioner of Internal Revenue to change their methods of accounting under Revenue Procedures 2012-19, 2012-14 I.R.B. 689, and 2012-20, 2012-14 I.R.B. 700. For taxpayers choosing to apply the provisions of the final regulations to taxable years beginning on or after January 1, 2012, the Service and the Treasury Department expect to publish procedures for obtaining automatic consent to change a method of accounting when the final regulations are published.

CONTACT INFORMATION

For further information concerning this notice, contact Merrill D. Feldstein or Alan S. Williams, Office of Associate Chief Counsel (Income Tax & Accounting), (202) 622-4950 (not a toll-free call).

Branded Prescription Drug Fee; Guidance for the 2013 Fee Year

Notice 2012-74

Purpose

This notice provides guidance on the branded prescription drug fee for the 2013 fee year related to (1) the submission of Form 8947, "Report of Branded Prescription Drug Information," (2) the time and manner for notifying covered entities of their preliminary fee calculation, (3) the time and manner for submitting error reports for the dispute resolution process, and (4) the time for notifying covered entities of their final fee calculation.

Background

An annual fee on covered entities engaged in the business of manufacturing or importing branded prescription drugs is imposed by section 9008 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)).

The Branded Prescription Drug Fee Regulations in 26 C.F.R. Part 51, which were published on August 18, 2011 (76 FR 51245), provide the method by which each covered entity's annual fee is calculated. These regulations also define terms for the administration of the fee. As relevant for this notice, § 51.2T(g) defines *fee year* as the calendar year in which the fee for a particular sales year must be paid and § 51.2T(m) defines *sales year* as the second calendar year preceding the fee year.

Section 51.3T provides that annually, each covered entity may submit a completed Form 8947, "Report of Branded Prescription Drug Information," in accordance with the instructions for the form.

Generally, the form solicits information from covered entities on National Drug Codes, orphan drugs, designated entities, rebates, and other information specified by the form or its instructions. The form is to be filed by the date prescribed in guidance published in the Internal Revenue Bulletin.

Section 51.6T provides that for each sales year the IRS will make a preliminary fee calculation for each covered entity and will notify each covered entity of this calculation by the date prescribed in guidance published in the Internal Revenue Bulletin. This notification will also include additional prescribed information. As used in this notice, “notice of preliminary fee calculation” includes the additional prescribed information.

Section 51.7T provides that upon receipt of its preliminary fee calculation, each covered entity will have an opportunity to dispute this calculation by submitting to the IRS an error report with prescribed information. Sections 51.7T(b) and (c) set out the information that a covered entity must submit to support each asserted error. Section 51.7T(d) provides that each covered entity must submit its error report(s) in the form and manner that is prescribed in guidance published in the Internal Revenue Bulletin. This guidance will also prescribe the date by which each covered entity must submit its report(s).

Section 51.8T provides that the IRS will send each covered entity its final fee calculation no later than August 31st of each fee year and also provides that covered entities must pay their fee by September 30th of the fee year.

Submission of Form 8947

For the 2013 fee year, a covered entity that chooses to submit Form 8947 must file the form by December 17, 2012.

Time and manner for notifying covered entities of their preliminary fee calculation

For the 2013 fee year, the IRS will mail each covered entity a paper notice of its preliminary fee calculation by April 1, 2013. This mailing will include a National Drug Code (NDC) attachment (NDC attachment) that lists the covered entity’s NDCs and the sales data reported to the IRS by each government program pursuant to § 51.4T.

A covered entity may request that the IRS send a CD-ROM with the NDC attachment in Microsoft Excel format. The covered entity must make this request by March 15, 2013. This request must be made either by telephone to Ingrid Taylor at (908) 301–2118 or Mi Lim at (312) 292–3775 (not toll-free calls) or by email to *it.bpd.fee@irs.gov*. If a covered entity makes this request timely, the IRS will mail the covered entity its notice of preliminary fee calculation on paper and the NDC attachment on paper and CD-ROM by April 1, 2013.

Time and manner for submitting error reports for the dispute resolution process

For the 2013 fee year, a covered entity that chooses to submit an error report regarding its preliminary fee calculation must mail the error report by May 16, 2013.

When the IRS mails each covered entity a notice of its preliminary fee calculation by April 1, 2013, the IRS will also send each covered entity a template on a CD-ROM that the covered entity must use to prepare its error report. All completed templates and the supporting documentation must be submitted on a CD-ROM and sent by mail to:

Department of the Treasury
Internal Revenue Service — Branded
Prescription Drug Fee
1973 N. Rulon White Boulevard, Mail
Stop 4916
Ogden, UT 84404

Notification of Final Fee Calculation

In accordance with § 51.8T(a), the IRS will notify each covered entity of its final fee calculation for 2013 by August 31, 2013. In accordance with § 51.8T(c), each covered entity must pay this fee by September 30, 2013.

Effect on Other Documents

Notice 2011–92, 2011–48 I.R.B. 809, which provides guidance for the 2012 fee year, is obsolete.

Drafting Information

The principal author of this notice is Celia Gabrysh of the Office of Associate Chief Counsel (Passthroughs

& Special Industries). For further information regarding this notice, contact Celia Gabrysh at (202) 622–3130 (not a toll-free call).

Application of the General Welfare Exclusion to Indian Tribal Government Programs That Provide Benefits to Tribal Members

Notice 2012–75

PURPOSE

This notice proposes a revenue procedure that would describe general principles for the general welfare exclusion and provide safe harbors under which the Internal Revenue Service would presume that the individual need requirement of the general welfare exclusion is met for benefits provided under Indian tribal governmental programs described in sections 5.02 and 5.03 of the proposed revenue procedure, and would not assert that benefits provided under programs described in section 5.03 represent compensation for services. The proposed revenue procedure provides certainty that the value of the benefits described will be excluded from gross income under the general welfare exclusion, but does not limit the applicability to Indian tribes of existing guidance holding that certain benefits are excluded from gross income under the general welfare exclusion.

Under the general welfare exclusion, the Service has consistently concluded that certain payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not included in a recipient’s gross income. Pursuant to Executive Order 13175, representatives of the Service and the Treasury Department consulted with tribal leaders and members of Indian tribes concerning the application of the general welfare exclusion to programs of Indian tribal governments. In Notice 2011–94, 2011–49 I.R.B. 834, the Service invited comments concerning the application of the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

The Service received over 85 comments from Indian tribal governments and other individuals and groups describing various Indian tribal government programs for tribal members and how the general welfare exclusion should apply to those programs.

The proposed revenue procedure responds to the issues addressed in the written comments and discussed as part of the consultation process, including the requirement under the general welfare exclusion to establish individual need. Under the proposed revenue procedure, the Service would conclusively presume that the individual need requirement is met for each tribal member, spouse, or dependent receiving a benefit under the housing programs, educational programs, elder and disabled programs, other qualifying assistance programs, and cultural and religious programs described in sections 5.02 and 5.03 of the proposed revenue procedure. For tribal members receiving a benefit described in section 5.03, the Service also would conclusively presume that the benefit does not represent compensation for services.

Pursuant to Executive Order 13175, the Service and Treasury Department are issuing this proposed revenue procedure to allow Indian tribes to review the guidance and provide comments prior to the issuance of final guidance.

Accordingly, the Service and Treasury Department request comments on the proposed revenue procedure. Comments may be submitted in writing on or before June 4, 2013. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2012-75), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irscounsel.treas.gov. Please include "Notice 2012-75" in the subject line of any electronic communications.

Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2012-75), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

Although the revenue procedure is in proposed form, until additional guidance is published taxpayers may apply the pro-

posed revenue procedure in taxable years for which the period of limitation on refund or credit under § 6511 has not expired.

PROPOSED REVENUE PROCEDURE

SECTION 1. PURPOSE

This revenue procedure describes general principles for the general welfare exclusion and provides safe harbors under which the Internal Revenue Service will presume that the individual need requirement of the general welfare exclusion is met for benefits provided under Indian tribal governmental programs described in sections 5.02 and 5.03 of this revenue procedure, and will not assert that benefits provided under programs described in section 5.03 of this revenue procedure represent compensation for services. Consequently, under this revenue procedure, the Service will not assert that members of an Indian tribe or their spouses or dependents must include the value of their benefits described in section 5.02 or 5.03 of this revenue procedure in gross income under § 61 of the Internal Revenue Code or that the benefits are subject to the information reporting requirements of § 6041.

SECTION 2. BACKGROUND

.01 *Gross income.* Under § 61(a), except as otherwise provided in subtitle A, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

Section 1.61-1(a) of the Income Tax Regulations provides that gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, or other property or in-kind benefits, as well as in cash.

Indians are citizens subject to the payment of income taxes. *Squire v. Capoe-man*, 351 U.S. 1, 6 (1956), 1956-1 C.B. 605, 607.

.02 *General welfare exclusion.* Payments made to or on behalf of individuals or other persons under governmental

programs are included within the broad definition of gross income under § 61 unless an exclusion applies. See Notice 2003-18, 2003-1 C.B. 699; Rev. Rul. 79-356, 1979-2 C.B. 28. The Service has consistently concluded, however, that certain payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income (general welfare exclusion). See, for example, Rev. Rul. 98-19, 1998-1 C.B. 840 (relocation payment authorized by the Housing and Community Development Act and made by a local jurisdiction to an individual moving from a flood-damaged residence to another residence is not includible in the individual's gross income); Rev. Rul. 74-205, 1974-1 C.B. 20 (replacement housing payments to aid individuals displaced from their homes in acquiring decent, safe, and sanitary dwellings of modest standards are not includible in gross income).

To qualify under the general welfare exclusion, the payments must (1) be made pursuant to a governmental program, (2) be for the promotion of the general welfare (that is, based on need), and (3) not represent compensation for services. Rev. Rul. 2005-46, 2005-2 C.B. 120; Rev. Rul. 82-106, 1982-1 C.B. 16; Rev. Rul. 75-246, 1975-1 C.B. 24. Thus, the general welfare exclusion applies if "the grant [is] received under a program requiring the individual recipient to establish need. [Internal citations omitted.] Grants received under social welfare programs that [do] not require recipients to establish individual need" do not qualify under the general welfare exclusion. *Bailey v. Commissioner*, 88 T.C. 1293, 1300 (1987), *acq.*, 1989-2 C.B. 1.

Whether a payment qualifies under the general welfare exclusion is determined under the federal income tax laws (including provisions not in the Internal Revenue Code), not under the laws of state, local, sovereign tribal, or foreign governments, or other federal laws. Thus, an incentive payment that a United States citizen received from the City of Berlin, Germany under a program to encourage spending and consumption was not excludable from the recipient's gross income simply because it was a program of a sovereign government when the program did not meet

the requirements of the general welfare exclusion under U.S. tax law. *Foley v. Commissioner*, 87 T.C. 605 (1986).

If the activity engaged in is basically the performance of services, the payments are compensation for services rendered and are includible in the gross income of the recipient under § 61. Thus, Rev. Rul. 74-413, 1974-2 C.B. 333, concludes that payments to participants in a state program that provided short-term employment in disaster relief activities for unemployed individuals, but not any training or retraining to help the participants obtain better employment opportunities, are compensation includible in gross income under § 61.

In the context of job training programs, however, the Service has held that payments that primarily provide job-training skills to unemployed and underemployed individuals to enhance their employability are not compensation for services and, therefore, are excluded from the gross income of recipients under the general welfare exclusion. For example, Rev. Rul. 68-38, 1968-1 C.B. 446, concludes that payments to participants in a program sponsored by an Indian tribal council to train underemployed and unemployed residents of the Indian reservation in construction skills to enhance employability are excluded from the participants' gross income under the general welfare exclusion because the basic purpose of the program is training.

Payments under training programs that include reasonable and limited allowances for meals, travel, transportation, subsistence, emergency, and other purposes also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75-246 (*Situation 1*). Allowances on the basis of need to cover certain expenses incident to the training (such as payments for auto insurance or to make the trainee's presence possible, or expenditures for work clothing, without which the trainee could not engage in the work training experience) also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75-246 (*Situation 3*).

Benefits qualify under the general welfare exclusion only if they are not lavish or extravagant. For example, replacement housing payments to help displaced individuals and families acquire dwellings of modest standards qualify for exclusion from gross income under the general wel-

fare exclusion. Rev. Rul. 74-205. Assistance to help disaster victims meet necessary expenses or serious needs in the categories of medical or dental, housing, personal property, transportation, and funeral expenses qualifies for exclusion from gross income under the general welfare exclusion, but assistance for nonessential, luxurious, or decorative items does not qualify. Rev. Rul. 76-144, 1976-1 C.B. 17. Payments to compensate individuals for unreimbursed reasonable and necessary personal, living, and family expenses they incur due to a disaster or emergency situation also are excluded from gross income under the general welfare exclusion. Notice 2002-76, 2002-2 C.B. 917 (Q&As 1 and 2).

In general, payments to businesses do not qualify under the general welfare exclusion because the payments are not based on individual or family need. See Rev. Rul. 2005-46; Notice 2003-18. Rev. Rul. 77-77, 1977-1 C.B. 11, however, provides that nonreimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the general welfare exclusion.

.03 *Application of the general welfare exclusion to programs of Indian tribal governments.* Indian tribal governments have a unique legal status. They have inherent sovereignty and a government-to-government relationship with the United States. Indian tribes have developed a broad range of programs to address their unique social, cultural, and economic issues. In developing these programs, Indian tribes give significant consideration to the needs of the entire community. The general welfare exclusion applies to payments by Indian tribal governments no less favorably than it applies to payments by federal, state, local, or foreign governments.

Payments by Indian tribal governments qualify for the general welfare exclusion if the payments are (1) made pursuant to a governmental program of the tribe; (2) for the promotion of general welfare (that is, based on individual or family need, and, uniquely in the case of programs of Indian tribal governments, to help establish Indian-owned businesses on or near a reservation); and (3) not compensation for services. Rev. Rul. 2005-46; Notice

2003-18; Rev. Rul. 77-77; Rev. Rul. 75-246; Rev. Rul. 82-106. Payments under Indian tribal governmental programs meeting these requirements qualify for the general welfare exclusion whether the revenues that the Indian tribal government uses to fund the programs derive from levies, taxes, service fees, or revenues from tribally-owned businesses. For example, general welfare programs may be funded from casino revenues. However, *per capita* payments to tribal members of tribal gaming revenues that are subject to the Indian Gaming Regulatory Act are gross income under § 61, are subject to the information reporting and withholding requirements of §§ 6041 and 3402(r), and are not excludable from gross income under the general welfare exclusion or this revenue procedure. See 25 U.S.C. §§ 2701-2721 and 25 C.F.R. Part 290.

.04 *Benefits excluded generally from § 61.* This revenue procedure does not address benefits under Indian tribal governmental programs that do not fall within the definition of gross income under § 61. For example, an Indian tribal government may provide benefits in the form of public libraries or recreational facilities, which are available for the general public use of members of the tribe. Like other taxpayers, members of Indian tribes and their dependents do not include the value of these benefits in income regardless of whether the requirements of the general welfare exclusion are met because these benefits are not gross income under § 61. In addition, this revenue procedure does not address payments under programs of Indian tribal governments that qualify for an exclusion from gross income under a specific provision of the Internal Revenue Code or other federal statute. For example, § 139D provides that gross income does not include the value of any qualified Indian health care benefit. A qualified Indian health care benefit includes amounts that an Indian tribe (as defined in § 45A(c)(6)) provides for the medical care (as used in § 213) of a member of the tribe or the member's spouse or dependents. Thus, a payment that an Indian tribe makes to an Indian medicine man to use traditional practices for the purpose of treating a tribal member's disease may be excludable from the tribal member's gross income under § 139D. See *Tso v. Commissioner*, T.C.M. 1980-399.

SECTION 3. SCOPE

This revenue procedure applies to Indian tribal governments and members of Indian tribes, their spouses, and dependents.

SECTION 4. DEFINITIONS

The following definitions apply for purposes of this revenue procedure.

.01 *Indian tribal government.* The term “Indian tribal government” has the same meaning as in § 7701(a)(40) but for purposes of this revenue procedure includes agencies or instrumentalities of the Indian tribal government.

.02 *Indian tribe.* The term “Indian tribe” has the same meaning as in § 45A(c)(6).

.03 *Member of an Indian tribe.* The term “member of an Indian tribe” has the same meaning as in 25 C.F.R. § 290.2.

.04 *Reservation.* The term “reservation” has the same meaning as in § 168(j).

SECTION 5. APPLICATION

.01 *Application of general welfare exclusion to Indian tribal government programs.* If section 5.01(1) or 5.01(2) of this revenue procedure applies, the Service will not assert that members of an Indian tribe or their spouses or dependents must include the value of the applicable benefits in gross income under § 61 or that the benefits are subject to the information reporting requirements of § 6041.

(1) If an Indian tribal government provides a benefit (whether in cash or in kind) meeting the criteria specified in section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure, the Service will conclusively presume that individual need is met for each tribal member, spouse, or dependent of a tribal member receiving the benefit.

(2) If an Indian tribal government provides a benefit meeting the criteria specified in section 5.03, the Service will conclusively presume that individual need is met for each tribal member, spouse, or dependent receiving the benefit and that the benefit does not represent compensation for services.

.02 *Benefits provided by a tribe for which individual need is presumed.* Section 5.01(1) of this revenue procedure

applies to benefits meeting the general criteria of section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure.

(1) *General criteria.* To qualify for exclusion under this revenue procedure, a benefit described in section 5.02(2) of this revenue procedure must meet the following requirements—

(a) The benefit is provided pursuant to a specific Indian tribal government program;

(b) The program has written guidelines that specify how individuals may qualify for the benefit;

(c) The benefit is available to any tribal member who satisfies the program guidelines;

(d) The distribution of benefits from the program does not discriminate in favor of members of the governing body of the tribe;

(e) The benefit is not compensation for services; and

(f) The benefit is not lavish or extravagant.

(2) *Specific benefits.* Benefits provided under the following programs are benefits described in this section 5.02(2).

(a) *Housing programs.* Programs relating to principal residences that—

(i) Assist in making mortgage or rent payments for residences on or near a reservation;

(ii) Enhance habitability of housing, such as by remedying water, sewage, sanitation service, or heating or cooling issues;

(iii) Provide basic housing repairs or rehabilitation; and

(iv) Assist in paying utility bills and charges (such as water, electricity, and gas).

(b) *Educational programs.* Programs to—

(i) Provide students (including post-secondary students) transportation to and from school, tutors, and supplies (including clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in their studies;

(ii) Provide tuition payments for students (including allowances for room and board for the student, spouse, and dependents) to attend an accredited college or university, educational seminars, vocational education, technical education, adult education, continuing education, and alternative education; and

(iii) Provide job counseling and programs for which the primary objective is job placement or training, including allowances for—

(A) Expenses for interviewing or training away from home (such as travel, auto expenses, lodging, and food);

(B) Tutoring; and

(C) Necessary clothing for a job interview or training (for example, an interview suit or a uniform required during a period of training).

(c) *Elder and disabled programs.* Programs for individuals who have attained age 55 or are disabled that provide—

(i) Meals through home-delivered meals programs or at a community center;

(ii) Home care such as assistance with preparing meals or doing chores, or day care outside the home;

(iii) Local transportation assistance;

(iv) Travel expenses for doctor appointments or other medical care;

(v) Transportation costs and admission fees to attend educational, social, or cultural programs offered by the tribe or another tribe; and

(vi) Improvements to adapt housing to special needs (such as grab bars and ramps).

(d) *Other qualifying assistance programs.* Programs to—

(i) Pay bus, taxi, or public transportation fares from the Indian reservation to public facilities (such as medical facilities and grocery stores);

(ii) Pay for the cost of transportation and temporary meals and lodging of a tribal member, spouse, or dependent while the tribal member, spouse, or dependent is receiving medical care away from home;

(iii) Provide assistance to individuals in exigent circumstances (such as victims of abuse), including the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;

(iv) Pay costs for temporary relocation and shelter for individuals displaced from their homes (for example, when a home is destroyed by a fire or natural disaster);

(v) Provide emergency assistance in the form of bus fare, a hotel room, or meals for an individual who is stranded off the Indian reservation; and

(vi) Provide or reimburse the cost of nonprescription drugs.

(e) *Cultural and religious programs.* Programs to—

(i) Pay or reimburse travel expenses (transportation, food, and lodging) to attend an Indian tribe's cultural, social, or community activities such as pow-wows, ceremonies, and traditional dances;

(ii) Pay or reimburse travel expenses (transportation, food, and lodging) to visit other Indian reservations or sites that are culturally and historically significant for the tribe;

(iii) Pay or reimburse the costs of receiving instruction about an Indian tribe's culture, history, and traditions (for example, traditional language, music, and dances); and

(iv) Pay or reimburse funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, or similar bereavement events.

.03 *Benefits provided by a tribe that are presumed not to be compensation for services.* Except as provided in this section 5.03, section 5.01 of this revenue procedure does not apply to benefits that are compensation for services. However, section 5.01(2) of this revenue procedure applies to benefits provided under an Indian tribal governmental program that are items of cultural significance (not lavish or extravagant) or nominal cash honoraria provided to medicine men or women, shamans, or similar religious or spiritual officials to recognize their participation in cultural, religious, and social events (for example, pow-wows, rite of passage ceremonies, or funerals, wakes, burials, or other bereavement events). The Service will conclusively presume that individual need is met for the tribal officials receiving these benefits and that the benefits do not represent compensation for services.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for benefits provided on or after December 6, 2012. Taxpayers may apply this revenue procedure in taxable years for which the period of limitation on refund or credit under § 6511 has not expired.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, please

contact Mr. Iskow at (202) 622-4920 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part 1, §§ 6662, 6694, 1.6662-4, 1.6694-2)

Adequate Notice Revenue Procedure Renewal

Rev. Proc. 2012-51

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2012-15, 2012-7 I.R.B. 369, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or a position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements). If this revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 or 8275-R, as appropriate, attached to the return for the year or to a qualified amended return.

This revenue procedure applies to any income tax return filed on 2012 tax forms for a taxable year beginning in 2012, and to any income tax return filed on 2012 tax forms in 2013 for short taxable years beginning in 2013.

SECTION 2. CHANGES FROM REV. PROC. 2012-15

Editorial changes have been made throughout this revenue procedure. No substantive changes have been made.

SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment to which the section applies is added to the tax (the penalty rate is 40 percent in the case of gross valuation misstatements under section 6662(h), nondisclosed noneconomic substance transactions under section 6662(i), or undisclosed foreign financial asset understatements under section 6662(j)). Section 6662(b)(2) applies to the portion of an underpayment of tax that is attributable to a substantial understatement of income tax.

.02 Section 6662(d)(1) provides that there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the amount of tax required to be shown on the return for the taxable year or \$5,000. Section 6662(d)(1)(B) provides a special rule for corporations. A corporation (other than an S corporation or a personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of (i) 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, \$10,000) or (ii) \$10,000,000. Section 6662(d)(2) defines an understatement as the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate.

.03 In the case of an item not attributable to a tax shelter, section 6662(d)(2)(B)(ii) provides that, if there is a reasonable basis for the tax treatment of the item by taxpayer, the amount of the understatement is reduced by the portion of the understatement attributable to any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

.04 Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting

an understatement of liability due to an “unreasonable position” if the tax return preparer knew (or reasonably should have known) of the position. A position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) is generally treated as unreasonable unless (i) there is or was substantial authority for the position, or (ii) the position was properly disclosed in accordance with section 6662(d)(2)(B)(ii)(I) and had a reasonable basis. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. See Notice 2009–5, 2009–3 I.R.B. 309 (January 21, 2009), for interim penalty compliance rules for tax shelter transactions.

.05 In general, this revenue procedure provides guidance for determining when disclosure by return is adequate for purposes of section 6662(d)(2)(B)(ii) and section 6694(a)(2)(B). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable.

.06 Fiscal and short tax year returns. (a) In general. This revenue procedure may apply to a return for a fiscal tax year that begins in 2012 and ends in 2013. This revenue procedure may also apply to a short year return for a period beginning in 2013 if the return is to be filed before the 2013 forms are available. (Note that individuals are generally not put in this position, as the only situation in which a short year arises is when filing a decedent’s final return for a fractional part of a year, which is due the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of such fractional part of the year (after the 2013 form is available). See Treas. Reg. § 1.6072–1(b).) In the case of fiscal year and short year returns, the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2012, even though these changes are not reflected on the form.

(b) Tax law changes effective after December 31, 2012. This document does

not take into account the effect of tax law changes effective for tax years beginning after December 31, 2012. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275–R, *Regulation Disclosure Statement*, until the Service prescribes criteria for complying with the requirement.

.07 A complete and accurate disclosure of a tax position on the appropriate year’s Schedule UTP, *Uncertain Tax Position Statement*, will be treated as if the corporation filed a Form 8275 or Form 8275–R regarding the tax position. The filing of a Form 8275 or Form 8275–R, however, will not be treated as if the corporation filed a Schedule UTP.

SECTION 4. PROCEDURE

.01 General

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M–1 and M–3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between related parties. If an entry may present a legal issue or controversy because of a related-party transaction, then that transaction and the relationship must be disclosed on a Form 8275 or Form 8275–R.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that

item (such as on an unnamed line under an “Other Expense” category), the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words “bad debt” must be written or typed on the line of Schedule C that shows the amount of the bad debt. Also, for Schedule M–3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 37, Other expense/deduction items with differences, the entry must provide descriptive language; for example, “Cost of non-compete agreement deductible not capitalizable.” If space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return: (1) does not have a reasonable basis as defined in Treas. Reg. § 1.6662–3(b)(3); (2) is attributable to a tax shelter item as defined in section 6662(d)(2); or (3) is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position.

(6) Disclosure also will have no effect for purposes of the section 6694(a) penalty as applicable to tax return preparers if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies.

.02 Items

(1) Form 1040, Schedule A, *Itemized Deductions*:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 10 through 15, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is completed, or (ii) amounts disallowed under section 265.

(d) Contributions: Complete lines 16 through 19, supplying all required information. Enter the amount of the contribution reduced by the value of any substantial benefit (goods or services) provided by the donee organization in consideration, in whole or in part. Entering the value of the contribution unreduced by the value of the benefit received will not constitute adequate disclosure. If a contribution of \$250 or more is made, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(8), is obtained from the donee organization. If a contribution of cash of less than \$250 is made, this section will not apply unless a bank record or written communication from the donee, as required by section 170(f)(17), is obtained from the donee organization. If a contribution of property other than cash is made and the amount claimed as a deduction exceeds \$500, attach a properly completed Form 8283, *Noncash Charitable Contributions*, to the return. In addition to the Form 8283, if a contribution of a qualified motor vehicle, boat, or airplane has a value of more than \$500, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(12), is obtained from the donee organization and attached to the return. An acknowledgment under section 170(f)(8) is not required if an acknowledgment under section 170(f)(12) is required.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1125-E, *Compensation of Officers*, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to "part" or "as needed." This section does not apply to "golden parachute" payments, as defined under section 280G. This section will not apply to the extent that remuneration paid or incurred exceeds the employee-remuneration deduction limitations under section 162(m), if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any repair expenses properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting.

For Schedule M-1 and all Schedules M-3, including those listed in (a)-(f) below, the information provided must reasonably apprise the Service of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275-R must be used to adequately disclose the item (see Part II of the instructions for those forms).

Note: An item reported on a line with a pre-printed description, shown on an attached schedule or "itemized" on Schedule M-1, may represent the aggregate amount of several transactions producing that item (*i.e.*, a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, a potentially controversial item may involve a portion of the aggregate amount disclosed on the schedule. The Service will not be reasonably apprised of a potential controversy by the aggregate amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275-R regarding that portion of the item.

Combining unlike items, whether on Schedule M-1 or Schedule M-3 (or on an attachment when directed by the instructions), will not constitute an adequate disclosure.

Additionally, for taxpayers that file the Schedule M-3 (Form 1120), Schedule B, *Additional Information for Schedule M-3*

Filers, must also be completed. For taxpayers that file the Schedule M-3 (Form 1065), Schedule C, *Additional Information for Schedule M-3 Filers*, must also be completed. When required, these Schedules are necessary to constitute adequate disclosure.

(a) Form 1065. Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(b) Form 1120. (i) Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*.

(ii) Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations with Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items) and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items); and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(c) Form 1120-L. Schedule M-3 (Form 1120-L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation

of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(d) Form 1120-PC. Schedule M-3 (Form 1120-PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(e) Form 1120-S. Schedule M-3 (Form 1120-S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction

items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(f) Form 1120-F. Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Total Assets of \$10 Million or More*: Column (b), *Temporary Difference*, Column (c), *Permanent Difference*, and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*; Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, must be completed when required by its instructions.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*, and attach to the return. This section does not apply to club dues, or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2012 tax form for a taxable year beginning in 2012, and to any income tax return filed on a 2012 tax form in 2013 for a short taxable year beginning in 2013.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Cowan of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and Administration at (202) 622-4940 (not a toll-free call).

Part IV. Items of General Interest

FICA Taxes on Wages Paid to Residents of the Philippines for Services Performed in the Commonwealth of the Northern Mariana Islands

Announcement 2012-43

This document provides that the IRS will not assert that any taxpayer has understated liability for taxes under the Federal Insurance Contributions Act (FICA) by reason of a failure to treat services performed before January 1, 2015, in the Commonwealth of the Northern Mariana Islands (CNMI) by a resident of the Republic of the Philippines as employment under section 3121(b) of the Internal Revenue Code (Code). Employers must withhold and pay FICA taxes on remuneration paid to residents of the Philippines who do not hold an H-2 status for services performed as employees in the CNMI after December 31, 2014, unless those workers are eligible for FICA exemption based on some circumstances other than the exemption in section 3121(b)(18).

Sections 3101 and 3111 of the Code impose FICA taxes on wages with respect to employment. FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed on both the employee and the employer. I.R.C. §§ 3101 and 3111.

The term “wages” is defined in section 3121(a) for FICA purposes as all remuneration for employment, with certain specific exceptions. Section 3121(b) defines the term “employment” to include any service, of whatever nature, performed within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, with certain specific exceptions. The CNMI is included in the definition of the United States for FICA purposes. I.R.C. § 3121(e); Article 6, Section 601(c), Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (Covenant), Pub. L. No. 94-241, 90 Stat. 263 (codified as amended) at 48 U.S.C. § 1801 note (2006); *Zhang v. United States*, 640

F.3d 1358 (Fed. Cir. 2011), *cert. denied*, 132 S.Ct. 2375 (2012).

Under section 3121(b)(18) of the Code, services that residents of the Philippines perform while temporarily admitted to Guam under section 101(a)(15)(H)(ii) of the U.S. Immigration and Nationality Act (U.S. INA) (H-2 status), 8 U.S.C. § 1101(a)(15)(H)(ii), are excepted from employment for FICA tax purposes. Section 601(c) of the Covenant provides that “[r]eferences in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.” Section 606(b) of the Covenant states that “those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System. . . will become applicable to the Northern Mariana Islands as they apply to Guam.” Therefore, section 3121(b)(18), in combination with the Covenant, provides an exception from employment for FICA purposes for services performed by residents of the Philippines temporarily in the CNMI in H-2 status.

Prior to November 28, 2009, the CNMI had its own immigration laws with its own immigration categories, and the U.S. INA did not apply in the CNMI (except for very limited purposes not relevant for purposes of FICA tax). However, CNMI immigration laws provided a CNMI temporary work status under the Northern Mariana Islands Commonwealth Code, 3 C.M.C. section 4303(q)(8)(B), which was similar in some ways to H-2 status. Both laws similarly defined a nonimmigrant worker as one temporarily in the United States or the CNMI to perform temporary services or labor. Therefore, the IRS determined that the exemption from FICA under section 3121(b)(18) applied to residents of the Philippines admitted to the CNMI on the similar CNMI temporary status and amended Publication 80, *Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands*, to reflect this position.

On May 8, 2008, Congress enacted the Consolidated Natural Resources Act of

2008 (CNRA), Pub. L. 110-229, 122 Stat. 854, which extended federal immigration laws to the CNMI. The transition period for implementation of the United States immigration law in the CNMI began on November 28, 2009, and is scheduled to end on December 31, 2014. As a result of the CNRA, CNMI immigration laws no longer apply and CNMI work permits no longer exist. Nonresidents in the CNMI must apply for a federal immigration status if they wish to remain in the CNMI.

The CNRA authorized nonresidents to work in the CNMI for a two-year period beginning November 28, 2009, and ending November 27, 2011, if they had received a transitional conditional permit (commonly referred to as an “umbrella permit”) from the CNMI government as of November 28, 2009. Additionally, the CNRA established a new Commonwealth Only Transitional Worker (CW) nonimmigrant visa classification for workers in the CNMI. The CW visa classification enables workers who are ineligible for other employment-based nonimmigrant U.S. visa classifications (e.g., H-2 status) to continue working in the CNMI through the end of the transition period on December 31, 2014 (or longer if the U.S. Secretary of Labor extends the CW program, as is authorized by the CNRA).

Section 3121(b)(18) provides an exception from “employment” for temporary services that residents of the Philippines perform only in H-2 status. Residents of the Philippines temporarily present in the CNMI under any immigration status other than H-2 status, including the CW visa classification, are not eligible for the FICA exemption in section 3121(b)(18). Unless an individual is eligible for FICA exemption based on some other circumstances, FICA taxes will apply to remuneration paid to residents of the Philippines performing services as employees.

However, many residents of the Philippines currently employed in the CNMI have been seeking to determine their proper immigration status. As a result, these workers and their employers have been or are uncertain about their immigration status. For this reason, and in order to ease the CNMI’s transition to federal immigration law, the IRS will not assert

that any taxpayer has understated liability for FICA taxes by reason of a failure to treat services performed before January 1, 2015, in the CNMI by a resident of the Republic of the Philippines as employment under section 3121(b) of the Code. However, employers must withhold and pay FICA taxes on wages paid to residents of the Philippines who do not hold an H-2 status for services performed in the CNMI after December 31, 2014, unless those workers are eligible for FICA exemption based on some circumstances other than the exemption at section 3121(b)(18).

The principal author of this announcement is Don Parkinson of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact Mr. Parkinson at (202) 622-6040 (not a toll-free call).

Voluntary Classification Settlement Program

Announcement 2012-45

This document provides notice and information regarding the revised Voluntary Classification Settlement Program (VCSP) that provides partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat workers as employees.

I. PURPOSE

This announcement modifies and supersedes Announcement 2011-64, 2011-41 I.R.B. 503.

In light of feedback received from taxpayers and taxpayer representatives, the Internal Revenue Service (IRS) has modified the VCSP, described in Announcement 2011-64. The VCSP has been modified to: (1) permit a taxpayer under IRS audit, other than an employment tax audit, to be eligible to participate in the VCSP; (2) clarify the current eligibility requirement that a taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is not eligible to participate in the VCSP if any member of the affiliated group is under employment tax audit; (3) clarify that a taxpayer is not eligible to

participate in the VCSP if the taxpayer is contesting in court the classification of the class or classes of workers from a previous audit by the IRS or the Department of Labor; and (4) eliminate the requirement that a taxpayer agree to extend the period of limitations on assessment of employment taxes as part of the VCSP closing agreement with the IRS.

The VCSP permits eligible taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes and obtain relief similar to that obtained through the current Classification Settlement Program (CSP). The VCSP is optional and provides taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with limited federal employment tax liability for the past nonemployee treatment. To participate, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP, and enter into a closing agreement with the IRS.

II. BACKGROUND

Whether a worker is performing services as an employee or as an independent contractor depends upon the facts and circumstances and is generally determined under the common law test of whether the service recipient has the right to direct and control the worker as to how to perform the services. In some factual situations, the determination of the proper worker classification status under the common law may not be clear. For taxpayers under IRS examination, the current CSP is available to resolve federal employment tax issues related to worker misclassification if certain criteria are met. The CSP permits the prospective reclassification of workers as employees, with reduced federal employment tax liabilities for past nonemployee treatment. The CSP allows businesses and tax examiners to resolve the worker classification issues as early in the administrative process as possible, thereby reducing taxpayer burden and providing efficiencies for both the taxpayer and the government.

In order to facilitate voluntary resolution of worker classification issues and achieve the benefits of increased tax compliance and certainty for taxpayers, workers and the government, the IRS determined that it would be beneficial to provide taxpayers with a program that

allows for voluntary reclassification of workers as employees outside of the examination context and without the need to go through normal administrative correction procedures applicable to employment taxes. Accordingly, the VCSP was established on September 21, 2011, through Announcement 2011-64.

The VCSP has been well-received and the IRS has received many applications to date. Taxpayers and taxpayer representatives have provided feedback regarding certain requirements that limit or discourage participation in the program. In particular, they requested that the IRS reconsider the requirement that a taxpayer not currently be under any IRS audit in order to be eligible and the requirement that a taxpayer agree to extend the period of limitations on assessment as part of the VCSP closing agreement with the IRS. The IRS is modifying these VCSP requirements for future applications.

III. ELIGIBILITY

The VCSP is available for taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are currently treating their workers (or a class of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees. To be eligible, a taxpayer must have consistently treated the workers as nonemployees, and must have filed all required Forms 1099, consistent with the nonemployee treatment, for the previous three years with respect to the workers to be reclassified. The taxpayer cannot currently be under employment tax audit by the IRS. A taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is considered to be under employment tax audit for purposes of the VCSP if any member of the affiliated group is under employment tax audit. Furthermore, the taxpayer cannot be currently under audit concerning the classification of the class or classes of workers by the Department of Labor or by a state government agency.

A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the class or classes of workers is eligible for the VCSP if the taxpayer has complied with

the results of that audit and is not currently contesting the classification in court.

IV. EFFECT OF THE VCSP

A taxpayer who participates in the VCSP agrees to prospectively treat the class or classes of workers identified in the application as employees for future tax periods. In exchange, the taxpayer pays 10 percent of the employment tax liability that would have been due on compensation paid to the workers being reclassified for the most recent tax year if those workers were classified as employees for such year, determined under the reduced rates of section 3509(a); is not liable for any interest and penalties on the liability; and is not subject to an employment tax audit with respect to the worker classification of the class or classes of workers for prior years.

V. APPLICATION PROCESS

Eligible taxpayers who wish to participate in the VCSP must submit an application for participation in the program using Form 8952, *Application for Voluntary Classification Settlement Program (VCSP)*. Information about the VCSP and the application is available on www.irs.gov. Along with the application, the taxpayer may provide the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848). The IRS retains discretion whether to accept a taxpayer's application for the VCSP. The IRS will contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility. Taxpayers whose application has been accepted enter into a closing agreement with the IRS to finalize the terms of the VCSP and must simultaneously make full and complete payment of any amount due under the closing agreement.

VI. DRAFTING INFORMATION

The principal author of this announcement is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact

Don Parkinson at 202-622-6040 (not a toll-free call).

Voluntary Classification Settlement Program — Temporary Eligibility Expansion

Announcement 2012-46

This document provides notice and information regarding a temporary expansion of eligibility for the Voluntary Classification Settlement Program (VCSP) that will be available through June 30, 2013. The temporary eligibility expansion makes a modified VCSP available to taxpayers who would otherwise be eligible for the current VCSP but have not filed all required Forms 1099 for the previous three years with respect to the workers to be reclassified. Eligible taxpayers that take advantage of this limited, temporary eligibility expansion agree to prospectively treat workers as employees and will receive partial relief from federal employment taxes.

I. PURPOSE

The Internal Revenue Service (IRS) has developed a new, temporary initiative to permit taxpayers who are otherwise eligible for the VCSP, but have not filed all required Forms 1099 for the previous three years with respect to the workers to be reclassified, to apply for a modified version of the VCSP, the VCSP Temporary Eligibility Expansion. The VCSP Temporary Eligibility Expansion is available through June 30, 2013.

Like the VCSP, the VCSP Temporary Eligibility Expansion permits eligible taxpayers to voluntarily reclassify their workers as employees for federal employment tax purposes and obtain relief similar to that obtained through the current Classification Settlement Program (CSP). The VCSP Temporary Eligibility Expansion is optional and provides taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with limited federal employment tax liability for the past nonemployee treatment. Payment under the VCSP Temporary Eligibility Expansion is higher than the payment under the VCSP, but the benefits are otherwise the same for taxpay-

ers that want to voluntarily reclassify their workers but have not filed all required Forms 1099 for those workers. To participate, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP Temporary Eligibility Expansion, and enter into a closing agreement with the IRS.

II. BACKGROUND

Whether a worker is performing services as an employee or as an independent contractor depends upon the facts and circumstances and is generally determined under the common law test of whether the service recipient has the right to direct and control the worker as to how to perform the services. In some factual situations, the determination of the proper worker classification status under the common law may not be clear. For taxpayers under IRS examination, the current CSP is available to resolve federal employment tax issues related to worker misclassification if certain criteria are met. The CSP permits the prospective reclassification of workers as employees, with reduced federal employment tax liabilities for past nonemployee treatment. The CSP allows businesses and tax examiners to resolve the worker classification issues as early in the administrative process as possible, thereby reducing taxpayer burden and providing efficiencies for both the taxpayer and the government.

In order to facilitate voluntary resolution of worker classification issues and achieve the benefits of increased tax compliance and certainty for taxpayers, workers, and the government, the IRS determined that it would be beneficial to provide taxpayers with a program that allows for voluntary reclassification of workers as employees outside of the examination context and without the need to go through normal administrative correction procedures applicable to employment taxes. Accordingly, the VCSP was established on September 21, 2011, through Announcement 2011-64, 2011-41 I.R.B. 503. In response to feedback from taxpayers and taxpayer representatives, the VCSP is modified under Announcement 2012-45, 2012-51 I.R.B. 724, to (1) permit a taxpayer under IRS audit, other than an employment tax audit, to be eligible to participate in the VCSP; (2) clarify the current eligibility requirement that a taxpayer

that is a member of an affiliated group within the meaning of section 1504(a) is not eligible to participate in the VCSP if any member of the affiliated group is under employment tax audit; (3) clarify that a taxpayer is not eligible to participate in the VCSP if the taxpayer is contesting in court the classification of the class or classes of workers from a previous audit by the IRS or the Department of Labor; and (4) eliminate the requirement that a taxpayer agree to extend the period of limitations on assessment of employment taxes as part of the VCSP closing agreement with the IRS.

To be eligible under the VCSP, a taxpayer must meet certain requirements, including having consistently treated the workers as nonemployees and having filed all required Forms 1099, consistent with the nonemployee treatment, for the previous three years with respect to the workers to be reclassified. Taxpayers that do not qualify under the VCSP because they have not filed all required Forms 1099 for the previous three years requested a similar program. The IRS decided to provide this limited, temporary eligibility expansion through June 30, 2013, to permit taxpayers that have not filed all required Forms 1099 to agree to voluntarily reclassify their workers prospectively and file and furnish any required Forms 1099 with respect to the workers being reclassified for the previous three years.

III. ELIGIBILITY

The VCSP Temporary Eligibility Expansion is available for taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are currently treating their workers (or a class of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees. To be eligible, a taxpayer must have consistently treated the workers as nonemployees. The taxpayer cannot currently be under employment tax audit by the IRS. A taxpayer that is a member of an affiliated group within the meaning of section 1504(a) is considered to be under employment tax audit for purposes of the VCSP Temporary Eligibility Expansion if any member of the affiliated group is under employment tax audit. Furthermore, the taxpayer cannot be currently under audit

concerning the classification of the class or classes of workers by the Department of Labor or by a state government agency.

A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the class or classes of workers is eligible for the VCSP Temporary Eligibility Expansion if the taxpayer has complied with the results of that audit and is not currently contesting the classification in court.

In addition, in order to be eligible to participate in the VCSP Temporary Eligibility Expansion, a taxpayer must furnish to the workers and electronically file all required Forms 1099, consistent with the nonemployee treatment, with respect to the workers being reclassified for the previous three years prior to executing the VCSP Temporary Eligibility Expansion closing agreement with the IRS. Taxpayers must electronically file such Forms 1099 in accordance with IRS instructions, which will be provided once the IRS has reviewed the application and verified that the taxpayer is otherwise eligible for the VCSP Temporary Eligibility Expansion, as indicated in Section V, Application Process.

Taxpayers seeking to participate in the VCSP Temporary Eligibility Expansion must submit an application, as indicated below in Section V, Application Process, on or before June 30, 2013.

IV. EFFECT OF THE VCSP TEMPORARY ELIGIBILITY EXPANSION

A taxpayer who participates in the VCSP Temporary Eligibility Expansion agrees to prospectively treat the class or classes of workers identified in the application as employees for future tax periods. In exchange, the taxpayer pays 25 percent of the employment tax liability that would have been due on compensation paid to the workers being reclassified for the most recent tax year if those workers were classified as employees for such year, determined under the reduced rates of section 3509(b); pays a reduced penalty, as discussed below, for unfiled Forms 1099 for the previous three years with respect to the workers being reclassified; is not liable for any interest and penalties on the liability; and is not subject to an employment tax audit with respect to the worker classification of the class or classes of workers

for prior years. The taxpayer must certify as part of the VCSP Temporary Eligibility Expansion closing agreement with the IRS that it has furnished to the workers and has electronically filed all required Forms 1099 for the previous three years with respect to the workers being reclassified.

Under the VCSP Temporary Eligibility Expansion, the penalty for unfiled Forms 1099 is graduated, based on the number of required Forms 1099 that were not filed for the previous three years with respect to the workers being reclassified, up to a maximum amount. The worksheet provided with this announcement provides further details regarding how the penalty is calculated.

V. APPLICATION PROCESS

Eligible taxpayers who wish to participate in the VCSP Temporary Eligibility Expansion must submit an application on or before June 30, 2013, for participation in the program using Form 8952, *Application for Voluntary Classification Settlement Program (VCSP)*. However, taxpayers seeking to participate in the VCSP Temporary Eligibility Expansion should write "VCSP Temporary Eligibility Expansion" at the top of Form 8952.

Taxpayers seeking to participate in the VCSP Temporary Eligibility Expansion must complete all parts of Form 8952, with the following modifications:

(1) Taxpayers should put a line through Part V, Line A3, to indicate that Taxpayer has not satisfied all Form 1099 requirements for each of the workers for the 3 preceding calendar years ending before the date of the application; and

(2) Taxpayers should not complete Part IV, Payment Calculation, of Form 8952. Instead, taxpayers should use the worksheet provided in this announcement to calculate their payment under the VCSP Temporary Eligibility Expansion. Taxpayers should attach the completed worksheet provided in this announcement to Form 8952.

Information about the VCSP Temporary Eligibility Expansion and the application is available on www.irs.gov. Along with the application, the taxpayer may provide the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848). The IRS will contact the taxpayer or authorized representa-

tive with instructions on how to electronically file Forms 1099 once it has reviewed the application and verified that the taxpayer is otherwise eligible. The IRS retains discretion whether to accept a taxpayer's application for the VCSP Temporary Eligibility Expansion. The taxpayer must contact the IRS to provide confirmation that the taxpayer has electronically filed Forms 1099 and furnished the forms to the workers being reclassified. The IRS will then contact the taxpayer to complete

the process. Taxpayers whose application has been accepted enter into a closing agreement with the IRS to finalize the terms of the VCSP Temporary Eligibility Expansion and must simultaneously make full and complete payment of any amount due under the closing agreement.

of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact Ligeia Donis at 202-622-6040 (not a toll-free call).

VI. DRAFTING INFORMATION

The principal drafter of this announcement is Ligeia M. Donis of the Office

Taxpayer's Employer Identification Number (EIN)

Taxpayer's Name

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VCSP Temporary Eligibility Expansion Computation Worksheet
Attach this Worksheet to Form 8952. Do not send payment with Form 8952.

Taxpayers seeking to participate in the VCSP Temporary Eligibility Expansion must use this worksheet instead of completing Part IV of Form 8952. Attach this worksheet to Form 8952.

Part IV: Payment Calculation using Section 3509(b) rates

18. Enter total compensation paid in the most recently completed calendar year to all workers to be reclassified (see Form 8952 instructions)	18.		
19. Multiply line 18 by 5.03% (.0503)		19.	
20. Enter any compensation included on line 18 that exceeded the social security wage base for any worker or workers for the most recently completed calendar year (see Form 8952 instructions)	20.		
21. Subtract line 20 from line 18	21.		
22. Multiply line 21 by 7.88% (.0788)		22.	
23. Add line 19 and line 22		23.	
24. Multiply line 23 by 25% (.25)			24.
25. Number of non-filed Forms 1099 for the previous three years for all workers to be reclassified	25.		
26. Form 1099 Penalty Calculation: If line 25 includes: • 1 to 25 non-filed Forms 1099, multiply line 25 by \$50 • 26 to 49 non-filed Forms 1099, multiply line 25 by \$75 • 50 or more non-filed Forms 1099, multiply line 25 by \$100	26.		
27. Form 1099 Max Penalty: If Line 25 includes • 1 to 25 non-filed Forms 1099, enter \$500 • 26 to 49 non-filed Forms 1099, enter \$3,675 • 50 or greater non-filed Forms 1099, enter \$10,000	27.		
28. Enter lesser of line 26 or line 27			28.
29. Add line 24 and line 28. This is your VCSP Temporary Eligibility Expansion payment			29.

Corrections and an Addition to Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*

Announcement 2012–48

The following announcement lists corrections and one addition for items in Publication 1179, *General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns*, Revised November 26, 2012.

Corrections

Title of Form 1099–K in subsection 1.1.2 — Which Forms are Covered? (page 577)

The correct title of the 2012 Form 1099–K is “Payment Card and Third Party Network Transactions.”

Measurements under *Exceptions* in Part 2.1.7 (page 585)

The first sentence in the first complete paragraph should read “There is a .33 inch top margin from the top of the corrected box, and a .2 to .25 inch right margin, with a +/- 1/20 (0.05) inch tolerance for the right margin.”

The first sentence in the third complete paragraph should read “The depth of the individual trim size of each form on a page must be 3 2/3 inches, the same depth as the official form.”

Specification for *Typography* in Part 3.2.1 (page 587)

The second sentence should read “All rules on the document are either 1/2 point (.007 inch), 1 point (0.015 inch), or 3 point (0.045).”

Form 1099–B in Part 4.1.2 (page 589)

In section 4.1.2, the 3rd sentence in the first paragraph of the **Form 1099–B** section should read “For 2012 dispositions,

the substitute Forms 1099–B may have up to five separate sections, each with a heading identifying which securities are included in the list, and each separately totaled.”

Subsection numbers for Section 4.6 — *Electronic Delivery of Recipient Statements* (page 597)

The *Consent* subsection under Section 4.6 should be numbered “4.6.2.”

The *Format, Posting, and Notification* subsection under Section 4.6 should be numbered “4.6.3.”

Addition

Addition to *OMB requirements* under subsection 5.2.1 (page 600)

The following 3 numbered statements are added after the second bullet:

- (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.

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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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