

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### Action On Decision 2017-07, page 311.

Nonacquiescence relating to the holdings that: 1) mere possession of a stock certificate, disregarding other conditions, restrictions or limitations on the possessor's rights regarding the stock, constitutes ownership for purposes of § 469(c)(7)(D)(ii); and 2) work performed by the taxpayer in a rental real estate activity for purposes of § 469(c)(7)(A) may also constitute work performed by the taxpayer in non-rental business activities of the taxpayer for other purposes of § 469.

#### Notice 2017-53, page 318.

This notice explains the circumstances under which the 4-year replacement period under section 1033(e)(2) is extended for livestock sold on account of drought. The Appendix to this notice contains a list of counties that experienced exceptional, extreme, or severe drought conditions during the 12-month period ending August 31, 2017. Taxpayers may use this list to determine if any extension is available.

#### Notice 2017-54, page 321.

Optional special per diem rates. This notice provides the 2017-2018 special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The notice includes (1) the special transportation industry rate, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method.

#### Notice 2017-55, page 324.

This notice excludes from the definition of United States property for purposes of section 956 certain property temporarily stored in the United States following Hurricane Irma or Hurricane Maria.

**Bulletin No. 2017-42**  
**October 16, 2017**

#### Notice 2017-57, page 324.

This notice announces that Treasury and IRS intend to amend regulations under section 987 to delay the applicability date of the final section 987 regulations and certain temporary section 987 regulations by 1 year. The Treasury Department and the IRS intend to amend §§1.861-9T, 1.985-5, 1.987-11, 1.987-1T through 1.987-4T, 1.987-6T, 1.987-7T, 1.988-1, 1.988-1T, 1.988-4, and 1.989(a)-1 to provide that the final regulations and the related temporary regulations will apply to taxable years beginning on or after two years after the first date of the first taxable year following December 7, 2016. Before the issuance of the amendments to the final section 987 regulations and the related temporary regulations, taxpayers may rely on the provisions of this Notice regarding those proposed amendments.

#### Notice 2017-58, page 326.

Notice 2017-58 extends the due date for participants to file disclosures under § 1.6011-4(e)(2)(i) of the Income Tax Regulations pursuant to IRS Notice 2017-10, from October 2, 2017, until October 31, 2017.

#### REG-128841-07, page 327.

Under §147(f) of the Code, a private activity bond is not tax-exempt if it is not approved by both the governmental unit issuing the bond and the governmental unit in which the financed property will be located. This project proposes rules that would update the existing regulations, located in §5f.103-2, to address changes in the Code and to provide issuers of private activity bonds additional flexibility in satisfying the approval requirement. This project also withdraws a notice of proposed rulemaking on the same topic published in 2008.

## **ADMINISTRATIVE**

### **Rev. Proc. 2017-54, page 336.**

This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2017.

### **T.D. 9824, page 312.**

This document contains final regulations with respect to the withholding from, and information reporting on, certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The final regulations affect both payers and payees of the gambling winnings.

# The IRS Mission

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

## Introduction

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

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

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

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

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

## Decisions of the Tax Court with Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommenda-

tion of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Internal Revenue Bulletin**.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a

case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does NOT ACQUIESCE in the following decision:

**Carol A. and Roy E. Stanley v. United States, W.D. Ark. No.5:14-cv-5236 (2015).**<sup>1</sup>

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<sup>1</sup>Nonacquiescence relating to the holdings that: 1) mere possession of a stock certificate, disregarding other conditions, restrictions or limitations on the possessor's rights regarding the stock, constitutes ownership for purposes of § 469(c)(7)(D)(ii); and 2) work performed by the taxpayer in a rental real estate activity for purposes of § 469(c)(7)(A) may also constitute work performed by the taxpayer in non-rental business activities of the taxpayer for other purposes of § 469.

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

## T.D. 9824

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Withholding on Payments of Certain Gambling Winnings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations with respect to the withholding from, and the information reporting on, certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The final regulations affect both payers and payees of the gambling winnings.

DATES: *Effective date:* These regulations are effective on September 27, 2017.

*Applicability Dates:* For dates of applicability, see §§ 31.3402(q)-1(g) and 31.3406(g)-2(h).

FOR FURTHER INFORMATION CONTACT: David Bergman, (202) 317-6845 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 3402 of the Internal Revenue Code (Code). The final regulations amend, update, and clarify the existing withholding and information reporting requirements for certain gambling winnings under § 31.3402(q)-1 of the Employment Tax Regulations, and make conforming changes to § 31.3406(g)-2.

On December 30, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-123841-16) in the **Federal Register**, 81 FR 96406, containing proposed regulations that would provide a new rule regard-

ing how payers determine the amount of the wager in parimutuel wagering transactions with respect to horse races, dog races, and jai alai, and that would update the existing rules to reflect current law regarding the withholding thresholds and certain information reporting requirements.

Over 2,700 written public comments were received in response to the notice of proposed rulemaking. No public hearing was requested. After careful consideration of the written comments, the proposed regulations are adopted as modified by this Treasury Decision.

##### Explanation and Summary of Comments

All of the written comments on the notice of proposed rulemaking were considered and are available at [www.regulations.gov](http://www.regulations.gov) or upon request. Many of these comments addressed similar issues and expressed similar points of view. These comments are summarized in this preamble.

##### *Rule for Determining the Amount of the Wager in the Case of Horse Races, Dog Races, and Jai Alai*

The proposed regulations contained a new rule for determining the amount of the wager in the case of horse races, dog races, and jai alai to allow all wagers placed in a single parimutuel pool and represented on a single ticket to be aggregated and treated as a single wager. Commenters largely supported the proposed rules because they believe that the rules accurately and fairly reflect parimutuel wagering realities.

Some commenters raised concerns that the single ticket requirement in the proposed regulations did not address electronic wagering. Commenters stated that in horse racing a paper ticket can only accommodate six separate lines of bets. In contrast, electronic wagering utilizes an “account wagering” system that can accommodate dozens (or even hundreds) of lines of bets in a single parimutuel pool, allowing bettors to place more, customized wagers. As a result, some commenters requested a special rule for electronic wagering.

The proposed rule at § 31.3402(q)-1(c)(1)(ii) is specifically not limited to a paper ticket, but also includes an electronic record that is presented to collect proceeds from a wager or wagers placed in a single parimutuel pool. Therefore, the rule in proposed § 31.3402(q)-1(c)(1)(ii) is not dependent on the applicable industry’s ticketing format. Further, despite the commenters concern regarding the limits on the number of lines a paper ticket can accommodate, the proposed regulations do not limit the number of bets on a single ticket nor do the proposed regulations contain a rule governing the number of bets that can be contained on a single, electronic record of a wagering transaction.

Another commenter stated that the single ticket requirement puts a person making an electronic bet at a disadvantage because it removes the opportunity to place bets in a single parimutuel pool at multiple points in time throughout the allotted time period for wagering. The single ticket rule in the proposed regulations does not differentiate between electronic betting and placing a bet at a ticket window. Therefore, the proposed rule does not put an electronic bettor at a disadvantage. However, the comment brings to light that there is some confusion regarding how the rule applies in the context of electronic betting.

The single-ticket requirement in the proposed regulations allows aggregation of wagers that are placed in the same parimutuel pool if they are represented on a single ticket. This is the case regardless of whether the ticket is paper or electronic. This requirement was included in the proposed regulations to limit the potential for fraud, such as a winning bettor collecting losing tickets from another bettor or bettors who placed bets in the same parimutuel pool to artificially increase the amount of the wager. In addition, the single-ticket requirement improves administrability because it does not require payers to collect information reflected on multiple tickets. As the preamble to the proposed regulations explains, the single ticket requirement was not intended to limit the amount of the wager to bets

placed at a single point in time because a ticket containing prior bets in a single pool can be cancelled, and the original and additional wagers in that pool can be placed on a new ticket. The fraud and administrability concerns that apply to paper tickets do not apply equally to electronic records because each person's bets are reflected on a single electronic wagering account. Accordingly, electronic bettors may aggregate wagers placed at different points in time without having to cancel prior wagers and place them on a new ticket as long as the wagers meet the requirements in the proposed rule—that is, they are placed in a single parimutuel pool and are represented on a single, electronic record.

Because the comments received in response to the proposed rule do not justify any change, the final regulations adopt the proposed rule without modification.

#### *Effective/Applicability Dates*

The proposed regulations provided that final regulations would apply to payments made after the date they are published in the **Federal Register**. Some commenters requested a delayed effective date to allow time for industry stakeholders to update their systems and seek any necessary state regulatory approval. One commenter specifically suggested that 45 days following publication of the final regulations would be sufficient time to perform such updates. In addition, the commenters suggested that the final rules be effective for wagering transactions with respect to winning events that occur after the date that the final rules are published in the **Federal Register**. The Treasury Department and IRS agree with these comments. Therefore, the final regulations are applicable to reportable gambling winnings paid with respect to a winning event that occurs on or after 45 days from the date the final regulations are published in the **Federal Register**. If they so choose, payers may rely on the provisions of the final regulations for payments made after the date the final regulations are published in the **Federal Register**, regardless of when the related winning event occurred.

#### *Other Comments*

Several commenters raised concerns regarding the thresholds for information reporting and withholding for certain gambling winnings. Another commenter requested that the regulations provide an exception to withholding under section 3402(q). Neither the threshold for information reporting with respect to gambling winnings not subject to withholding nor exceptions to section 3402(q) withholding were the focus of the proposed regulations. In addition, the withholding thresholds are defined by statute. These comments are outside the scope of the proposed regulations, and therefore the comments have not been adopted in the final regulations.

#### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule may affect a substantial number of small entities, the economic impact is minimal because this rule merely provides guidance as to the statutory withholding rules and filing of information returns for payers who make reportable payments of certain gambling winnings and who are required by sections 3402 and 6041 to withhold and make returns reporting those payments. This rule reduces the existing burden on payers to comply with the statutory requirement by simplifying the process for payers to verify payees' identities with a broader range of documents that are more readily available.

This rule also will result in a reduction in the number of forms filed. Instead of treating all components of a bet made by a gambler in a single parimutuel pool as a separate amount wagered, the rules treat all amounts wagered in a single parimutuel pool reflected on a single ticket as the amount wagered for purposes of determining whether reporting or withholding is needed. For the reasons stated, the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexi-

bility analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses, and no comments were received.

#### **Drafting Information**

The principal author of these regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

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#### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

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

Par. 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3402(q)-1 is amended:

1. By revising paragraphs (a)(1), (b), and (c)(1) and (4).

2. By redesignating paragraphs (d), (e) and (f) as paragraphs (f), (d), and (e), respectively.

3. By revising newly designated paragraphs (d) and (e).

4. By removing, in newly designated paragraph (f), Example 3 and Example 11, redesignating Examples 4 through 10 as Examples 3 through 9, and adding examples 10 through 16.

5. By removing, in newly designated paragraph (f) the language "example 4" in newly designated Example 4 and adding in its place the language "example 3" and by removing the language "example 6" in newly designated Example 6 and adding in its place the language "example 5" wherever it appears.

6. By adding paragraph (g).

The revisions and additions read as follows:

**§ 31.3402(q)-1 Extension of withholding to certain gambling winnings.**

(a) *Withholding obligation*—(1) *General rule*. Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentality of any of the foregoing making any payment of “winnings subject to withholding” (defined in paragraph (b) of the section) must deduct and withhold a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and the payment. The tax must be deducted and withheld upon payment of the winnings by the person making the payment (“payer”). See paragraph (c)(5)(ii) of this section for a special rule relating to the time for making deposits of withheld amounts and filing the return with respect to those amounts. Any person receiving a payment of winnings subject to withholding must furnish the payer a statement as required in paragraph (d) of this section. Payers of winnings subject to withholding must file a return with the Internal Revenue Service and furnish a statement to the payee as required in paragraph (e) of this section. With respect to reporting requirements for certain payments of gambling winnings not subject to withholding, see section 6041 and the regulations thereunder.

\* \* \* \* \*

(b) *Winnings subject to withholding*—(1) *In general*. Winnings subject to withholding means any payment from—

(i) A wager placed in a State-conducted lottery (defined in paragraph (c)(2) of this section) but only if the proceeds from the wager exceed \$5,000;

(ii) A wager placed in a sweepstakes, wagering pool, or lottery other than a State-conducted lottery but only if the proceeds from the wager exceed \$5,000; or

(iii) Any other wagering transaction (as defined in paragraph (c)(3) of this section) but only if the proceeds from the wager:

(A) Exceed \$5,000; and

(B) Are at least 300 times as large as the amount of the wager.

(2) *Total proceeds subject to withholding*. If proceeds from the wager qualify as

winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$5,000, are subject to withholding.

(c) *Definitions; special rules*—(1) *Rules for determining amount of proceeds from a wager*—(i) *In general*. The amount of proceeds from a wager is the amount paid with respect to the wager, less the amount of the wager.

(ii) *Amount of the wager in the case of horse races, dog races, and jai alai*. In the case of a wagering transaction with respect to horse races, dog races, or jai alai, all wagers placed in a single parimutuel pool and represented on a single ticket are aggregated and treated as a single wager for purposes of determining the amount of the wager. A ticket in the case of horse races, dog races, or jai alai is a written or electronic record that the payee must present to collect proceeds from a wager or wagers.

(iii) *Amount paid with respect to a wager*—(A) *Identical wagers*. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. Two or more wagers are identical wagers if winning depends on the occurrence (or non-occurrence) of the same event or events; the wagers are placed with the same payer; and, in the case of horse races, dog races, or jai alai, the wagers are placed in the same parimutuel pool. Wagers may be identical wagers even if the amounts wagered differ as long as the wagers are otherwise treated as identical wagers under this paragraph (c)(1)(iii)(A). Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, for example, the drawing of a particular number.

(B) *Non-monetary proceeds*. In determining the amount paid with respect to a wager, proceeds which are not money are taken into account at the fair market value.

(C) *Periodic payments*. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the amount paid with respect to the wager. The aggregate amount of periodic pay-

ments to be made for a person’s life is based on that person’s life expectancy. See §§ 1.72-5 and 1.72-9 of this chapter for rules used in computing the expected return on annuities. For purposes of determining the amount subject to withholding, the first periodic payment must be reduced by the amount of the wager.

\* \* \* \* \*

(4) *Certain payments to nonresident aliens or foreign corporations*. A payment of winnings that is subject to withholding tax under section 1441(a) (relating to withholding on nonresident aliens) or 1442(a) (relating to withholding on foreign corporations) is not subject to the tax imposed by section 3402(q) and this section when the payee is a foreign person, as determined under the rules of section 1441(a) and the regulations thereunder. A payment is treated as being subject to withholding tax under section 1441(a) or 1442(a) notwithstanding that the rate of such tax is reduced (even to zero) as may be provided by an applicable treaty with another country. However, a reduced or zero rate of withholding of tax must not be applied by the payer in lieu of the rate imposed by sections 1441 and 1442 unless the person receiving the winnings has provided to the payer the documentation required by § 1.1441-6 of this chapter to establish entitlement to treaty benefits.

\* \* \* \* \*

(d) *Statement furnished by payee*—(1) *In general*. Each person who is making a payment subject to withholding under this section must obtain from the payee a statement described in paragraph (d)(2) of this section.

(2) *Contents of statement*. Each person who is to receive a payment of winnings subject to withholding under this section must furnish the payer a statement on Form W-2G or 5754 (whichever is applicable) made under the penalties of perjury containing—

(i) The name, address, and taxpayer identification number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment, or

(ii) The name, address, and taxpayer identification number of the payee and of every person entitled to any portion of the payment.

(3) *Multiple payments.* If more than one payment of winnings subject to withholding is to be made with respect to a single wager, for example in the case of an annuity, the payee is required to furnish the payer a statement with respect to the first payment only, provided that the other payments are taken into account in a return required by paragraph (e) of this section.

(4) *Reliance on statement for identical wagers.* If the payee furnishes the statement which may be required pursuant to § 1.6011–3 of this chapter (regarding the requirement of a statement from payees of certain gambling winnings), indicating that the payee (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers, as defined in paragraph (c)(1)(iii)(A) of this section, and indicating the amount of the winnings, if any, then the payer may rely upon the statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section.

(e) *Return of payer—(1) In general.* Every person making payment of winnings for which a statement is required under paragraph (d) of this section must file a return on Form W–2G at the Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment of winnings is made. The return required by this paragraph (e) need not include the statement by the payee required by paragraph (d) of this section and, therefore, need not be signed by the payee, provided the statement is retained by the payer as long as its contents may become material in the administration of any internal revenue law. In addition, the return required by this paragraph (e) need not contain the information required by paragraph (e)(1)(v) of this section provided the information is obtained with respect to the payee and retained by the payer as long as its contents may become material in the administration of any internal revenue law. For payments to more than one winner, a separate Form W–2G, which in no event need be signed by the winner, must be filed with

respect to each such winner. Each Form W–2G must contain the following:

- (i) The name, address, and taxpayer identification number of the payer;
- (ii) The name, address, and taxpayer identification number of the winner;
- (iii) The date, amount of the payment, and amount withheld;
- (iv) The type of wagering transaction;
- (v) Except with respect to winnings from a wager placed in a State-conducted lottery, a general description of the two types of identification (as described in paragraph (e)(2) of this section), one of which must have the payee's photograph on it (except in the case of tribal member identification cards in certain circumstances as described in paragraph (e)(3) of this section), that the payer relied on to verify the payee's name, address, and taxpayer identification number;
- (vi) The amount of winnings from identical wagers; and
- (vii) Any other information required by the form, instructions, or other applicable guidance published in the Internal Revenue Bulletin.

(2) *Identification.* The following items are treated as identification for purposes of paragraph (e)(1)(v) of this section—

(i) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, tribal member identification card issued by a federally-recognized Indian tribe, or voter registration card) in the name of the payee; and

(ii) A Form W–9, “Request for Taxpayer Identification Number and Certification,” signed by the payee that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W–9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(3) *Special rule for tribal member identification cards.* A tribal member identification card need not contain the payee's photograph to meet the identification requirement described in paragraph (e)(1)(v) of this section if—

(i) The payee is a member of a federally-recognized Indian tribe;

(ii) The payee presents the payer with a tribal member identification card issued by a federally-recognized Indian tribe stating that the payee is a member of such tribe; and

(iii) The payer is a gaming establishment (as described in § 1.6041–10(b)(2)(iv) of this chapter) owned or licensed (in accordance with 25 U.S.C. 2710) by the tribal government that issued the tribal member identification card referred to in paragraph (e)(3)(ii) of this section.

(4) *Transmittal form.* Persons making payments of winnings subject to withholding must use Form 1096 to transmit Forms W–2G to the Internal Revenue Service.

(5) *Furnishing a statement to the payee.* Every payer required to make a return under paragraph (e)(1) of this section must also make and furnish to each payee, with respect to each payment of winnings subject to withholding, a written statement that contains the information that is required to be included on the return under paragraph (e)(1) of this section. The payer must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the winnings subject to withholding is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(f) \* \* \*

*Example 10.* (i) B places a \$15 bet at the cashier window at the racetrack for horse A to win the fifth race at the racetrack that day. After placing the first bet, B gains confidence in horse A's prospects to win and places an additional \$40 bet at the cashier window at the racetrack for horse A to win the fifth race, receiving a second ticket for this second bet. Horse A wins the fifth race, and B wins a total of \$5,500 (100 to 1 odds) on those bets. The \$15 bet and the \$40 bet are identical wagers under paragraph (c)(1)(iii)(A) of this section because winning on both bets depended on the occurrence of the same event and the bets are placed in the same parimutuel pool with the same payer. This is true regardless of the fact that the amount of the wager differs in each case.

(ii) B cashes the tickets at different cashier windows. Pursuant to paragraph (d) of this section and § 1.6011–3, B completes a Form W–2G indicating that the amount of winnings is from identical wagers

and provides the form to each cashier. The payments by each cashier of \$1,500 and \$4,000 are less than the \$5,000 threshold for withholding, but under paragraph (c)(1)(iii)(A) of this section, identical wagers are treated as paid with respect to a single wager for purposes of determining the proceeds from a wager. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$5,445 (\$1,500 + \$4,000 - \$55), the proceeds from the wager are not at least 300 times as great as the amount wagered (\$55 x 300 = \$16,500).

*Example 11.* B makes two \$1,000 bets in a single “show” pool for the same jai alai game, one bet on Player X to show and one bet on Player Y to show. A show bet is a winning bet if the player comes in first, second, or third in a single game. The bets are placed at the same time at the same cashier window, and B receives a single ticket showing both bets. Player X places second in the game, and Player Y does not place first, second, or third in the game. B wins \$8,000 from his bet on Player X. Because winning on both bets does not depend on the occurrence of the same event, the bets are not identical bets under paragraph (c)(1)(iii)(A) of this section. However, pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is the aggregate amount of both wagers (\$2,000) because the bets were placed in a single parimutuel pool and reflected on a single ticket. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$6,000 (\$8,000 - \$2,000), the proceeds from the wager are not at least 300 times as great as the amount wagered (\$2,000 x 300 = \$600,000).

*Example 12.* B bets a total of \$120 on a three-dog exacta box bet (\$20 for each one of the six combinations played) at the dog racetrack and receives a single ticket reflecting the bet from the cashier. B wins \$5,040 from one of the selected combinations. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is \$120, not \$20 for the single winning combination of the six combinations played. The payment is not subject to withholding under section 3402(q) because the proceeds from the wager are \$4,920 (\$5,040 - \$120), which is below the section 3402(q) withholding threshold.

*Example 13.* B makes two \$12 Pick 6 bets at the horse racetrack at two different cashier windows and receives two different tickets each representing a single \$12 Pick 6 bet. In his two Pick 6 bets, B selects the same horses to win races 1–5 but selects different horses to win race 6. All Pick 6 bets on those races at that racetrack are part of a single parimutuel pool from which Pick 6 winning bets are paid. B wins \$5,020 from one of his Pick 6 bets. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the bets are reflected on separate tickets. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$24,950 ((\\$100,000 - \$200) x 25%) because the amount of the proceeds of \$99,800 (\$100,000 - \$200) is greater than \$5,000, and is at least 300 times as great as the amount wagered (\$200 x 300 = \$60,000). The racetrack also must report C's winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to C.

track also must report B's winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to B.

*Example 14.* C makes two \$50 bets in two different parimutuel pools for the same jai alai game. One bet is an “exacta” in which C bets on player M to win and player N to “place.” The other bet is a “trifecta” in which C bets on player M to win, player N to “place,” and player O to “show.” C wins both bets and is paid \$2,000 with respect to the bet in the “exacta” pool and \$3,100 with respect to the bet in the “trifecta” pool. Under paragraph (c)(1)(iii)(A) of this section, the bets are not identical bets. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager for either payment because they are not wagers in the same parimutuel pool. No section 3402(q) withholding is required on either payment because neither payment separately exceeds the \$5,000 withholding threshold.

*Example 15.* C makes two \$100 bets for the same dog to win a particular race. C places one bet at the racetrack and one bet at an off-track betting establishment, but the two pools constitute a single pool. C receives separate tickets for each bet. C wins both bets and is paid \$4,000 from the racetrack and \$4,000 from the off-track betting establishment. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the wager placed at the racetrack and the wager placed at the off-track betting establishment are reflected on separate tickets, despite being placed in the same parimutuel pool. No section 3402(q) withholding is required because neither payment separately exceeds the \$5,000 withholding threshold.

*Example 16.* C places a \$200 Pick 6 bet for a series of races at the racetrack on a particular day and receives a single ticket for the bet. No wager correctly picks all six races that day, so that portion of the pool carries over to the following day. On the following day, C places an additional \$200 Pick 6 bet for that day's series of races and receives a new ticket for that bet. C wins \$100,000 on the second day. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are on two separate tickets, so C's two Pick 6 bets are not aggregated for purposes of determining the amount of the wager. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$24,950 ((\\$100,000 - \$200) x 25%) because the amount of the proceeds of \$99,800 (\$100,000 - \$200) is greater than \$5,000, and is at least 300 times as great as the amount wagered (\$200 x 300 = \$60,000). The racetrack also must report C's winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to C.

(g) *Applicability date.* The rules in this section apply to payments made with respect to a winning event that occurs after November 13, 2017. For rules that apply to payments made with respect to a winning event on or before that date, see § 31.3402(q)-1 as contained in 26 CFR part 31, revised April 1, 2017.

Par. 3. Section 31.3406-0 is amended by adding an entry for paragraph (h) to § 31.3406(g)-2 to read as follows:

**§ 31.3406-0 Outline of the backup withholding regulations.**

\* \* \* \* \*

**§ 31.3406(g)-2 Exception for reportable payments for which backup withholding is otherwise required.**

\* \* \* \* \*

**(h) Applicability date.**

\* \* \* \* \*

Par. 4. Section 31.3406(g)-2 is amended by revising paragraphs (d)(2) and (3) and adding paragraph (h) to read as follows:

**§ 31.3406(g)-2 Exception for reportable payment for which withholding is otherwise required.**

\* \* \* \* \*

**(d) \***

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. A gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is \$600 or more and if the proceeds are at least 300 times as large as the amount wagered. See § 1.6041-10 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payer; by

(ii) The amount of the wager.

(3) *Special rules.* For special rules for determining the amount of the wager in a wagering transaction with respect to horse racing, dog racing, and jai alai, or amounts paid with respect to identical wagers, see § 31.3402(q)-1(c).

\* \* \* \* \*

(h) *Applicability date.* The rules apply to reportable gambling winnings paid with respect to a winning event that occurs

after November 13, 2017. For rules that apply to payments made with respect to a winning event on or before that date, see § 31.3406(g)-2 as contained in 26 CFR part 31, revised April 1, 2017.

Kirsten Wielobob,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved: August 21, 2017.

David J. Kautter,  
*Assistant Secretary for Tax Policy.*

(Filed by the Office of the Federal Register on September 25, 2017, 4:15 a.m., and published in the issue of the Federal Register for September 27, 2017, 82 F.R. 44925)

# Part III. Administrative, Procedural, and Miscellaneous

## Extension of Replacement Period for Livestock Sold on Account of Drought

### Notice 2017-53

#### SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

#### SECTION 2. BACKGROUND

.01 *Nonrecognition of Gain on Involuntary Conversion of Livestock.* Section 1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 *Replacement Period.* Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being

designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for any taxable year with respect to which the due date (without regard to extensions) for a taxpayer's return is after December 31, 2002.

#### SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006-82, 2006-2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006-82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's 4-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at <http://droughtmonitor.unl.edu/Maps/MapArchive.aspx>.

In addition, Notice 2006-82 provides that the Internal Revenue Service will publish in September of each year a list of counties, districts, cities, or parishes (hereinafter "counties") for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe

drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2017. Under Notice 2006-82, the 12-month period ending on August 31, 2017, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2017 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2017), the replacement period will be extended under § 1033(e)(2) and Notice 2006-82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer's first taxable year ending after a drought-free year for the applicable region.

#### SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Innessa Glazman of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, please contact Ms. Glazman at (202) 317-7006 (not a toll-free number).

#### APPENDIX

##### Alabama

Counties of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Saint Clair, Shelby, Sumter, Talladega, Tallapoosa,

Tuscaloosa, Walker, Washington, Wilcox, Winston.

#### *Arizona*

Counties of Cochise, La Paz, Pima, Santa Cruz, Yuma.

#### *Arkansas*

Counties of Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Cleburne, Cleveland, Conway, Craighead, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Jefferson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Marion, Miller, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Saint Francis, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, Stone, Union, Van Buren, Washington, White, Woodruff, Yell.

#### *California*

Counties of Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Mariposa, Merced, Mono, Monterey, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Solano, Stanislaus, Tulare, Tuolumne, Ventura, Yolo.

#### *Colorado*

Counties of Adams, Arapahoe, Baca, Boulder, Broomfield, Cheyenne, Denver, Douglas, Elbert, Jefferson, Kiowa, Larimer, Lincoln, Prowers, Weld.

#### *Connecticut*

Counties of Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham.

#### *District of Columbia*

#### *District of Columbia.*

#### *Florida*

Counties of Alachua, Baker, Bay, Brevard, Calhoun, Charlotte, Citrus, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Franklin, Gadsden, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Saint Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Volusia, Wakulla, Walton, Washington.

#### *Georgia*

Counties of Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Burke, Butts, Calhoun, Camden, Carroll, Catoosa, Charlton, Chattooga, Chattooga, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Elbert, Emanuel, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Taylor, Telfair, Terrell, Thomas, Tift, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth.

#### *Hawaii*

Counties of Hawaii, Kauai, Maui.

#### *Idaho*

Counties of Bonner, Boundary, Clearwater, Idaho, Shoshone.

#### *Illinois*

Counties of Alexander, Hardin, Massac, Pope, Pulaski.

#### *Indiana*

Counties of Clark, Floyd, Harrison, Jefferson, Scott, Switzerland, Washington.

#### *Iowa*

Counties of Adair, Appanoose, Buena Vista, Calhoun, Cherokee, Clarke, Davis, Decatur, Jefferson, Keokuk, Lucas, Madison, Mahaska, Marion, Monroe, O'Brien, Plymouth, Pocahontas, Ringgold, Sac, Union, Van Buren, Wapello, Warren, Wayne, Woodbury.

#### *Kansas*

Counties of Clark, Comanche, Finney, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Lane, Meade, Morton, Ness, Scott, Seward, Stanton, Stevens, Wichita.

#### *Kentucky*

Counties of Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boone, Bourbon, Boyle, Bracken, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clay, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Madison, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McCreary, McLean,

Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe, Woodford.

#### Louisiana

Parishes of Acadia, Allen, Ascension, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, Jefferson, La Salle, Lafayette, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint James, Saint John the Baptist, Saint Landry, Saint Martin, Saint Tammany, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, Winn Parish.

#### Maine

Counties of Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, Washington, York.

#### Maryland

Counties of Anne Arundel, Howard, Montgomery, Prince George's.

#### Massachusetts

Counties of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.

#### Mississippi

Counties of Adams, Alcorn, Amite, Atala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, DeSoto,

Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

#### Missouri

Counties of Audrain, Benton, Boone, Butler, Callaway, Carroll, Chariton, Cole, Cooper, Dunklin, Howard, Johnson, Lafayette, Livingston, Macon, Mississippi, Moniteau, Monroe, Morgan, New Madrid, Pemiscot, Pettis, Randolph, Ray, Saline, Scott, Stoddard, Wayne.

#### Montana

Counties of Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone.

#### Nebraska

Counties of Adams, Brown, Cedar, Cherry, Dakota, Dixon, Kearney, Keya Paha, Knox, Pierce, Rock, Wayne.

#### Nevada

City of Carson City. Counties of Churchill, Douglas, Esmeralda, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, Washoe.

#### New Hampshire

Counties of Belknap, Carroll, Cheshire, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, Sullivan.

#### New Jersey

Counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, Sussex, Union, Warren.

#### New York

Counties of Allegany, Bronx, Cattaraugus, Cayuga, Chautauqua, Chemung, Clinton, Columbia, Cortland, Dutchess, Erie, Essex, Franklin, Genesee, Greene, Hamilton, Jefferson, Lewis, Livingston, Monroe, Nassau, New York, Niagara, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Queens, Richmond, Rockland, Saratoga, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates.

#### North Carolina

Counties of Alexander, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, Yancey.

#### North Dakota

Counties of Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Dickey, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, LaMoure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Ransom, Renville, Sargent, Sheridan, Sioux, Slope, Stark, Stutsman, Ward, Wells, Williams.

#### Ohio

Counties of Adams, Brown, Scioto.

#### Oklahoma

Counties of Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Canadian,

Cherokee, Choctaw, Cimarron, Cleveland, Coal, Craig, Creek, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Johnston, Kay, Kingfisher, Latimer, Le Flore, Lincoln, Logan, Major, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Texas, Tulsa, Wagoner, Washington, Woods, Woodward.

#### Oregon

Counties of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa.

#### Pennsylvania

Counties of Berks, Bucks, Cameron, Carbon, Centre, Clearfield, Clinton, Elk, Erie, Lehigh, Lycoming, Monroe, Montgomery, Northampton, Pike, Potter, Tioga.

#### Rhode Island

Counties of Bristol, Kent, Newport, Providence, Washington.

#### South Carolina

Counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Laurens, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, York.

#### South Dakota

Counties of Aurora, Beadle, Bennett, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clay, Corson, Custer, Davison, Dewey, Douglas, Edmunds, Fall River, Faulk, Gregory, Haakon, Hand, Hanson, Harding, Hughes, Hyde, Jackson, Jerauld, Jones, Lawrence, Lyman, McPherson, Meade, Mellette, Pennington, Perkins, Potter, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Union, Walworth, Yankton, Ziebach.

#### Tennessee

Counties of Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carroll, Carter, Cheatham, Ches-

ter, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Meigs, Monroe, Montgomery, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Shelby, Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

#### Texas

Counties of Anderson, Angelina, Archer, Bastrop, Baylor, Bexar, Blanco, Bowie, Brooks, Caldwell, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Collingsworth, Comal, Cottle, Delta, Dickens, Fannin, Foard, Franklin, Freestone, Grayson, Gregg, Hansford, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hopkins, Hunt, Hutchinson, Jasper, Kendall, Kenedy, King, Kleberg, Knox, Lamar, Liberty, Limestone, Lipscomb, Marion, McLennan, Morris, Motley, Nacogdoches, Navarro, Newton, Nueces, Ochiltree, Orange, Panola, Polk, Rains, Red River, Roberts, Rusk, Sabine, San Augustine, Shackelford, Shelby, Sherman, Smith, Starr, Stephens, Throckmorton, Titus, Tyler, Upshur, Van Zandt, Wheeler, Wichita, Willacy, Wood, Young.

#### Utah

Counties of Carbon, Emery, Juab, Sanpete, Utah, Wasatch.

#### Vermont

Counties of Addison, Chittenden, Franklin, Grand Isle, Orange, Rutland, Washington, Windsor.

#### Virginia

Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, Norton.

Counties of Arlington, Buchanan, Culpeper, Dickenson, Fairfax, Fauquier, Lee, Loudoun, Louisa, Madison, Orange, Prince William, Russell, Scott, Spotsylvania, Stafford, Wise.

#### Wyoming

Counties of Big Horn, Campbell, Crook, Niobrara, Park, Sheridan, Teton, Weston.

## 2017–2018 Special Per Diem Rates

### Notice 2017–54

#### SECTION 1. PURPOSE

This annual notice provides the 2017–2018 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

#### SECTION 2. BACKGROUND

Rev. Proc. 2011–47, 2011–42 I.R.B. 520, provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers using the rates and list of high-cost localities provided in this notice must comply with Rev. Proc. 2011–47. Notice 2016–58, 2016–41 I.R.B. 438, provides the rates and list of high-cost localities for the period October 1, 2016, to September 30, 2017.

Section 3.02(3) of Rev. Proc. 2011–47 provides that the term “incidental expenses” has the same meaning as in the Federal Travel Regulations, 41 C.F.R. 300–3.1, and that future changes to the definition of incidental expenses in the Federal Travel Regulations would be announced in the annual *per diem* notice. Subsequent to the publication of Rev. Proc. 2011–47, the General Services Administration published final regulations re-

vising the definition of incidental expenses under the Federal Travel Regulations to include only fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Transportation between places of lodging or business and places where meals are taken, and the mailing cost of filing travel vouchers and paying employer-sponsored charge card billings, are no longer included in incidental expenses. Accordingly, taxpayers using the *per diem* rates may separately deduct or be reimbursed for transportation and mailing expenses.

### **SECTION 3. SPECIAL M&IE RATES FOR TRANSPORTATION INDUSTRY**

The special M&IE rates for taxpayers in the transportation industry are \$63 for any locality of travel in the continental

United States (CONUS) and \$68 for any locality of travel outside the continental United States (OCONUS). *See* section 4.04 of Rev. Proc. 2011-47.

### **SECTION 4. RATE FOR INCIDENTAL EXPENSES ONLY DEDUCTION**

The rate for any CONUS or OCONUS locality of travel for the incidental expenses only deduction is \$5 per day. *See* section 4.05 of Rev. Proc. 2011-47.

### **SECTION 5. HIGH-LOW SUBSTANTIATION METHOD**

1. *Annual high-low rates.* For purposes of the high-low substantiation method, the *per diem* rates in lieu of the rates described in Notice 2016-58 (the *per diem* substantiation method) are \$284 for travel

to any high-cost locality and \$191 for travel to any other locality within CONUS. The amount of the \$284 high rate and \$191 low rate that is treated as paid for meals for purposes of § 274(n) is \$68 for travel to any high-cost locality and \$57 for travel to any other locality within CONUS. *See* section 5.02 of Rev. Proc. 2011-47. The *per diem* rates in lieu of the rates described in Notice 2016-58 (the meal and incidental expenses only substantiation method) are \$68 for travel to any high-cost locality and \$57 for travel to any other locality within CONUS.

2. *High-cost localities.* The following localities have a federal *per diem* rate of \$238 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parentheses under the key city name.

<i>Key city</i>	<i>County or other defined location</i>
California	
Mill Valley/San Rafael/Novato (October 1–October 31 and June 1–September 30)	Marin
Monterey (July 1–August 31)	Monterey
Napa (October 1–October 31 and May 1–September 30)	Napa
Oakland (October 1–October 31 and January 1–September 30)	Alameda
San Francisco	San Francisco
San Mateo/Foster City/Belmont	San Mateo
Santa Barbara	Santa Barbara
Santa Monica	City limits of Santa Monica
Sunnyvale/Palo Alto/San Jose	Santa Clara
Colorado	
Aspen	Pitkin
Denver/Aurora	Denver, Adams, Arapahoe, and Jefferson
Grand Lake (December 1–March 31)	Grand
Silverthorne/Breckenridge (December 1–March 31)	Summit
Steamboat Springs (December 1–March 31)	Routt
Telluride	San Miguel
Vail (December 1–March 31 and July 1–August 31)	Eagle
Delaware	
Lewes (July 1–August 31)	Sussex
District of Columbia	
Washington D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia)	

<i>Key city</i>	<i>County or other defined location</i>
<b>Florida</b>	
Boca Raton/Delray Beach/Jupiter (January 1–April 30)	Palm Beach and Hendry
Fort Lauderdale (January 1–April 30)	Broward
Fort Myers (February 1–March 31)	Lee
Fort Walton Beach/De Funiak Springs (June 1–July 31)	Okaloosa and Walton
Key West	Monroe
Miami (December 1–March 31)	Miami-Dade
Naples (December 1–April 30)	Collier
<b>Illinois</b>	
Chicago (October 1–November 30 and April 1–September 30)	Cook and Lake
<b>Maine</b>	
Bar Harbor (October 1–October 31 and July 1–September 30)	Hancock
<b>Maryland</b>	
Ocean City (July 1–August 31)	Worcester
Washington, DC Metro Area	Montgomery and Prince George's
<b>Massachusetts</b>	
Boston/Cambridge	Suffolk, city of Cambridge
Falmouth (July 1–August 31)	City limits of Falmouth
Hyannis (July 1–August 31)	Barnstable less the city of Falmouth
Martha's Vineyard (June 1–September 30)	Dukes
Nantucket (June 1–September 30)	Nantucket
<b>Michigan</b>	
Petoskey (July 1–August 31)	Emmet
Traverse City/Leland (July 1–August 31)	Grand Traverse and Leelanau
<b>New York</b>	
Lake Placid (July 1–August 31)	Essex
New York City	Bronx, Kings, New York, Queens, and Richmond
Saratoga Springs/Schenectady (July 1–August 31)	Saratoga and Schenectady
<b>Oregon</b>	
Portland (October 1–October 31 and March 1–September 30)	Multnomah
Seaside (July 1–August 31)	Clatsop

<i>Key city</i>	<i>County or other defined location</i>
Pennsylvania	
Hershey (June 1–August 31)	Hershey
Philadelphia (October 1–November 30 and April 1–September 30)	Philadelphia
Rhode Island	
Jamestown/Middletown/Newport (October 1–October 31 and June 1–September 30)	Newport
South Carolina	
Charleston (October 1–November 30 and March 1–September 30)	Charleston, Berkeley and Dorchester
Utah	
Park City (December 1–March 31)	Summit
Virginia	
Virginia Beach (June 1–August 31)	City of Virginia Beach
Wallop Island (July 1–August 31)	Accomack
Washington, DC Metro Area	Cities of Alexandria, Fairfax, and Falls Church; counties of Arlington and Fairfax
Washington	
Seattle	King
Vancouver (October 1–October 31 and March 1–September 30)	Clark, Cowlitz, and Skamania
Wyoming	
Jackson/Pinedale (June 1–September 30)	Teton and Sublette

3. *Changes in high-cost localities.* The list of high-cost localities in this notice differs from the list of high-cost localities in section 5 of Notice 2016–58.

- a. The following localities have been added to the list of high-cost localities: Oakland, California; Lewes, Delaware; Fort Myers, Florida; Hyannis, Massachusetts; Petoskey, Michigan; Portland, Oregon; Vancouver, Washington.
- b. The following localities have changed the portion of the year in which they are high-cost localities: Aspen, Colorado; Denver/Aurora, Colorado; Telluride, Colorado; Vail, Colorado; Bar Harbor, Maine; Ocean City, Maryland; Nantucket, Massachusetts; Philadelphia, Pennsylvania; Jamestown/Middletown/Newport, Rhode Island; Jackson/Pinedale, Wyoming.
- c. The following localities have been removed from the list of high-cost localities: Sedona, Arizona; Los Angeles,

California; Vero Beach, Florida; Kill Devil, North Carolina.

#### **DRAFTING INFORMATION**

The principal author of this notice is Elizabeth Binder of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Binder at (202) 317-7005 (not a toll-free number).

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## **Treatment Under Section 956(c) of Certain Property Temporarily Stored in the United States Following Hurricane Irma or Hurricane Maria**

### **Notice 2017–55**

#### **SECTION 1. OVERVIEW**

Section 956(c) of the Internal Revenue Code defines United States property generally to include tangible property

#### **SECTION 7. EFFECT ON OTHER DOCUMENTS**

Notice 2016–58 is superseded.

located in the United States. In response to the damage caused by Hurricane Irma and Hurricane Maria, including in the Commonwealth of Puerto Rico and the U.S. Virgin Islands, certain controlled foreign corporations (within the meaning of section 957(a)) (“CFCs”) may need to transport property described in section 1221(a)(1) (“section 1221(a)(1) property”) located in affected areas to the United States (as defined in section 7701(a)(9)) for safekeeping. This notice provides relief for certain such section 1221(a)(1) property that would otherwise constitute United States property.

## **SECTION 2. TREATMENT OF CERTAIN SECTION 1221(a)(1) PROPERTY UNDER SECTION 956(c)**

The damage caused by Hurricane Irma and Hurricane Maria has imperiled section 1221(a)(1) property located in affected areas. To facilitate necessary safekeeping of such section 1221(a)(1) property, this notice announces that, for purposes of section 956, a CFC will not be treated as holding United States property as a result of holding section 1221(a)(1) property located in the United States, if such section 1221(a)(1) property was located, on or before September 5, 2017, in an area identified by the Federal Emergency Management Agency (“FEMA”) as subject to a major disaster or emergency declaration, and such section 1221(a)(1) property was transported to the United States for temporary storage for safekeeping in anticipation of, or as a result of, Hurricane Irma. Furthermore, for purposes of section 956, a CFC will not be treated as holding United States property as a result of holding section 1221(a)(1) property located in the United States, if such section 1221(a)(1) property was located, on or before September 17, 2017, in an area identified by FEMA as subject to a major disaster or emergency declaration, and such section 1221(a)(1) property was transported to the United States for temporary storage for safekeeping in anticipation of, or as a result of, Hurricane Maria.

## **SECTION 3. RELIANCE ON NOTICE**

This notice shall only apply to taxable year quarters of a CFC ending on or after September 5, 2017, and on or before January 31, 2018.

## **SECTION 4. DRAFTING INFORMATION**

The principal author of this notice is Rose E. Jenkins of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Jenkins at (202) 317-6934 (not a toll-free number).

## **Foreign Currency Guidance under Section 987**

### **Notice 2017-57**

#### **I. PURPOSE**

This Notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend the regulations under section 987 to defer the applicability date of the final regulations under section 987, as well as certain provisions of the temporary regulations under section 987, by one year.

The final regulations under section 987 were identified in Notice 2017-38, 2017-30 I.R.B. 147 (July 24, 2017), as significant tax regulations requiring additional review pursuant to Executive Order 13789. As part of that review, the Treasury Department and the IRS are considering changes to the final regulations that would allow taxpayers to elect to apply alternative rules for transitioning to the final regulations and alternative rules for determining section 987 gain or loss.

#### **II. BACKGROUND**

##### **A. FINAL AND TEMPORARY REGULATIONS**

On January 9, 2017, the Treasury Department and the IRS published Treasury Decision 9794, which contains final regulations relating to the determination of the taxable income or loss of a taxpayer with respect to a qualified business unit (QBU)

subject to section 987 (a section 987 QBU); the timing, amount, character, and source of any section 987 gain or loss; and other regulations (the final regulations). On that same date, the Treasury Department and the IRS also published Treasury Decision 9795, which contains temporary regulations under section 987, including the following: rules relating to the recognition and deferral of foreign currency gain or loss under section 987 in connection with certain QBU terminations and certain other transactions; an annual deemed termination election for a section 987 QBU; an elective method, available to taxpayers that make the annual deemed termination election, for translating all items of income or loss with respect to a section 987 QBU at the yearly average exchange rate; rules regarding the treatment of section 988 transactions of a section 987 QBU; rules regarding QBUs with the U.S. dollar as their functional currency; rules regarding combinations and separations of section 987 QBUs; rules regarding the translation of income used to pay creditable foreign income taxes; and rules regarding the allocation of assets and liabilities of aggregate partnerships for purposes of section 987 (the temporary section 987 regulations). Treasury Decision 9795 also contains temporary regulations under section 988 requiring the deferral of certain section 988 loss that arises with respect to related-party loans (the temporary section 988 regulations, and with the temporary section 987 regulations, the temporary regulations).

#### **B. APPLICABILITY DATES**

The final and temporary regulations were effective on December 7, 2016. Dates of applicability for §§ 1.987-1 through 1.987-10 are provided in § 1.987-11. Specifically, § 1.987-11(a) states that, except as otherwise provided in § 1.987-11, §§ 1.987-1 through 1.987-10 apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. Corresponding provisions under sections 861, 985, 988, and 989 also apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. See §§ 1.861-9T(g)(2)(vi); 1.985-5(g);

1.988–1(i); 1.988–4(b)(2)(ii); 1.989(a)–1(b)(4); 1.989(a)–1(d)(4).

Similarly, §§ 1.987–1T (other than §§ 1.987–1T(g)(2)(i)(B) and (g)(3)(i)(H)) through 1.987–4T, 1.987–6T, 1.987–7T, and 1.988–1T (the related temporary regulations) apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. See §§ 1.987–1T(h); 1.987–2T(e); 1.987–3T(f); 1.987–4T(h); 1.987–6T(d); 1.987–7T(d); 1.988–1T(j). All other provisions in the temporary regulations, including the provisions relating to the deferral of section 987 gain or loss and the temporary section 988 regulations, are subject to different applicability dates. See §§ 1.987–1T(h) (concerning §§ 1.987–1T(g)(2)(i)(B) and (g)(3)(i)(H)); 1.987–8T(g); 1.987–12T(j); 1.988–2T(j).

A taxpayer may apply the final regulations and the related temporary regulations to taxable years beginning after December 7, 2016, provided the taxpayer consistently applies those regulations to such taxable years with respect to all section 987 QBUs directly or indirectly owned by the taxpayer on the transition date as well as all section 987 QBUs directly or indirectly owned on the transition date by members that file a consolidated return with the taxpayer or by any controlled foreign corporation, as defined in section 957, in which a member owns more than 50 percent of the voting power or stock value, as determined under section 958(a). Sections 1.987–11(b); 1.987–1T(h); 1.987–2T(e); 1.987–3T(f); 1.987–4T(h); 1.987–6T(d); 1.987–7T(d). The transition date is the first day of the first taxable year to which §§ 1.987–1 through 1.987–10 are applicable with respect to a taxpayer under § 1.987–11. Section 1.987–11(c).

### III. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend §§ 1.861–9T, 1.985–5, 1.987–11, 1.987–1T through 1.987–4T, 1.987–6T, 1.987–7T, 1.988–1, 1.988–1T, 1.988–4, and 1.989(a)–1 to provide that the final regulations and the related temporary regulations will apply to taxable

years beginning on or after two years after the first date of the first taxable year following December 7, 2016. Thus, for a taxpayer whose first taxable year after December 7, 2016, begins on January 1, 2017, the final regulations and the related temporary regulations will apply for the taxable year beginning on January 1, 2019.

A taxpayer may, however, elect under § 1.987–11(b) to apply the final regulations and the related temporary regulations to taxable years beginning after December 7, 2016 (subject to the conditions in § 1.987–11(b)), including taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016 (the original applicability date in § 1.987–11(a)).

The intended amendments would not affect the applicability date of the temporary regulations other than the related temporary regulations.

### IV. TAXPAYER RELIANCE

Before the issuance of the amendments to the final regulations and the related temporary regulations described in section III of this Notice, taxpayers may rely on the provisions of this Notice regarding those proposed amendments.

### V. DRAFTING INFORMATION

The principal author of this Notice is Anthony J. Marra of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Anthony J. Marra at (202) 317-6938 (not a toll-free number).

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## Extended Due Date under Notice 2017–10 for Participants Affected by Hurricanes Harvey, Irma, or Maria

### Notice 2017–58

On December 23, 2016, the IRS released Notice 2017–10, 2017–4 I.R.B. 544, identifying syndicated conservation easement transactions described in section

2 of that notice and substantially similar transactions as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. Section 3 of Notice 2017–10 provides that, in the case of a participant with a disclosure obligation with respect to these transactions under § 1.6011–4(e)(2)(i) (regarding subsequently listed transactions), the disclosure was due to the IRS Office of Tax Shelter Analysis on June 21, 2017.

On April 27, 2017, the IRS released Notice 2017–29, 2017–20 I.R.B. 1243, modifying Notice 2017–10. Notice 2017–29 extended the due date for participants filing disclosures under § 1.6011–4(e)(2)(i) from June 21, 2017, until October 2, 2017.

In response to Hurricane Harvey, Hurricane Irma, and Hurricane Maria, this notice further extends the due date for affected participants to file disclosures under § 1.6011–4(e)(2)(i) from October 2, 2017, until October 31, 2017.

An affected participant is any participant whose principal residence or principal place of business was located in a Hurricane Harvey, Hurricane Irma, or Hurricane Maria covered disaster area, as defined in § 301.7508A–1(d)(2), or whose records necessary to meet the disclosure obligation were maintained in such a covered disaster area.

Taxpayers who believe they are entitled to this extended due date should mark “Hurricane Harvey”, “Hurricane Irma”, or “Hurricane Maria” on the top of their Form 8886, Reportable Transaction Disclosure Statement.

### EFFECT ON OTHER DOCUMENTS

Notice 2017–10 and Notice 2017–29 are modified.

### DRAFTING INFORMATION

The principal authors of this notice are Zachary King and Charles Gorham of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Mr. King or Mr. Gorham at (202) 317-7003 (not a toll-free number).

# Part IV. Items of General Interest

## Public Approval of Tax-Exempt Private Activity Bonds

### REG-128841-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations to update and streamline the public approval requirement provided in section 147(f) of the Internal Revenue Code applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations would update the existing regulations on the public approval requirement to reflect statutory changes, to streamline the public approval process, and to reduce burden on State and local governments that issue tax-exempt private activity bonds. This document also withdraws two previous notices of proposed rulemaking on this topic. The proposed regulations affect State and local governments that issue tax-exempt private activity bonds.

**DATES:** Comments and requests for a public hearing must be received by December 27, 2017.

**ADDRESSES:** Send submissions to CC: PA:LPD:PR (REG-128841-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128841-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-128841-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Spence Hanemann at (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina John-

son at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under OMB Control Number 1545-2185 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in this proposed regulation is the requirement in § 1.147(f)-1 that certain information be contained in a public notice or public approval and, consequently, disclosed to the public. This information is required to meet the statutory public approval requirement provided in section 147(f). The likely respondents are the governmental units required to approve an issue of private activity bonds under section 147(f).

Estimated total annual burden: 2,600 hours.

Estimated average annual burden per respondent: 1.3 Hours.

Estimated number of respondents: 2,000.

Estimated frequency of responses: Annual. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 27, 2017.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

#### Background

This document contains proposed amendments to 26 CFR part 1 under section 147(f) of the Internal Revenue Code of 1986 (the Code) and 26 CFR part 5f under section 103(k) of the Internal Revenue Code of 1954 (the 1954 Code). In the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat. 324, Congress added section 103(k) to the 1954 Code to impose a public approval requirement on tax-exempt industrial development bonds. On May 11, 1983, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (48 FR 21117) temporary regulations under section 103(k) of the 1954 Code (TD 7892) (the Existing Regulations). See § 5f.103-2. A notice of proposed rulemaking (LR-221-82) by cross-reference to the temporary regulations was published in the **Federal Register** (48 FR 21166) on the same day.

In the Tax Reform Act of 1986 (1986 Tax Act), Public Law 99-514, 100 Stat. 2085, Congress reorganized the tax-exempt bond provisions and carried forward the public approval requirement of section 103(k) of the 1954 Code in expanded form in section 147(f) of the Code. In section 147(f), Congress extended the

public approval requirement to apply to all types of tax-exempt private activity bonds, as provided in section 141(e). The legislative history of the 1986 Tax Act indicates that “[t]he conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.” H.R. Rep. No. 99–841, at II–686 (1986) (Conf. Rep.). Thus, the Existing Regulations in § 5f.103–2 remain in effect.

On September 9, 2008, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–128841–07) in the **Federal Register** (73 FR 52220) that proposed regulations to amend and supplement the Existing Regulations (the 2008 Proposed Regulations). The Treasury Department and the IRS received public comments on the 2008 Proposed Regulations and held a public hearing on January 26, 2009. As discussed more fully in the Explanation of Provisions section of this preamble, the Treasury Department and the IRS have decided to withdraw the 2008 Proposed Regulations in full and to propose new regulations. This document contains those new proposed regulations (the Proposed Regulations).

## **Explanation of Provisions**

### *1. Introduction*

In general, pursuant to section 103 of the Code, interest received by investors on eligible State and local bonds is tax-exempt for Federal income tax purposes. Interest on private activity bonds qualifies for this tax-exempt treatment only if the bonds meet the requirements for “qualified bonds” as defined in section 141(e) and other applicable requirements provided in section 103. Section 141(e) of the Code requires, among other things, that qualified bonds meet the public approval requirement of section 147(f).

The Proposed Regulations would update the Existing Regulations to address subsequent statutory changes and to streamline the public approval process. The Proposed Regulations provide greater flexibility to State and local governments with respect to the public approval process to reduce administrative burdens associated with the public approval requirement. The Proposed Regulations recognize advances in technology and electronic communication that may facilitate more streamlined procedures for

providing reasonable public notice of a public hearing.

### *2. The 2008 Proposed Regulations*

The 2008 Proposed Regulations proposed to update, clarify, and simplify discrete aspects of the Existing Regulations regarding the public approval requirement. The 2008 Proposed Regulations focused on the scope, information content, methods, and timing for the public approval process, and generally did not focus on the governmental entities from which public approval is required. Overall, the public comments on the 2008 Proposed Regulations were favorable.

The Proposed Regulations generally incorporate the amendments proposed in the 2008 Proposed Regulations with modifications in response to the public comments. One comment focused on the structure of the 2008 Proposed Regulations. The 2008 Proposed Regulations would have revised the Existing Regulations by amending existing rules and adding new rules. The 2008 Proposed Regulations further provided that the Existing Regulations would remain in effect to the extent not inconsistent with the final version of the 2008 Proposed Regulations. Commenters expressed concern about potential confusion over two distinct and partially inconsistent regulation sections governing the public approval requirement. The Treasury Department and the IRS understand this concern. Accordingly, the Proposed Regulations consolidate the guidance in the Existing Regulations and the 2008 Proposed Regulations, with modifications in response to the public comments and other recent developments, into new proposed guidance and provide a further opportunity for public comment.

The Treasury Department and the IRS also received numerous comments regarding the level of specificity of information required to be contained in reasonable public notice of a public hearing or a public approval. Generally, the 2008 Proposed Regulations proposed to allow the issuer to provide streamlined information about projects to be financed, and the Existing Regulations require a greater level of specificity of information about such projects. The 2008 Proposed Regulations also proposed to afford issuers more

flexibility regarding the effect of post-issuance changes from the reasonably expected facts provided in the reasonable public notice or public approval. Commenters expressed differing views on whether these proposed amendments in the 2008 Proposed Regulations should be adopted. Commenters in favor of these amendments generally applauded the reduced burden that issuers would bear under the 2008 Proposed Regulations and suggested ways in which that burden could be reduced further. Commenters opposed to these amendments generally argued that reducing the amount of public information would limit the public’s ability to approve or oppose on an informed basis new private activity bonds and proposed projects to be financed. The legislative history of the public approval requirement emphasizes the importance of “a reasonable opportunity for persons with differing views on both issuance of the bonds and the location and nature of the proposed facility to be heard.” S. Rep. No. 97–494, at 171 (1982). With respect to these proposed amendments, the Treasury Department and the IRS have determined that the information that would have been required by the 2008 Proposed Regulations is sufficient to permit the public to evaluate the merits of both the issuance of the bonds and the location and nature of the financed facility. Thus, the burden imposed by the Existing Regulations may be reduced as provided in the 2008 Proposed Regulations without significantly impairing the public’s consideration of new private activity bonds. Accordingly, the Proposed Regulations generally retain the streamlined information and post-issuance flexibility proposed in the 2008 Proposed Regulations and provide for additional post-issuance flexibility. (See section 6 of this Explanation of Provisions.)

Commenters also provided differing views on the amendments in the 2008 Proposed Regulations that proposed changes to the procedures for providing reasonable public notice of a public hearing. The Existing Regulations generally permit an issuer to publicize notice by newspaper, radio, or television, and presume notice to be reasonable if published at least 14 days prior to the date of the public hearing. The 2008 Proposed Regu-

lations proposed to expand the permitted methods of providing public notice to include notice by newspaper, radio, television, Web site, or other permitted methods of giving public notice under State law, and would have shortened the presumptively reasonable notice period to seven days in advance of the hearing. Commenters in favor of these amendments generally stated that the proposed amendments would ease the burden of providing the public notice. Commenters opposed to these amendments generally expressed concern that seven days' notice of a public hearing would not provide the public sufficient time to make an informed decision and to make arrangements to be present at the hearing. The legislative history of TEFRA indicates that Congress expected notice to be published no fewer than 14 days before the scheduled date of the hearing. *See S. Rep. No. 97–494*, at 171 (1982). In response to these comments, the Proposed Regulations adopt and expand the permitted methods for giving notice of a public hearing that were proposed in the 2008 Proposed Regulations, but retain the 14-day notice period presumed reasonable under the Existing Regulations consistent with the expectations of Congress.

### *3. Host Approval and Issuer Approval*

Section 147(f) generally requires that both the governmental unit that issues the bonds (or on behalf of which the bonds are issued) and a governmental unit with jurisdiction over the location of the financed project approve an issue of private activity bonds (and the approvals are referred to as the issuer approval and the host approval, respectively). The Proposed Regulations generally carry forward the rules on issuer approval and host approval from the Existing Regulations, with limited revisions to address statutory changes that affect the application of these rules to certain types of private activity bonds. Thus, for example, the Proposed Regulations include guidance to address subsequent statutory changes in section 147(f)(3) and (4) that added special provisions regarding the issuer approval and host approval requirements for certain financings involving airports, high-speed rail facilities, qualified scholarship funding corporations, and volunteer fire departments.

The 1986 Tax Act extended the public approval requirement beyond the traditional, facility-focused industrial development bonds subject to the requirement under the 1954 Code to include certain special types of financings that are not facility-specific, including “qualified mortgage bonds” as defined in section 143(a), “qualified veterans’ mortgage bonds” as defined in section 143(b), “qualified student loan bonds” as defined in section 144(b), and “qualified 501(c)(3) bonds” as defined in section 145. For these types of bonds, obtaining a host approval may be impractical or unworkable. For example, for qualified mortgage bonds, the locations of many of the homes to be financed with qualified mortgage loans generally are unknown at the time of issuance of the bonds and thus it may be difficult to identify appropriate governmental units to provide host approval. Moreover, for qualified student loan bonds and for qualified 501(c)(3) bonds used to finance working capital expenditures, the application of the host approval requirement is unworkable because the assets and expenditures financed have no physical location. In recognition of the practical difficulties faced by issuers of these types of bonds under the Existing Regulations, the Proposed Regulations provide that no host approval is necessary for mortgage revenue bonds (defined as qualified mortgage bonds, qualified veterans’ mortgage bonds, and certain refundings of bonds issued to finance mortgages of owner-occupied residences under the law prior to enactment of section 143), qualified student loan bonds, or qualified 501(c)(3) bonds used to finance working capital expenditures.

### *4. Reasonable Public Notice and Public Hearing*

The Existing Regulations generally provide that an applicable elected representative of the approving governmental unit may approve an issue following a public hearing for which there was reasonable public notice. The Existing Regulations provide guidance on permitted methods for giving reasonable public notice and holding public hearings. The Proposed Regulations would expand these methods to provide greater flexibility to State and local governments for providing reasonable public notice.

The Existing Regulations provide generally that reasonable public notice must be published in a newspaper of general circulation available to residents of the relevant locality or announced by radio or television broadcast to those residents. The Proposed Regulations would expand the permitted methods of providing reasonable public notice to provide greater flexibility and to recognize advances in technology and electronic communications. Thus, the Proposed Regulations would allow reasonable public notice by newspaper publication, radio or television broadcast, postings on a governmental unit’s public Web site, or alternative methods permitted under a general State law for public notices for public hearings of a governmental unit. The Treasury Department and the IRS solicit comment on other possible methods of providing reasonable public notice to foster flexibility and to reduce administrative burdens.

## *5. Content of Reasonable Public Notice and Public Approval*

### *A. General Rules for Content of Reasonable Public Notice and Public Approval*

The Existing Regulations generally require that the reasonable public notice and the public approval contain the following information: A general, functional description of the type and use of the facility to be financed; the maximum aggregate face amount of the bonds to be issued for the facility; the initial owner, operator, or manager of the facility; and the location of the facility by street address or, if none, by a general description designed to inform readers of the specific location. The required level of specificity of information for the public approval process under the Existing Regulations has proven to be unduly limiting and burdensome in certain respects. The Proposed Regulations generally retain the requirements that information (public approval information) be provided for the public approval process but refine the required public approval information to reduce burden and enhance flexibility.

Initially, the Existing Regulations focus on an individual “facility” as the unit of financed property for which the issuer must provide the relevant information.

The definition of “facility” in the Existing Regulations includes facilities on multiple tracts of land only if the facilities are used in an integrated operation. Whether facilities are part of an “integrated operation” has proven difficult to determine.

The Proposed Regulations use the term “project” in lieu of the term “facility” because “project” more clearly indicates that financed property may consist of multiple buildings and multiple sites. The Proposed Regulations define the term “project” generally to mean one or more capital projects or facilities, including land, buildings, equipment, and other property, to be financed with an issue, that are located on the same site, or adjacent or proximate sites used for similar purposes. In addition, to address certain special types of loan financings, the definition of a project under the Proposed Regulations also includes mortgage loans financed by mortgage revenue bonds, student loans financed by qualified student loan bonds, and working capital expenditures financed by qualified 501(c)(3) bonds.

The Proposed Regulations would continue to require a general functional description of the type and use of the financed project. The Proposed Regulations, however, would mitigate the required level of specificity of that information. Thus, the Proposed Regulations would allow an issuer of exempt facility bonds to satisfy this requirement through a statement that identifies the category of exempt facility bond (for example, bonds financing an airport or a mass commuting facility). Similarly, an issuer of other types of private activity bonds may satisfy this requirement through a statement that identifies the type of bonds and the type and use of the project (for example, qualified small issue bonds for a manufacturing facility).

The Proposed Regulations would continue to require that the public approval information include the name of the expected initial owner or the principal user of the project. The Proposed Regulations, however, would permit an issuer to name the true beneficial party of interest as an alternative to naming a legal owner or user (for example, the name of a nonprofit hospital organization instead of a limited liability company that serves as the legal owner of a hospital).

The Proposed Regulations would continue to require that the public ap-

proval information include the location of the project by street address. The Proposed Regulations, however, would clarify that a description by boundary streets or other geographic boundaries suffices to meet this location requirement. The Proposed Regulations would allow a consolidated description of the location of a project on the same site or on adjacent or proximate sites (for example, a college campus).

#### B. Special Rules for Mortgage Revenue Bonds, Qualified Student Loan Bonds, and Certain Qualified 501(c)(3) Bonds

The 1986 Tax Act extended the public approval requirement to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds. The Existing Regulations were promulgated before the 1986 Tax Act and thus provide no guidance tailored to the application of the public approval requirement to these types of bonds. In the General Explanation of the 1986 Tax Act, the Staff of the Joint Committee on Taxation stated that, “[i]n extending this requirement to all private activity bonds, Congress intended that the applicable Treasury regulations will be amended for student loan bonds (where no facilities are financed), mortgage revenue bonds (where the exact residences to be financed may not be identified before issuance of the bonds), and qualified 501(c)(3) bonds that qualify for the special exception to the maturity limitation for pooled financings (where the facilities need not be identified before issuance of the bonds).” Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (JCS-10-87), at 1219 (May 4, 1987). Accordingly, the Proposed Regulations provide special rules for public approval of mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds issued for pooled financings as described in section 147(b)(4).

For mortgage revenue bonds, the Proposed Regulations would require the public approval information to state that the bonds will finance residential mortgages, provide the maximum stated principal amount of the bonds, and generally describe the issuer’s geographic jurisdiction

in which the residences to be financed with the mortgage loans are expected to be located. Similarly, for qualified student loan bonds, the Proposed Regulations would require the public approval information to state that the bonds will finance student loans and provide the maximum stated principal amount of the bonds. For these two types of bonds, the Proposed Regulations would not require the names of borrowers to be included in the public approval information.

For qualified 501(c)(3) bonds that finance loans described in the special provision for pooled loan financings in section 147(b)(4), the Proposed Regulations would permit the issuer to choose to apply a two-stage public approval process if the issuer has insufficient information at the time of the reasonable public notice or public approval to meet the general public approval information requirements. To apply this special rule, the issuer must first obtain public approval within the time specified in the Proposed Regulations for public approval generally. For this first-stage public approval, the public approval information must state that the bonds will be qualified 501(c)(3) bonds used to finance loans described in section 147(b)(4)(B), provide the maximum stated principal amount of the bonds, generally describe the type of project to be financed with such loans (for example, loans for hospital facilities or college facilities), and state that the issuer will obtain an additional public approval with specific project information before origination of any such loans. In addition, before loan origination, the issuer must obtain a supplemental public approval of that loan containing all of the project-specific information that the public approval information rules generally require.

#### 6. Deviations From the Information in the Reasonable Public Notice and Public Approval

Differences or “deviations” between information regarding a proposed project to be financed with a proposed issuance of private activity bonds that serves as the basis for a public approval and the actual project financed with the bonds may affect the validity of the public approval. The Existing Regulations and the Proposed Regulations provide that insubstantial de-

viations do not invalidate a public approval. The Proposed Regulations provide additional guidance concerning differences that constitute insubstantial deviations and also allow remedial actions to cure certain substantial deviations.

The Proposed Regulations provide that whether a deviation is substantial generally depends on all of the facts and circumstances. The Proposed Regulations, however, would always treat a change in the fundamental nature or type of a project as a substantial deviation.

The Proposed Regulations would treat certain specified deviations from the public approval information provided as insubstantial deviations. For example, a deviation from the size of a proposed bond issue for a proposed project specified in public approval information is an insubstantial deviation if the stated principal amount of bonds actually issued and used for the project is no more than ten percent (10%) greater than the maximum stated principal amount publicly approved for the project or is any amount less than that maximum stated principal amount. Furthermore, if an issuer applies proceeds of an issue approved for use on one project to pay working capital expenditures directly associated with any project approved in the same public approval, that deviation is an insubstantial deviation. Finally, a deviation between the initial owner or principal user of the project identified in the public approval information and the actual initial owner or principal user of the project is an insubstantial deviation if the parties are related on the issue date.

The Proposed Regulations would allow supplemental post-issuance public approvals to cure certain substantial deviations that result from unexpected events or unforeseen changes in circumstances that occur after the issuance of the bonds. This remedial action is similar to a permitted post-issuance public approval under § 1.141–12(e)(2) and (f) used for remedial actions for purposes of the private business restrictions.

## *7. Applicability Dates and Reliance*

The Proposed Regulations are proposed to apply to bonds issued pursuant to a public approval that occurs on or after the date that is 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

**ter.** Issuers may apply the Proposed Regulations, in whole but not in part, to bonds that are issued pursuant to a public approval that occurs on or after September 28, 2017 and before the applicability date provided in a Treasury decision adopting these rules as final regulations in the **Federal Register**.

In addition, the Treasury Department and the IRS propose to remove the Existing Regulations under § 5f.103–2 from 26 CFR part 5f effective on the general applicability date of the final regulations, which is proposed to be the date that is 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

## **Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The Existing Regulations provide guidance on the minimum informational content, procedures, and timing for the statutorily required public notices, public hearings, and public approvals. Although the Proposed Regulations are expected to affect a significant number of small State or local governmental units that issue tax-exempt private activity bonds, the Proposed Regulations are not expected to have a significant economic effect on those governmental units because the Proposed Regulations generally would streamline and simplify the Existing Regulations in various respects to reduce the administrative burdens of meeting the statutory public approval requirement. For example, the Proposed Regulations would permit publication of public notice by Web site to reduce costs associated with print publication or radio or television broadcast, reduce the information required to be contained in public notice and public approval for certain types of bonds, liberalize the consequences of insubstantial changes in project information, and permit curative actions to address certain circumstances in which finished projects differ from descriptions provided in the public notice or public

approval. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

## **Comments and Requests for Public Hearing**

Before the Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

## **Drafting Information**

The principal authors of these regulations are Spence Hanemann and Vicky Tsilas, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

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## **Withdrawal of Notice of Proposed Rulemaking**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–128841–07) that was published in the **Federal Register** (73 FR 52220) on September 9, 2008, is withdrawn. Also, under the authority of 26 U.S.C. 7805, § 1.103–17 of the notice of proposed rulemaking (LR–221–82) published in the **Federal Register** (48 FR 21166) on May 11, 1983, is withdrawn.

## **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 5f are proposed to be amended as follows:

## PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.147(f)-1 is added to read as follows:

### § 1.147(f)-1 Public approval of private activity bonds.

(a) *In general.* Interest on a private activity bond is excludable from gross income under section 103(a) only if the bond meets the requirements for a qualified bond as defined in section 141(e) and other applicable requirements provided in section 103. In order to be a qualified bond as defined in section 141(e), among other requirements, a private activity bond must meet the requirements of section 147(f). A private activity bond meets the requirements of section 147(f) only if the bond is publicly approved pursuant to paragraph (b) of this section or the bond qualifies for the exception for refunding bonds in section 147(f)(2)(D).

(b) *Public approval requirement—(1)*

*In general.* Except as otherwise provided in this section, a bond meets the requirements of section 147(f) if, before the issue date, the issue of which the bond is a part receives issuer approval and host approval (each a *public approval*) as defined in paragraphs (b)(2) and (3) of this section in accordance with the method and process set forth in paragraphs (c) through (f) of this section.

(2) *Issuer approval.* Except as otherwise provided in this section, *issuer approval* means an approval that meets the requirements of this paragraph (b)(2). Either the governmental unit that issues the issue or the governmental unit on behalf of which the issue is issued must approve the issue. For this purpose, § 1.103-1 applies to the determination of whether an issuer issues bonds on behalf of another governmental unit. If an issuer issues bonds on behalf of more than one governmental unit (for example, in the case of an authority that acts for two counties), any one of those governmental units may provide the issuer approval.

(3) *Host approval.* Except as otherwise provided in this section, *host approval* means an approval that meets the require-

ments of this paragraph (b)(3). Each governmental unit the geographic jurisdiction of which contains the site of a project to be financed by the issue must approve the issue. If, however, the entire site of a project to be financed by the issue is within the geographic jurisdiction of more than one governmental unit within a State (counting the State as a governmental unit within such State), then any one of those governmental units may provide host approval for the issue for that project. For purposes of the host approval, if a project to be financed by the issue is located within the geographic jurisdiction of two or more governmental units but not entirely within any one of those governmental units, each portion of the project that is located entirely within the geographic jurisdiction of the respective governmental units may be treated as a separate project. The issuer approval provided pursuant to paragraph (b)(2) of this section may be treated as a host approval if the governmental unit providing the issuer approval is also a governmental unit eligible to provide the host approval pursuant to this paragraph (b)(3).

(4) *Special rule for host approval of airports or high-speed intercity rail facilities.* Pursuant to a special rule in section 147(f)(3), if the proceeds of an issue are to be used to finance a project that consists of either facilities located at an airport (within the meaning of section 142(a)(1)) or high-speed intercity rail facilities (within the meaning of section 142(a)(11)) and the issuer of that issue is the owner or operator of the airport or high-speed intercity rail facilities, the issuer is the only governmental unit that is required to provide the host approval for that project.

(5) *Special rule for issuer approval of scholarship funding bond issues and volunteer fire department bond issues.* In the case of a qualified scholarship funding bond as defined in section 150(d)(2), the governmental unit that made a request described in section 150(d)(2)(B) with respect to the issuer of the bond is the governmental unit on behalf of which the bond was issued for purposes of the issuer approval. If more than one governmental unit within a State made a request described in section 150(d)(2)(B), the State or any such requesting governmental unit may be treated as the governmental unit

on behalf of which the bond was issued for purposes of the issuer approval. In the case of a bond of a volunteer fire department treated as a bond of a political subdivision of a State under section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to that volunteer fire department is the governmental unit on behalf of which the bond is issued for purposes of the issuer approval.

(6) *Host approval not required for issues of mortgage revenue bonds, student loan bonds, and certain qualified 501(c)(3) bonds.* In the case of a mortgage revenue bond (as defined in paragraph (g)(5) of this section), a qualified student loan bond as defined in section 144(b), and the portion of an issue of qualified 501(c)(3) bonds as defined in section 145 that finances working capital expenditures, the issue or portion of the issue must receive an issuer approval but no host approval is necessary.

(c) *Method of public approval.* The method of public approval of an issue must satisfy either paragraph (c)(1) or (2) of this section. An approval may satisfy the requirements of this paragraph (c) without regard to the authority under State or local law for the acts constituting that approval.

(1) *Applicable elected representative.* An applicable elected representative of the approving governmental unit approves the issue following a public hearing for which there was reasonable public notice.

(2) *Voter referendum.* A voter referendum of the approving governmental unit approves the issue.

(d) *Public hearing and reasonable public notice—(1) Public hearing.* *Public hearing* means a forum providing a reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the location and nature of the proposed project to be financed.

(2) *Location of the public hearing.* The public hearing must be held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit. The location of the public hearing is presumed convenient for residents of the unit if the public hearing is located in the approving governmental unit's capital or seat of government. If more than one governmental unit is required to hold a public hearing, the hear-

ings may be combined as long as the combined hearing affords the residents of all of the participating governmental units a reasonable opportunity to be heard. The location of any combined hearing is presumed convenient for residents of each participating governmental unit if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(3) *Procedures for conducting the public hearing.* In general, a governmental unit may select its own procedure for a public hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, a governmental unit may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing or that they limit their oral remarks to a prescribed time. For this purpose, it is unnecessary, for example, that the applicable elected representative of the approving governmental unit be present at the hearing, that a report on the hearing be submitted to that applicable elected representative, or that State administrative procedural requirements for public hearings be observed. Except to the extent State procedural requirements for public hearings are in conflict with a specific requirement of this section, a public hearing performed in compliance with State procedural requirements satisfies the requirements for a public hearing in this paragraph (d). A public hearing may be conducted by an individual appointed or employed to perform such function by the governmental unit or its agencies, or by the issuer. Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee of either.

(4) *Reasonable public notice.* *Reasonable public notice* means notice that is reasonably designed to inform residents of an approving governmental unit, including the issuing governmental unit and the governmental unit in whose geographic jurisdiction a project is to be located, of the proposed issue. The notice must state

the time and place for the public hearing and contain the information required by paragraph (f)(2) of this section. Notice is presumed to be reasonably designed to inform residents of an approving governmental unit if it satisfies the requirements of this paragraph (d)(4) and is given no fewer than fourteen (14) calendar days before the public hearing in one or more of the ways set forth in paragraphs (d)(4)(i) through (iv) of this section.

(i) *Newspaper publication.* Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) *Radio or television broadcast.* Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) *Governmental unit Web site posting.* Public notice may be given by electronic posting on the approving governmental unit's public Web site used to inform its residents about events affecting the residents (for example, notice of public meetings of the governmental unit). In the case of public notice provided as described in the first sentence of this paragraph (d)(4)(iii), the governmental unit must offer a reasonable, publicly known alternative method for obtaining the information contained in the public notice for residents without access to the Internet (such as telephone recordings).

(iv) *Alternative State law public notice procedures.* Public notice may be given in a way that is permitted under a general State law for public notices for public hearings for the approving governmental unit.

(e) *Applicable elected representative—*  
(1) *In general—*(i) *Definition of applicable elected representative.* The *applicable elected representative* of a governmental unit means—

(A) The governmental unit's elected legislative body;

(B) The governmental unit's chief elected executive officer;

(C) In the case of a State, the chief elected legal officer of the State's executive branch of government; or

(D) Any official elected by the voters of the governmental unit and designated for purposes of this section by the governmental unit's chief elected executive offi-

cer or by State or local law to approve issues for the governmental unit.

(ii) *Elected officials.* For purposes of paragraphs (e)(1)(i)(B), (C), and (D) of this section, an official is considered elected only if that official is popularly elected at-large by the voters of the governmental unit. If an official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, that official is deemed to be an elected chief executive officer for purposes of this section but for no longer than the official's tenure as an official popularly elected at-large.

(iii) *Legislative bodies.* In the case of a bicameral legislature that is popularly elected, both chambers together constitute an applicable elected representative. Absent designation under paragraph (e)(1)(i)(D) of this section, however, neither such chamber independently constitutes an applicable elected representative. If multiple elected legislative bodies of a governmental unit have independent legislative authority, the body with the more specific authority relating to the issue is the only legislative body that is treated as an elected legislative body under paragraph (e)(1)(i)(A) of this section.

(2) *Governmental unit with no applicable elected representative—*(i) *In general.* The applicable elected representatives of a governmental unit with no applicable elected representative (but for this paragraph (e)(2) and section 147(f)(2)(E)(ii)) are the applicable elected representatives of the next higher governmental unit (with an applicable elected representative) from which the governmental unit derives its authority. Except as otherwise provided in this section, any governmental unit from which the governmental unit with no applicable elected representative derives its authority may be treated as the next higher governmental unit without regard to the relative status of such higher governmental unit under State law. A governmental unit derives its authority from another governmental unit that—

(A) Enacts a specific law (for example, a provision in a State constitution, charter, or statute) by or under which the governmental unit is created;

(B) Otherwise empowers or approves the creation of the governmental unit; or

(C) Appoints members to the governing body of the governmental unit.

(ii) *Host approval.* For purposes of a host approval, a governmental unit may be treated as the next higher governmental unit only if the project is located within its geographic jurisdiction and eligible residents of the unit are entitled to vote for its applicable elected representatives.

(3) *On behalf of issuers.* In the case of an issuer that issues bonds on behalf of a governmental unit, the applicable elected representative is any applicable elected representative of the governmental unit on behalf of which the bonds are issued.

(f) *Public approval process—(1) In general.* The public approval process for an issue, including scope, content, and timing of the public approval, must meet the requirements of this paragraph (f). A governmental unit must timely approve either each project to be financed with proceeds of the issue or a plan of financing for each project to be financed with proceeds of the issue.

(2) *General rule on information required for a reasonable public notice and public approval.* Except as otherwise provided in this section, a project to be financed with proceeds of an issue is within the scope of a public approval under section 147(f) if the reasonable public notice of the public hearing, if applicable, and the public approval (together the notice and approval) include the information set forth in paragraphs (f)(2)(i) through (iv) of this section.

(i) *The project.* The notice and approval must include a general functional description of the type and use of the project to be financed with the issue. For this purpose, a project description is sufficient if it identifies the project by reference to a particular category of exempt facility bond to be issued (for example, an exempt facility bond for an airport pursuant to section 142(a)(1)) or by reference to another general category of private activity bond together with information on the type and use of the project to be financed with the issue (for example, a qualified small issue bond as defined in section 144(a) for a manufacturing facility or a qualified 501(c)(3) bond as defined in section 145 for a hospital facility and working capital expenditures).

(ii) *The maximum stated principal amount of bonds.* The notice and approval must include the maximum stated principal amount of the issue of private activity bonds to be issued to finance the project. If an issue finances multiple projects (for example, facilities at different locations on non-proximate sites that are not treated as part of the same project), the notice and approval must specify separately the maximum stated principal amount of bonds to be issued to finance each separate project.

(iii) *The name of the initial owner or principal user of the project.* The notice and approval must include the name of the expected initial owner or principal user (within the meaning of section 144(a)) of the project. The name provided may be either the name of the legal owner or principal user of the project or, alternatively, the name of the true beneficial party of interest for such legal owner or user (for example, the name of a 501(c)(3) organization that is the sole member of a limited liability company that is the legal owner).

(iv) *The location of the project.* The notice and approval must include a general description of the prospective location of the project by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. For a project involving multiple capital projects or facilities located on the same site, or on adjacent or reasonably proximate sites with similar uses, a consolidated description of the location of those capital projects or facilities provides a sufficient description of the location of the project. For example, a project for a section 501(c)(3) educational entity involving multiple buildings on the entity's main urban college campus may describe the location of the project by reference to the outside street boundaries of that campus with a reference to any noncontiguous features of that campus.

(3) *Special rule for mortgage revenue bonds.* Mortgage loans financed by mortgage revenue bonds are within the scope of a public approval if the notice and approval state that the bonds are to be issued to finance residential mortgages, provide the maximum stated principal

amount of mortgage revenue bonds expected to be issued, and provide a general description of the geographic jurisdiction in which the residences to be financed with the proceeds of the mortgage revenue bonds are expected to be located (for example, residences located throughout a State for an issuer with a statewide jurisdiction or residences within a particular local geographic jurisdiction, such as within a city or county, for a local issuer). For this purpose, in the case of mortgage revenue bonds, no information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

(4) *Special rule for qualified student loan bonds.* Qualified student loans financed by qualified student loan bonds as defined in section 144(b) are within the scope of a public approval if the notice and approval state that the bonds will be issued to finance student loans and state the maximum stated principal amount of qualified student loan bonds expected to be issued for qualified student loans. For this purpose, in the case of qualified student loan bonds, no information is required with respect to names of specific student loan borrowers.

(5) *Special rule for certain qualified 501(c)(3) bonds.* Loans financed by qualified 501(c)(3) bonds issued pursuant to section 145 and described in section 147(b)(4)(B) (without regard to any election under section 147(b)(4)(A)) are within the scope of a public approval if the requirements of paragraphs (f)(5)(i) and (ii) of this section are met.

(i) *Pre-issuance general public approval.* Within the time period required by paragraph (f)(7) of this section, public approval is obtained after reasonable public notice of a public hearing is provided and a public hearing is held. For this purpose, a project is treated as described in the notice and approval if the notice and approval provide that the bonds will be qualified 501(c)(3) bonds to be used to finance loans described in section 147(b)(4)(B), state the maximum stated principal amount of bonds expected to be issued to finance loans to 501(c)(3) organizations or governmental units as described in section 147(b)(4)(B), provide a general description of the type of project to be financed with such loans

(for example, loans for hospital facilities or college facilities), and state that an additional public approval that includes specific project information will be obtained before any such loans are originated.

(ii) *Post-issuance public approval for specific loans.* Except as provided in paragraph (f)(5)(iii) of this section, before a loan described in section 147(b)(4)(B) is originated, a supplemental public approval for the bonds to be used to finance that loan is obtained that meets all the requirements of section 147(f) and the requirements for a public approval in paragraph (b) of this section. This post-issuance supplemental public approval requirement applies by treating the bonds to be used to finance such loan as if they were reissued for purposes of section 147(f) (without regard to paragraph (f)(5) of this section). For this purpose, proceeds to be used to finance such loan do not include the portion of the issue used to finance a common reserve fund or common costs of issuance.

(iii) *Exception to post-issuance public approval requirement.* A post-issuance supplemental public approval pursuant to paragraph (f)(5)(ii) of this section is unnecessary for the initial use of proceeds to finance one or more loans if the pre-issuance notice and approval pursuant to paragraph (f)(5)(i) of this section include the information required by paragraphs (f)(2)(i) through (iv) of this section for the projects to be financed by those loans.

(6) *Deviations in public approval information*—(i) *In general.* Except as otherwise provided in this section, a substantial deviation between the stated use of proceeds of an issue included in the information required to be provided in the notice and approval (*public approval information*) and the actual use of proceeds of the issue causes that issue to fail to meet the public approval requirement. Conversely, insubstantial deviations between the stated use of proceeds of an issue included in the public approval information and the actual use of proceeds of the issue do not cause such a failure. In general, the determination of whether a deviation is substantial is based on all the facts and circumstances. In all events, however, a change in the fundamental nature or type of a project is a substantial deviation.

(ii) *Certain insubstantial deviations in public approval information.* The following deviations from the public approval information in the notice and approval are treated as insubstantial deviations:

(A) *Size of bond issue and use of proceeds.* A deviation between the maximum stated principal amount of a proposed issuance of bonds to finance a project that is specified in public approval information and the actual stated principal amount of bonds issued and used to finance that project is an insubstantial deviation if that actual stated principal amount is no more than ten percent (10%) greater than that maximum stated principal amount or is any amount less than that maximum stated principal amount. In addition, the use of proceeds to pay working capital expenditures directly associated with any project specified in the public approval information is an insubstantial deviation.

(B) *Initial owner or principal user.* A deviation between the initial owner or principal user of the project named in the notice and approval and the actual initial owner or principal user of the project is an insubstantial deviation if such parties are related parties on the issue date of the issue.

(iii) *Supplemental public approval to cure certain substantial deviations in public approval information.* A substantial deviation between the stated use of proceeds of an issue included in the public approval information and the actual use of the proceeds of the issue does not cause that issue to fail to meet the public approval requirement if all of the following requirements are met:

(A) *Original public approval and reasonable expectations.* The issue met the requirements for a public approval in paragraph (b) of this section. In addition, on the issue date of the issue, the issuer reasonably expected there would be no substantial deviations between the stated use of proceeds of an issue included in the public approval information and the actual use of the proceeds of the issue.

(B) *Unexpected events or unforeseen changes in circumstances.* As a result of unexpected events or unforeseen changes in circumstances that occur after the issue date of the issue, the issuer determines to use proceeds of the issue

in a manner or amount not provided in a public approval.

(C) *Supplemental public approval.* Before using proceeds of the bonds in a manner or amount not provided in a public approval, the issuer obtains a supplemental public approval for those bonds that meets the public approval requirement in paragraph (b) of this section. This supplemental public approval requirement applies by treating those bonds as if they were reissued for purposes of section 147(f).

(7) *Certain timing requirements.* Public approval of an issue is timely only if the issuer obtains the public approval within one year before the issue date of the issue. Public approval of a plan of financing is timely only if the issuer obtains public approval for the plan of financing within one year before the issue date of the first issue issued under the plan of financing and the issuer issues all issues under the plan of financing within three years after the issue date of such first issue.

(g) *Definitions.* The definitions in this paragraph (g) apply for purposes of this section. In addition, the general definitions in § 1.150–1 apply for purposes of this section.

(1) *Geographic jurisdiction* means the area encompassed by the boundaries prescribed by State or local law for a governmental unit or, if there are no such boundaries, the area in which a unit may exercise such sovereign powers that make that unit a governmental unit for purposes of § 1.103–1 and this section.

(2) *Governmental unit* has the meaning of “State or local governmental unit” as defined in § 1.103–1. Thus, a governmental unit is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

(3) *Host approval* is defined in paragraph (b)(3) of this section.

(4) *Issuer approval* is defined in paragraph (b)(2) of this section.

(5) *Mortgage revenue bonds* mean qualified mortgage bonds as defined in section 143(a), qualified veterans’ mortgage bonds as defined in section 143(b), or refunding bonds issued to finance mortgages of owner-occupied residences pursuant

ant to applicable law in effect prior to enactment of section 143(a) or section 143(b).

(6) *Proceeds* means “proceeds” as defined in § 1.141–1(b), except that it does not include disposition proceeds.

(7) *Project* generally means one or more capital projects or facilities, including land, buildings, equipment, and other property, to be financed with an issue, that are located on the same site, or adjacent or proximate sites used for similar purposes, and that are subject to the public approval requirement of section 147(f). For an issue of mortgage revenue bonds or an issue of qualified student loan bonds as defined in section 144(b), the term project means the mortgage loans or qualified student loans to be financed with the proceeds of the issue. For an issue of qualified 501(c)(3) bonds as defined in section 145, the term project means a project as defined in the first sentence of this definition, and also is deemed to include working capital expenditures to be financed with proceeds of the issue.

(8) *Public approval information* is defined in paragraph (f)(6)(i) of this section.

(9) *Public hearing* is defined in paragraph (d)(1) of this section.

(10) *Reasonable public notice* is defined in paragraph (d)(4) of this section.

(11) *Voter referendum* means a vote by the voters of the affected governmental unit conducted in the same manner and time as voter referenda on matters relating to governmental spending or bond issuances by the governmental unit under applicable State and local law.

(h) *Applicability date*. This section applies to bonds issued pursuant to a public approval occurring on or after the date that is 90 days after publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For bonds issued pursuant to a public approval occurring before that date, see § 5f.103–2 as contained in 26 CFR part 5f, revised as of the date of the most recent annual revision.

## PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 3. The authority citation for part 5f continues to read in part as follows:

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

### §5f.103–2 [Removed]

Par. 4. Section 5f.103–2 is removed.

Kirsten Wielobob,  
*Deputy Commissioner for Services  
and Enforcement.*

(Filed by the Office of the Federal Register on September 27, 2017, 8:45 a.m., and published in the issue of the Federal Register for September 28, 2017, 82 F.R. 45233)

## Rev. Proc. 2017–54

### SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2017.

### SECTION 2. BACKGROUND

Rev. Proc. 92–31, 1992–1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92–31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 2017.

### SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 2017 is as follows:

<i>Qualified State</i>	<i>Amount Allocated</i>
Alabama	52,860
California	426,613
Connecticut	38,873
Delaware	10,348
Florida	224,039
Idaho	18,294
Illinois	139,141
Kansas	31,600
Kentucky	48,226

<i>Qualified State</i>	<i>Amount Allocated</i>
Maryland	65,393
Massachusetts	74,038
Michigan	107,912
Minnesota	59,997
Montana	11,331
Nebraska	20,729
New Hampshire	14,508
New Jersey	97,218
New Mexico	22,619
New York	214,614
North Carolina	110,287
Ohio	126,238
Oklahoma	42,646
Oregon	44,492
Pennsylvania	138,953
South Dakota	9,407
Texas	302,842
Utah	33,164
Vermont	6,789
Virginia	91,429
Washington	79,214
West Virginia	19,902
Wisconsin	62,809

### EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state’s housing credit ceiling for calendar year 2017.

### DRAFTING INFORMATION

The principal author of this revenue procedure is James A. Holmes of the Office of Associate Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Holmes at (202) 317-4137 (not a toll-free number).

## Section 42.—Low-Income Housing Credit

26 CFR 1.42-14. Allocation rules for post-1989 State housing credit ceiling amounts. Guidance is provided to state housing credit agencies of qualified states that request an allocation of unused housing credit carryover under section 42(h)(3)(D) of the Internal Revenue Code. See Rev. Proc. 2017–54, page 336.

# 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 sub-

stance 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.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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