

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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

ADMINISTRATIVE

Notice 2023-21, page 563.

This notice under § 7508A of the Internal Revenue Code postpones the beginning of the lookback periods under § 6511 for certain taxpayers to file a claim for refund. The affected taxpayers are those that had tax returns due from April 15, 2020, to July 15, 2020, or from April 15, 2021, to May 17, 2021, and due to the COVID-19 pandemic, those due dates were postponed by Notice 2020-23 or Notice 2021-21 to July 15, 2020 or May 17, 2021, respectively. Those 2020 and 2021 notices did not postpone the beginning of the lookback periods under § 6511 for claiming refunds related to those returns. This notice aligns the lookback periods with the postponed 2020 and 2021 tax return filing due dates.

T.D. 9972, page 530.

The final regulations amend the rules for filing certain returns and statements electronically to reflect changes made by the Taxpayer First Act of 2019 and to promote electronic filing.

EMPLOYEE PLANS

Notice 2023-19, page 560.

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

REG 122286-18, page 565.

These proposed regulations provide rules relating to the use of forfeitures in qualified retirement plans, including a deadline for the use of forfeitures in defined contribution plans,

Bulletin No. 2023-11
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and clarify that forfeitures arising in any defined contribution plan (including in a money purchase pension plan) may be used for one or more of the following purposes, as specified in the plan: (1) to pay plan administrative expenses, (2) to reduce employer contributions under the plan, or (3) to increase benefits in other participants' accounts in accordance with plan terms. The proposed regulations would require that plan administrators use or allocate forfeitures no later than 12 months after the close of the plan year in which the forfeitures are incurred. The proposed regulations also update rules relating to the use of forfeitures in defined benefit plans to reflect statutory changes enacted after the existing regulations were promulgated.

INCOME TAX

AOD 2023-2, page 529.

Issue 1:

Nonacquiescence to the court's conclusion that the parties' failure to report the transactions fully or consistently should not be a major factor in a decision whether to allow a taxpayer to disavow the form of its transactions and also to the standard the court applied to allow petitioner to disavow its form in this case.

Issue 2:

Nonacquiescence to the court's determination that the fair market value of a "Deferred Payment Right" (as described therein) for purposes of section 351(b)(1) is not equal to its issue price.

T.D. 9973, page 557.

This document contains final regulations that treat members of a consolidated group as a single United States shareholder in certain cases for purposes of section 951(a)(2)(B) of the Internal Revenue Code.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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.

Actions Relating to 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:

Complex Media, Inc. v. Commissioner, T.C. Memo. 2021-14¹

¹Issue 1:

Nonacquiescence to the court’s conclusion that the parties’ failure to report the transactions fully or consistently should not be a major factor in a decision whether to allow a taxpayer to disavow the form of its transactions and also to the standard the court applied to allow petitioner to disavow its form in this case.

Issue 2:

Nonacquiescence to the court’s determination that the fair market value of a “Deferred Payment Right” (as described therein) for purposes of section 351(b)(1) is not equal to its issue price.

Part I

T.D. 9972

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 53, 54, and 301

Electronic-Filing Requirements for Specified Returns and Other Documents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations amending the rules for filing electronically and affects persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The final regulations reflect changes made by the Taxpayer First Act (TFA) and are consistent with the TFA's emphasis on increasing electronic filing.

DATES: *Effective date:* These regulations are effective on February 23, 2023.

Applicability dates: For dates of applicability, see §§1.1461-1(j), 1.1474-1(j), 1.6033-4(b), 1.6037-2(b), 1.6045-2(i), 1.6045-4(s), 1.6050I-1(h), 1.6050I-2(f), 1.6050M-1(f), 53.6011-1(e), 54.6011-3(f), 301.1474-1(e), 301.6011-2(g), 301.6011-3(f), 301.6011-5(f), 301.6011-10(c), 301.6011-11(e), 301.6011-12(f), 301.6011-13(f), 301.6011-14(f), 301.6011-15(f), 301.6012-2(f), 301.6033-4(d), 301.6037-2(f), 301.6057-3(f), 301.6058-2(f), 301.6059-2(e), and 301.6721-1(h).

FOR FURTHER INFORMATION CONTACT: Casey R. Conrad of the Office of the Associate Chief Counsel (Pro-

cedure and Administration), (202) 317-6844 (not a toll-free number). The phone number above may also be reached by individuals who are deaf or hard of hearing or who have speech disabilities through the Federal Relay Service toll-free at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Income Taxes (26 CFR part 1) under sections 1461 and 1474 of the Internal Revenue Code (Code), which provide that persons required to deduct and withhold tax are liable for such tax; under sections 6045 and 6050M of the Code, which require persons to file and furnish certain information with respect to transactions and contracts; and under section 6050I of the Code, which requires persons to report information about financial transactions to the IRS; to the Regulations on Pension Excise Taxes (26 CFR part 54) under section 6011 of the Code, which requires persons to report information for certain excise taxes related to employee benefit plans; to the Regulations on Foundation and Similar Excise Taxes (26 CFR part 53) under section 6011 of the Code to remove the option—available to a person required to report certain excise taxes on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*—to designate a Form 4720 filed by a private foundation or trust as that person's return if the foundation is reporting the same transaction; and to the Regulations on Procedure and Administration (26 CFR part 301) under sections 1474, 6011, 6012, 6033, 6057, 6058, and 6059 of the Code for determining whether returns must be filed using magnetic media (references to “electronic form” are used in place of “magnetic media”).

On July 1, 2019, the President signed into law the TFA, Public Law 116-25, 133 Stat. 981 (2019). Section 2301 of the TFA amended section 6011(e) by adding new paragraph 5 that authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations that

decrease, in accordance with the TFA, the number of returns a taxpayer may file without being required to file electronically. Section 3101 of the TFA amended section 6011 to require any charitable or other organization required to file an annual return that relates to any tax imposed by section 511 on unrelated business taxable income to file those returns in electronic form. Section 3101 of the TFA also amended section 6033 to require any organization required to file a return under section 6033 to file those returns in electronic form.

On July 23, 2021, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (NPRM) (REG-102951-16) in the **Federal Register** (86 FR 39910), providing guidance on the electronic-filing rules for partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The 2021 proposed regulations also withdrew the proposed regulations published in the **Federal Register** on May 31, 2018, amending the rules for determining whether information returns must be filed electronically. The 2018 and 2021 proposed regulations are included in the rulemaking docket for this Treasury Decision on www.regulations.gov.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received 22 comments in response to the proposed regulations. All comments were considered and are available at www.regulations.gov or upon request. A public hearing was held on September 22, 2021. Three commenters testified at the public hearing. The comments that are within the scope of the regulations are summarized and discussed in this preamble.

After consideration of the comments, the Treasury Department and the IRS adopt the proposed regulations as revised by this Treasury Decision. To the extent

not inconsistent with the Summary of Comments and Explanation of Revisions section of this preamble, the Explanation of Provisions section of the preamble to the proposed regulations is incorporated in this document.

I. The Applicability Date of the Final Regulations

A. Applicable for Returns Required to be Filed in 2024

In general, the proposed regulations provide that the amended electronic-filing rules would be applicable to returns required to be filed during calendar years beginning after the date of publication of the Treasury Decision in the **Federal Register**. The proposed regulations provide for other applicability dates depending on the filing requirements for specific tax forms. For example, the proposed regulations provide that the changes to the electronic-filing rules would apply to returns required to be filed under §301.6058-2 for plan years that begin on or after January 1, 2022, but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022.

The majority of commenters recommended delaying the applicability of the proposed changes by at least one calendar year to provide time for their customers to adjust inventories; for software companies to adjust their programming; for paper filers and the IRS to adjust their processes; and for the IRS to communicate the changes to the public. One commenter, a manufacturer and supplier of tax forms, expressed concern that the timing of the proposed changes would impose financial burdens on their customers, buyers, and resellers of tax forms, because planning and purchasing inventory had already begun when the proposed regulations were published. That commenter also was concerned that those filers needing a Transmitter Control Code (TCC), required for electronically filing most information returns, would not be able to obtain one for the 2022 filing season, because applications for a TCC were due by November 1, 2021. Another commenter, a seller of paper forms, similarly noted that demand for paper tax forms generally begins long before the filing season starts, and that tax

professionals and suppliers had already begun ordering and shipping paper tax forms for the 2022 filing season before the proposed regulations were published. The commenters also asserted that changes in the electronic-filing rules made near the start of filing season have a substantial impact on tax-software companies that must adjust their systems to comply with the changes.

Other commenters supported the IRS's efforts to modernize the return-filing process to require withholding agents to electronically file Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and shared the IRS's desire to improve the timeliness and accuracy of refunds and credits claimed by foreign persons with amounts withheld. But they suggested that the IRS delay the applicability date of the proposed changes by at least one calendar year to provide time for the IRS and withholding agents to prepare for the electronic filing of Forms 1042. They requested that the IRS provide electronic-filing specifications for Forms 1042 as soon as possible, and once provided, allow additional time to create and test the required software.

The Treasury Department and the IRS understand the concerns raised by commenters with respect to applicability dates of the regulations contained in this Treasury Decision. The Treasury Department and the IRS believe that making the new provisions for electronic filing applicable to returns and other documents required to be filed during calendar year 2024 will give affected persons ample time to prepare. Accordingly, final regulations §§1.1461-1(j), 1.1474-1(j), 1.6037-2(b), 1.6045-2(i), 1.6045-4(s), 1.60501-1(h), 1.60501-2(f), 1.6050M-1(f)(4), 54.6011-3(f), 301.1474-1(e), 301.6011-2(g)(1), 301.6011-3(f), 301.6011-5(f), 301.6011-11(e), 301.6011-12(f), 301.6011-13(f), 301.6011-14(f), 301.6011-15(f), 301.6012-2(f), 301.6037-2(f), and 301.6721-1(h) provide that the new provisions for electronic filing will apply for returns and other documents required to be filed during calendar year 2024. Sections 301.6057-3(f), 301.6058-2(f), 301.6059-2(e) provide that the new provisions for electronic filing will apply for plan years that begin on or after January

1, 2024. To avoid partial retroactive effect with respect to certain non-calendar-year taxpayers, final regulations §§301.6011-12(f), 301.6011-13(f), and 301.6012-2(f) specify that these provisions apply to returns required to be filed for taxable years ending on or after December 31, 2023. In light of the applicability dates, the language “but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022” that was included in proposed §§301.6057-3(f), 301.6058-2(f), and 301.6059-2(e) has been removed from the final regulations.

B. Applicability date for forms under section 3101 of the TFA

Section 3101 of the TFA amended section 6011 of the Code to require any organization required to file an annual return that relates to any tax imposed by section 511 on unrelated business taxable income to file the return in electronic form. Section 3101 of the TFA also amended section 6033 to require any organization required to file a return under section 6033 to file the return in electronic form. Unlike section 2301 of the TFA, the provisions in section 3101 of the TFA are self-executing and generally apply to taxable years beginning after July 1, 2019, in accordance with section 3101(d) of the TFA. The applicability date of final regulations §§1.6033-4(b), 53.6011-1(e), 301.6011-10(c), and 301.6033-4(d) (returns required to be filed during calendar years beginning after the date of publication of the Treasury Decision in the **Federal Register**) does not affect the requirements under section 3101 of the TFA.

II. The Electronic-Filing Rules for Information Returns

A. The electronic-filing threshold

Proposed §301.6011-2(b) and (c) provide that if a person is required to file, during calendar year 2022, a total of at least 100 information returns covered by §301.6011-2(b)(1) and (2), and during calendar years 2023 and after, a total of at least 10 such returns, the person is required to file those information returns electronically (electronic-filing threshold for information returns). Because these

final regulations are not applicable until calendar year 2024, the proposed electronic-filing thresholds of 100 for returns required to be filed in calendar year 2022, and 10 returns for returns required to be filed in calendar year 2023 are not adopted. The electronic-filing threshold for returns required to be filed in calendar years 2022 and 2023 remains at 250. The final regulations adopt, however, the proposed electronic-filing threshold of 10 for returns required to be filed on or after January 1, 2024, as authorized by Congress's enactment of section 2301 of the TFA.

Two commenters disagreed with the proposed reduction to 10 returns for small businesses. Both questioned the need for an electronic-filing rule at all and suggested that businesses should be afforded flexibility in how they file their returns, rather than be required to file returns electronically when they have filed paper returns for years. The first commenter supported the proposed reduction of the electronic-filing threshold for information returns from 250 to 100 returns but disagreed with the proposed reduction to 10 returns because it was "unnecessary and lacks empathy for the challenges facing small businesses." The second believed that any reduction to the electronic-filing threshold should be a small, gradual reduction and added that some small businesses have little to no understanding of the Internet and requiring these filers to electronically file their returns would be challenging.

The Treasury Department and the IRS disagree with the commenters' suggestions because electronic filing has become more common, accessible, and economical, as evidenced by the prevalence of tax-return preparers and third-party service providers who offer return-preparation and electronic-filing services; by the availability of tax-return-preparation software; and by the numbers of returns already being filed electronically on a voluntary basis. Although the Treasury Department and the IRS understand that these changes to the electronic-filing requirements may constitute a burden in the short term for some filers, the final regulations do not adopt these comments. To address any undue hardship that these changes to the electronic-filing rules may have on certain small businesses that are paper information-return filers, the IRS will continue to

grant hardship waivers fairly and consistently and to grant reasonable-cause relief from penalties for failure to file returns electronically in appropriate cases. Additionally, the Treasury Department and the IRS expect the administrative costs to electronically file returns to be further reduced for taxable year 2022 and later years with the launch of the Information Returns Intake System (IRIS) Taxpayer Portal, an internet platform for Form 1099 filings.

B. Filing corrected information returns in same manner as originals

Proposed §301.6011-2(c)(4)(ii) provides a rule for the manner of filing corrected returns. Proposed §301.6011-2(c)(4)(ii)(A) provides that if a person is required to file original information returns electronically, that person must file any corresponding corrected information returns electronically. Proposed §301.6011-2(c)(4)(ii)(B) provides that, if a person is permitted to file information returns on paper and does file those information returns on paper, that person must also file any corresponding corrected information returns on paper.

One commenter generally supported the corrected-return rule, but expressed concern that the rule could occasionally be an inconvenience to some people or that an intervening event could occur that would require filers to change their method of filing. Two other commenters noted that the corrected-return rule would add an additional burden on filers because many software options provide electronic filing of original returns but not corrected ones. One of these commenters recommended that the Treasury Department and the IRS delay requiring filers to correct their electronically-filed returns electronically until the IRS has a platform in place (for example, the internet platform for Form 1099 filings required by section 2102 of the TFA) that will accept corrected information returns online. Another commenter opined that the IRS should not require corrected returns to be filed in a particular manner, but should instead "encourage the most efficient way to serve the majority better."

The final regulations do not adopt these comments. The Treasury Depart-

ment and the IRS have determined that, because of the disparate procedures for processing paper and electronic information returns, the corrected-return rule will increase the IRS's timeliness and accuracy in processing information returns, which will improve tax administration with respect to corrected returns. The Treasury Department and the IRS expect that the number of software options providing electronic filing for corrected returns will increase to meet that expected increase in demand. The IRS will work with the tax-software community to encourage them to develop software options for corrections. If an intervening event or the cost to purchase electronic-filing software for corrected information returns would cause a filer undue hardship, the filer may request a waiver from the electronic-filing requirement for the corrected information returns. As discussed in this preamble, the changes to the information return electronic-filing rules, including the corrected-return rule, in this Treasury Decision will apply for returns required to be filed after December 31, 2023, which is after the launch of the Form 1099 filing platform. See section I.A. Applicable for Returns Required to be Filed in 2024.

C. TCC issues for non-United States (U.S.) filers

The proposed regulations would increase the number of non-U.S. filers required to electronically file their information returns. On July 26, 2021, the IRS announced changes to the procedures for filers to authenticate their identities to create an account to apply for a TCC, which is required to electronically file most information returns. See FIRE System Update: Improving the Process and Security for Information Return (IR) Application for Transmitter Control Code (TCC), IRS (Oct. 1, 2021), <https://www.irs.gov/tax-professionals/fire-system-update-improving-the-process-and-security-for-information-return-ir-application-for-transmitter-control-code-tcc> (last visited January 13, 2023).

Several commenters expressed concern with the changes to the authentication identity-proofing procedures. One commenter mentioned that a significant

number of qualified intermediaries and foreign filers would not be able to electronically file information returns, such as Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, and 1099, because the new authentication procedures require users to have U.S.-based information, such as a U.S. Taxpayer Identification Number, U.S. telephone number, or U.S. financial account, to authenticate their identity before obtaining a TCC. Two other commenters expressed similar concerns with respect to all non-U.S. filers, specifically noting that due to client confidentiality and related issues, it is not feasible to require non-U.S. filers to engage third parties to file returns on their behalf. Two of the commenters recommended the IRS exclude qualified intermediaries and other non-U.S. filers from the secure authentication identity-proofing procedures to ensure they can continue to submit their information returns electronically. The other commenters recommended that the IRS, without compromising the security objectives, make accommodations for foreign filers so they can continue to file their information returns electronically.

The Treasury Department and the IRS are aware of this authentication issue for non-U.S. filers, but the final regulations do not adopt the suggestion to provide a blanket electronic-filing exemption for non-U.S. filers. The IRS's preferred approach, in light of the TFA's emphasis to increase electronic filing, is to develop alternative authentication requirements for identity proofing in accordance with standards set forth by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST). The IRS is thus actively working to develop updated authentication procedures for non-U.S. filers that comply with the NIST standards and will inform the public in subsequent guidance or public pronouncement when these procedures become available.

D. Form 1042-S issues

Proposed §301.6011-2(b)(1) includes Form 1042-S in the list of information returns covered by the electronic-filing rules set forth in that regulation. Form 1042-S has been included in the regulation since 1986. The proposed reg-

ulation, however, counts all the information returns in the aggregate to determine if the filer must electronically file. In addition, the proposed regulation decreases the number of information returns that can be filed on paper from 250 to 10, for returns required to be filed in calendar year 2023 and after. Two commenters requested that the Treasury Department and the IRS remove Form 1042-S entirely from the list of returns included in the proposed regulations because of the changes to Form 1042-S since 2013. For example, the 2013 Form 1042-S code for "other income" was income code 50, but the "other income" code was later changed to income code 23. The two commenters opined that changes to these codes could confuse filers and recipients of the form, and that updating the software to address these changes could present challenges to software providers. One of the commenters stated that the proposed regulations would disproportionately affect occasional and low-volume filers of the Form 1042-S who may not have sufficient resources to comply with the proposed regulations. Both commenters opined that, if Form 1042-S is removed from the aggregation rule, the IRS would not need as many resources to deal with improper filing errors and requests for a waiver from electronic filing for Forms 1042-S.

The final regulations do not adopt these comments. Although Form 1042-S underwent several changes for taxable year 2014 to accommodate reporting of payments and amounts withheld under the provisions of the Foreign Account Tax Compliance Act, the form has not undergone a large number of changes since then. For example, the 2022 Form 1042-S added to the form four new codes, but each was assigned a completely new number that was not previously listed on the 2021 Form 1042-S. Absent extraordinary circumstances, such as relevant statutory changes, no substantial changes to the income codes on Form 1042-S are expected at this time. To the extent, however, that taxpayers receiving Forms 1042-S have questions about how to report the information, the IRS updates the Instructions for Form 1042-S and the instructions for income tax returns each year so that taxpayers will have the most up-to-date in-

formation. Finally, the Treasury Department and the IRS have determined that the benefits to be gained in the form of faster and more accurate return processing outweigh any concerns about IRS resources needed in processing electronic-filing waiver requests.

III. Waiver and Exemptions

As described in the preamble to the proposed regulations, many of the regulations imposing electronic-filing requirements also provide a waiver from electronic filing to any person who establishes undue hardship. The Treasury Department and the IRS specifically requested comments on how the hardship-waiver procedures should be administered, including suggestions for revising the procedures for requesting, and criteria for granting, a hardship waiver, and received several comments in response.

A. Cost concerns

One commenter generally supported the proposed rules, noting that electronic filing not only significantly reduces paper waste but also is faster and more reliable than paper filings, which can get lost in the mail. Another commenter agreed that all persons should "get on board with the digital age of tax record keeping and filing," but commented that new small businesses with little resources and businesses that have paper filed for years may not want to file electronically or may not know how. Both commenters expressed concern over the cost of electronic filing, suggesting that the IRS waive all or part of the cost for low-income taxpayers and others experiencing financial hardship.

The final regulations do not adopt these comments. The preamble to the proposed regulations describes the recent reduction in costs to electronically file and the significant benefits of moving to electronic filing. To address any undue hardship on certain small businesses arising from these changes to the electronic-filing rules, the Treasury Department and the IRS will continue to administer the hardship-waiver program fairly and consistently and to grant reasonable-cause relief from penalties for failure to file returns electronically in appropriate cases.

B. General waiver and exemption procedures

Three commenters expressed concern that, unless the IRS provides administrative exemptions or hardship waivers, the proposed regulations under section 6011(e) would impose burdens upon discrete populations including, for example, members of certain religious communities; remote populations; and elderly individuals without adequate technological literacy.

With respect to religious communities, the commenters noted that members of certain religious communities, in accordance with their religious practices, generally do not use technology and have tenets and teachings that prohibit community members from having internet access or the technology required to electronically file tax returns. The commenters thus expressed concern that the reduction of the electronic-filing threshold to 10 returns with respect to information returns, partnership returns, corporate income tax returns, and electing small business income tax returns would now require many small business owners who are members of these religious communities to file these returns electronically, in violation of their religious practices. The commenters recommended two alternative changes to the waiver procedures: that the Treasury Department and the IRS expand the current waiver request form, Form 8508, *Request for Waiver From Filing Information Returns Electronically*, to include either a one-time or an annual application for exemption from electronic-filing requirements, based on religious beliefs, for any form the filer is required to file electronically; or that a new form be created, similar to Form 8948, *Preparer Explanation for Not Filing Electronically*, that could be attached to the paper-filed return to explain that the filer was filing on paper because of religious beliefs.

The Treasury Department and the IRS agree that filers for whom using the technology required to file in electronic form conflicts with their religious beliefs should be granted administrative exemptions from the electronic-filing requirements for information returns under §301.6011-2; partnership returns under §301.6011-3; corporate income tax returns under

§301.6011-5; electing small business income tax returns under §301.6037-2; and other returns and statements that the IRS determines appropriate. To that end, final regulations §§301.6011-2(c)(6)(ii); 301.6011-3(b)(2); 301.6011-5(b)(2); and 301.6037-2(b)(2) provide that an exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. Additionally, except as described in section III.C. of this preamble, the final regulations authorize the Commissioner to provide exemptions from the electronic-filing requirements to promote effective and efficient tax administration. Finally, these final regulations clarify that a submission claiming an exemption should be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including posting to the *IRS.gov* website. In general, exemptions will be made available on a form-by-form basis rather than on a per-filer basis to allow the IRS to appropriately address differences in filing requirements and filer populations.

With respect to remote populations, one of the commenters expressed concern that many Native tribes, such as Native Alaskan tribes, lack access to Internet and computers and that the reduction of the electronic-filing threshold for information returns would impact some of these Native Alaskans, for example, a commercial fishing captain. This commenter also stated that a disproportionate number of Americans in business age 65 or older may lack the ability or accessibility to electronically file tax returns and that the cost for these older taxpayers to pay a third party to electronically file could force them out of business. The commenter asked whether factors other than financial cost, such as a filer's lack of access to digital technology or a filer's age, are factored into the IRS's decision on whether to grant a waiver request. The commenter further expressed concern that granting a hardship waiver is discretionary and that the procedures do not include an objective threshold or standard on how much the cost to electronically file must exceed the cost to paper file for the IRS to grant an electronic-filing waiver. The commenter thus recommended that the Treasury Department and the IRS expand or clarify

that the hardship-waiver procedures to include Native tribes and other persons with difficulty accessing or using technology.

The Treasury Department and the IRS expect rural filers without access to internet and older filers that lack digital literacy to make good faith efforts to comply with the electronic-filing requirements of these regulations, which may require obtaining additional assistance to electronically file. To the extent the burden of obtaining the necessary assistance to file returns would cause undue hardship, the filers may submit a hardship-waiver request from the electronic-filing requirements.

Under section 6011(e)(2)(B) of the Code, the IRS must consider (among other relevant factors) the taxpayer's ability to comply at a reasonable cost with the requirements of such regulations. To determine whether a taxpayer can comply with the electronic-filing requirements at a reasonable cost, the IRS requires the taxpayer to provide two estimates of the cost that the taxpayer would incur to convert to electronic filing. Financial cost, however, is not the only factor that the IRS may consider. Under current procedures, for example, the IRS will consider granting a waiver from the electronic-filing requirements for information returns covered under §301.6011-2(b) if a fire, casualty, or natural disaster affected the operation of the business. The proposed hardship-waiver language, for example in proposed §301.6011-2(c)(6)(i), provides that "[t]he principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper." Because the IRS takes other factors into consideration when analyzing a request for a waiver from electronic-filing requirements, the final regulations are modified to read, "One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper." The Treasury Department and the IRS anticipate that additional details on the specific hardship-waiver procedures for each form affected by this Treasury Decision will be included in future public releases of IRS forms and instructions. After considering pub-

lic comments, the IRS revised the Form 8508 in January 2023 to clarify the circumstances the IRS may accept to justify a waiver from the e-filing requirement for the information returns listed on the Form, including hardships other than financial hardship. The Treasury Department and the IRS have thus determined that the IRS's current hardship-waiver procedures provide appropriate relief to rural and older taxpayers from any undue burdens arising from these changes to the electronic-filing rules. Reasonable cause relief from penalties may also be available for these filers.

The final regulations also clarify that, if the IRS's systems do not support electronic filing for a specific return required to be filed electronically with the IRS, a taxpayer will not be required to file the return electronically. Several of the final regulations require the electronic filing of returns that were previously filed on paper only. If the IRS's systems do not have the capacity to accept a particular type of return electronically when the electronic-filing requirements become applicable, this provision clarifies that a taxpayer will not be required to file that type of return electronically. In such situations, a taxpayer will not be required to submit a request for a hardship waiver to file that type of return on paper.

Finally, one of the commenters expressed concern with the statement in the proposed regulations that "a request for a hardship waiver must be made in accordance with postings, guidance, forms or instructions, including those *on the IRS.gov website*" because these discrete populations, without access to the website, might not have the latest guidance posted to the website, and so might be filing a hardship-waiver request based on outdated guidance from paper forms and instructions. The commenter thus recommended that the IRS be lenient in imposing penalties on taxpayers of faiths who avoid technology, filers that lack access to technology, and older Americans who in good faith request a hardship waiver in compliance with outdated guidance.

The Treasury Department and the IRS have determined that to the extent that a taxpayer can show reasonable cause for failure to file electronically, including valid impediments to making a proper waiver

request, the penalty for failure to file will not apply.

C. Exceptions to general waiver and exemption procedures

The final regulations do not provide for waivers and exemptions in all circumstances or for all tax forms required to be electronically filed.

1. Returns required under section 3101 of the TFA

Section 3101 of the TFA sets forth two requirements for mandatory electronic filing by tax-exempt organizations: under new section 6011(h), organizations with returns relating to any tax imposed under section 511 on unrelated business taxable income "shall file such return in electronic form," and under new section 6033(n), organizations with returns required to be filed under section 6033 "shall file such return in electronic form." Thus, the TFA amendments expand the class of forms that tax-exempt entities are currently required to file electronically, such as the Form 990-N, *Electronic Notice (e-Postcard)*, and Form 8871, *Political Organization Notice of Section 527 Status*.

Section 3101 of the TFA states that organizations required to file a return under sections 6011(h) or 6033(n) "shall" file such return in electronic form and does not provide for any waiver or alternative method to meet the electronic-filing requirements. The legislative history to section 3101 of the TFA explains that mandatory electronic filing by all tax-exempt organizations required to file returns will improve efficiency, reduce costs, and generally improve oversight of tax-exempt organizations. H. Rep. No. 116-39, at 97-98 (2019). Section 3101 of the TFA also amended section 6104(b) to provide that "[a]ny annual return required to be filed electronically under section 6033(n) shall be made available by the Secretary to the public as soon as practicable in a machine-readable format." The legislative history explains that it is important to increase the transparency of, and enhance public access to, information about tax-exempt organizations, particularly charitable organizations. *Id.* The legislative history further explains that this will expedite the

publication of the information required to be disclosed by the IRS and will enhance its usability by stakeholders attempting to exercise oversight of tax-exempt organizations. *Id.* Such stakeholders include not only members of the public who may support or donate to an organization, but also state and local officials charged with oversight responsibilities and responsibility for prosecuting fraudulent charities.

In contrast to forms affected by section 2301 of the TFA, there is no requirement that an alternate paper filing process be provided for certain filers of forms affected by section 3101 of the TFA (such as for filers filing fewer than 10 returns). Further, in contrast to forms affected by section 2301 of the TFA, information returns affected by section 3101 of the TFA are required to be released to the public in machine-readable format under section 6104(b), a process that would be hampered if the IRS were required to accept paper returns and frustrate the intent of Congress to expedite the publication of those returns. Proposed §§301.6011-10 and 301.6033-4, consistent with the statutory mandate to require all forms affected by section 3101 of the TFA to be electronically filed, did not provide for any waiver or exemption from the electronic filing requirements.

While public comments generally requesting waivers or exemptions from the electronic filing requirements under certain circumstances were received, §§301.6011-10 and 301.6033-4 are finalized without waiver or exemption provisions because providing a waiver or exemption provision would be contrary to the plain language of section 3101 of the TFA and inconsistent with the legislative history to that section. Notwithstanding that, the Religious Freedom Restoration Act of 1993, Public Law 103-141 (107 Stat. 1488), may provide an exemption for any filer for whom using the technology required to file electronically conflicts with their religious beliefs.

2. Qualified plan returns filed through EFAST2

On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359), requiring electronic filing of the Form 5500,

Annual Return/Report of Employee Benefit Plan, and Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, for plans covered by Title I of the Employee Retirement Income Security Act, Public Law 93-406 (88 Stat. 854), as amended (ERISA) for plan years beginning on or after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710), postponing the effective date of the electronic filing mandate so that the mandate applies to plan years beginning on or after January 1, 2009. See 29 CFR §2520.104a-2.

Filers of the Form 5500 and Form 5500-SF are required to file electronically through DOL's computerized ERISA Filing Acceptance System (EFAST2). Rev. Proc. 2015-47, 2015-39 IRB 419, sets forth procedures to request a waiver of the electronic-filing requirement due to economic hardship for plan administrators of retirement plans (or, in certain situations, employers maintaining retirement plans) that are required to file electronically certain employee benefit plan returns. Section 3 of Rev. Proc. 2015-47 provides that, because filers of Form 5500 and Form 5500-SF are required to file those returns electronically through DOL's EFAST2, a waiver of the electronic-filing requirement for those forms will not be granted. Because an actuarial report required under section 6059 is filed with Form 5500 or Form 5500-SF as a schedule and is also required to be filed electronically through DOL's EFAST2, a waiver of the electronic-filing requirement for the actuarial report also will not be granted. Sections 301.6058-2 and 301.6059-2 of the final regulations continue to provide that the Commissioner may waive the electronic-filing requirements under sections 6058 and 6059 in cases of undue economic hardship, and that a request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. However, pursuant to section 3 of Rev. Proc. 2015-47, waivers of the electronic-filing requirement for Forms 5500 and 5500-SF (and related actuarial reports) will continue to not be granted. In addition, §§301.6058-2 and 301.6059-2 of the final regulations do not provide

for any exemptions to the electronic-filing requirement for Forms 5500 and 5500-SF (and related actuarial reports) because, unlike other filings described in this Treasury Decision, Forms 5500 and 5500-SF (and related actuarial reports) are required to be filed electronically through DOL's EFAST2.

3. Form 8300

If filed electronically, Forms 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, are not filed electronically with the IRS; rather they are filed electronically through the Financial Crimes Enforcement Network's (FinCEN) BSA E-Filing System. The Treasury Department, FinCEN, and the IRS have determined that most Form 8300 filers who might have difficulty filing electronically and might therefore need a waiver, would likely not be required to file electronically in the first place because they would not meet the electronic-filing threshold in §301.6011-2(c), even after that threshold is reduced to 10 returns. See section II.A. Accordingly, the Treasury Department, FinCEN, and the IRS have determined that there is no need for a separate waiver process for Form 8300 filers. Instead, Form 8300 filers who request and receive a waiver under §301.6011-2(c) for any return required to be filed under §301.6011-2(b)(1) or (2) will automatically be deemed to have received an electronic-filing waiver for any Forms 8300 the filer is required to file for the duration of the calendar year.

IV. Form 1042 Substantiation Requirements to Claim Credit on Line 67

Proposed §§301.1474-1(a) and 301.6011-15(a) would require certain filers to electronically file Forms 1042. Forms 1042 have previously been filed only on paper. For Form 1042 filers that claim a credit on line 67 for taxes withheld by other withholding agents, the filers substantiate this credit by attaching, to the Form 1042, paper copies of the Forms 1042-S they received from those other withholding agents.

In light of the electronic-filing requirements for Form 1042, two commenters requested the IRS remove the requirement

to provide paper copies of Forms 1042-S to support the claim made on line 67 of the Form 1042, suggesting that the IRS would already have electronic copies of the Forms 1042-S filed by the other withholding agents, making the requirement duplicative.

The final regulations do not adopt these comments as they are outside the scope of these regulations, which do not impose the requirement to provide paper copies. Nonetheless, the IRS is actively working to develop programming that would allow filers to electronically attach or submit Forms 1042-S with their Forms 1042 to substantiate their claimed credit on Line 67. The IRS expects to have programming in place consistent with the applicability dates in these final regulations.

V. Regulatory Flexibility Act Certification

One commenter expressed concern that, although the proposed regulations certify that they will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act, the regulations will in fact have a "significant economic impact" on small entities.

The Treasury Department and the IRS maintain their certification that the final rules will not have a significant economic impact on a substantial number of small entities for the reasons discussed in subsection II, Regulatory Flexibility Act, of the following Special Analyses section of this preamble.

VI. Clarification on a Failure to File Electronically When Required

The proposed regulations provide that if a filer fails to file a return or report electronically when required to do so by the regulations, the filer is "deemed" to have failed to file the return or report. The word "deemed" is superfluous because a taxpayer who fails to file electronically when required to do so by these regulations has failed to file. Therefore, for sake of clarification, the Treasury Department and the IRS have made minor edits to remove the word deemed from final regulations §§54.6011-3(c), 301.1474-1(c), 301.6011-10(b), 301.6011-12(c), 301.6011-13(c), 301.6011-14(c), 301.6011-15(c),

301.6012-2(c), 301.6033-4(b), and 301.6721-1(a)(2)(ii).

VII. Clarification on 10-Return Calculation for Material Advisor Disclosure Statements

Under section 6111 and §301.6111-3(a) and (e), each material advisor is required to file a Form 8918, *Material Advisor Disclosure Statement*, with respect to any reportable transaction by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. Thus, a material advisor may not know the number of Forms 8918 it will be required to file during a calendar year until after the end of the third quarter of the calendar year. On the other hand, other returns—for example, Forms 1099, income tax returns, employment tax returns, and excise tax returns—have fixed due dates by which those returns must be filed each calendar year. A filer of those returns will therefore know at the beginning of the calendar year whether the filer is required to file at least 10 returns of those types. Thus, the Treasury Department and the IRS clarify in these final regulations that a material advisor will be required to file its Forms 8918 electronically or in other machine-readable form in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, during the calendar year only if the material advisor is required to file at least 10 returns of any type, other than Forms 8918. This clarification will help ensure material advisors understand early in the calendar year whether any Forms 8918 must be filed electronically or in other machine-readable form without complications of being unable to determine at the beginning of a calendar year the number of Forms 8918 that may need to be filed during the calendar year.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these final regulations as significant under section 1(b) of the MOA.

A. Background, Need for the Final Regulations, and Economic Analysis of Final Regulations

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, (96 Stat. 610), first directed the Secretary to prescribe regulations for requiring returns to be filed on magnetic media, a term generally used to refer to electronic filing at that time. TEFRA prohibited the Secretary from requiring income tax returns of individuals, estates, and trusts to be filed in a manner other than on paper forms. In 1998, Congress amended section 6011(e) of the Code to prohibit the Secretary from requiring the electronic filing of a return unless the filer is required to file at least 250 returns during the calendar year. The Treasury Department and the IRS subsequently issued regulations that required a person to file information returns electronically if that person is required to file 250 or more information returns in a calendar year. The regulations provide that the 250-return threshold applied separately to each type of information return covered under the regulations. The Treasury Department and the IRS also issued regulations that set a 250-return threshold in determining whether large corporation tax returns, S corporation tax returns, and other returns must be electronically filed.

Since 1998, the technology underlying electronic filing has become much more widely available, both in the form of tax return preparation software and electronic filing services offered by tax return preparers and other service providers. By 2019, over 98.8 percent of information returns were already being filed electronically. In July of that year, the President signed into law the Taxpayer First Act (TFA). The TFA authorizes the Secretary to prescribe regulations that decrease the number of returns a filer may file without being required to file electronically from 250 to 10.

When returns are filed on paper, the IRS transcribes much of the input data to electronic format. In some cases, employees must manually input this data, requiring significant IRS resources to be spent on otherwise needless processing and data entry rather than serving taxpayers in other ways. Manual data entry can cause delays in the input and retrieval of data, affecting the timeliness and accuracy of processing these forms. This can lead to delays or other disadvantageous outcomes for taxpayers. In some cases, manual data entry can cause delays in the information available for law enforcement and other users to detect potential money laundering, terrorist financing, and other tax and financial fraud. Moreover, the increased accuracy of the data received from electronic filing reduces transcription errors and the cost for the IRS and taxpayers to resolve these errors.

These final regulations impose electronic-filing requirements on persons required to file certain returns, including partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, and certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. Specifically, the final regulations reduce the 250-return threshold enacted in 1998 to the 10-return threshold provided by the TFA. Under current regulations, the 250-return threshold applies separately to each type of information return covered under the regulations. The final regulations require filers to aggregate across returns types to determine whether a filer meets the 10-return threshold and is thus required to file electronically.

The IRS receives nearly 4 billion information returns per year and projects that by 2028, it will receive over 5 billion information returns each year. See <https://www.irs.gov/statistics/soi-tax-stats-calendar-year-projections-publication-6961> (last visited January 13, 2023). In 2019, the IRS received nearly 40 million paper information returns even though approximately 99 percent of all information returns for that year were filed electronically.

For taxable year 2020, the data shows that creating a 50-return threshold would require 1-2 percent of the largest paper information return filers to file electronically, resulting in approximately 23 percent of all paper information returns currently filed to be filed electronically. For the same year, a 25-return threshold would require approximately 4-5 percent of the largest paper information return filers to

file electronically, resulting in approximately 39-41 percent of paper information returns currently filed to be filed electronically. At the 10-return threshold, the IRS is only requiring 13-16 percent of the largest paper information return filers to file electronically, but this will result in 62-64 percent of all outstanding paper information returns to be filed electronically.

In 2020, approximately 13 million out of 35 million paper information returns were filed by filers filing 1-10 returns and these filers averaged 2.78 returns each. This means approximately 85 percent of all paper information return filers would not be subject to the electronic-filing mandate at a 10-return threshold based on the 2020 data, yet nearly two-thirds of all paper information returns would then be required to be filed electronically. Thus the high rate of electronic filing does not ne-

gate the need for regulations to further reduce the number of paper returns the IRS is required to manually process each year.

Because the vast majority of returns subject to these final regulations are already filed electronically, the Treasury Department and the IRS expect that the final regulations will not have any meaningful impact on economic behavior. Electronic filing has become more common, accessible, and economical. The table below shows recent trends in the electronic-filing rates of tax returns and information returns. Eighty-one percent of all tax returns, including 95 percent of individual income tax returns, were filed electronically in fiscal year 2020, rising from 68 percent for all tax returns and 87 percent for individual income tax returns in 2016. Nearly all information returns submitted to the IRS were filed electronically.

Fiscal Year	2016	2017	2018	2019	2020
All tax returns	68%	70%	71%	73%	81%
Individual income tax returns	87%	88%	88%	90%	95%
Information returns, excluding forms processed by the Social Security Administration (Form SSA-1099, Form RRB-1099, and W-2)	99%	99%	99%	99%	100%

Data source: IRS Publication 6292 and IRS Data Book

In the limited circumstances in which the cost to comply with these electronic-filing requirements would cause undue hardship, many of these regulations provide a waiver from electronically filing. The IRS routinely grants meritorious hardship waiver requests. According to the regulations, such undue hardship could be caused by a range of factors that are not limited to the financial cost that would be incurred by the filer. For example, a hardship to comply with the electronic-filing requirements can apply to remote populations with limited online access and filers who lack adequate technological proficiency. Regardless of the factors, little economic burden is expected for the waiver process because submitting a hardship waiver requires no more technology than filing paper returns. For information returns, waiver requests can be made for many returns on the same Form 8508. (See instructions for Form 8508.)

In addition to hardship waivers, the final regulations provide exemptions for

religious communities for whom using the technology required to file in electronic form conflicts with their religious beliefs. An exemption means that filers do not have to be pre-approved to paper file. Thus, filers that are eligible for an exemption would not experience additional burden under the regulations.

In enacting TFA, Congress made clear its intention to broaden the requirements to file returns electronically. However, the broadened requirements intended by Congress will not occur without final regulations. In the absence of these regulations, the IRS would continue to devote resources to costly and inefficient processing of paper filings, resources that could be allocated to modernization of IT infrastructure.

Significant administrative costs include the time it takes an IRS employee to manually process paper information returns. First, the IRS employee must open and inspect the mail to determine what type of return or other form is in

the envelope, re-route the form if needed, ensure the return is processable and includes a Taxpayer Identification Number (TIN), and then date stamp the return. This initial step must take place within 30 days of receipt to allow timely correspondence with the filer of processable returns to give the filer time to correct the mistakes and re-file.

The IRS employee must next review the return to determine whether it is scannable or non-scannable, which includes removing staples and taping any cuts or torn portions of the document. The IRS employee must then cross check the information on the returns against the parent transmittal return (Form 1096) for the payer's TIN, payer's name, and if either is missing or illegible, cross check other submissions for the information or send correspondence to the filer.

Scannable submissions are then prepared for processing through the Service Center Recognition/Image Processing System (SCRIPS). Non-scannable sub-

missions are sorted, coded, and batched after ensuring all necessary information is included, which varies between types of information returns. The batched information returns are then forwarded to the appropriate IRS facility for Integrated Submission and Remittance Processing (ISRP). The ISRP employee must manually enter all required fields and add the appropriate document and format codes in accordance with the Internal Revenue Manual.

In August 2020, the IRS projected the potential cost and savings for implementation of the reduction of the electronic-filing threshold. The IRS estimated that the savings for IRS Submission Processing (IRS SP) due to fewer paper information returns to process when the electronic-filing threshold was reduced from 250 to 100 returns is 35 full-time equivalents (FTEs), or \$2 million. This savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 9 FTEs, or \$500,000. Thus, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 250 to 100 returns is estimated to be 26 FTEs, or \$1.5 million.

The IRS estimated that the savings for IRS SP due to fewer paper information returns to process when the electronic filing threshold was reduced from 100 to 10 returns is 147 FTEs, or \$8.3 million. This savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 40 FTEs, or \$2.3 million. Thus, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 100 to 10 returns is estimated to be 107 FTEs, or \$6 million.

Finally, the IRS estimated that the savings for IRS SP due to fewer paper information returns to process when the electronic-filing threshold was reduced from 250 to 10 returns is 182 FTEs, or \$10.3 million. For the first year of the reduction, the savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 49 FTEs, or \$2.8 million. Thus, for the first year of implementation, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 250 to 10 returns is estimated to be 133 FTEs, or \$7.5 million.

For each subsequent year, the IRS estimated that the savings for IRS SP due to fewer paper information returns to process is 147 FTEs, or \$8.3 million, which would be offset by some cost for telephone support.

An increase in electronic filing percentage rates change will result in millions fewer paper documents, freeing up valuable IRS resources for other tasks. Based on taxable year 2020 data, a 10-return electronic-filing threshold would have resulted in approximately 21 million fewer paper information returns. While the IRS projects the number of paper returns will continue to decrease even absent changes to the regulations, the decrease is projected to be gradual.

Requiring more electronic filing would increase the timeliness and accuracy of data entry, reduce postage costs, promote IT modernization efforts, reallocate IRS staff for priority assignments, and provide IRS criminal and civil investigators and other agencies with access to the data with more up-to-date and accurate information. Moreover, increased efficiency in processing returns will allow the IRS to provide faster and better customer service to taxpayers. Given the increasing prevalence of electronic filings in recent years, the final regulations reduce the 250-return threshold enacted in 1998 to the 10-return threshold provided by the TFA.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although these rules may affect a substantial number of small entities, for the reasons discussed in the following paragraphs, the economic impact is not significant.

Under section 6011(e) of the Code and §§1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and 301.6059-2, filers are already required to file returns and statements electronically if, during a calendar year, they are required to file 250 or more returns. The eight rules—§§1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and

301.6059-2—will lower the 250-return threshold to 10, as authorized by section 6011(e), as amended by section 2301 of the TFA. A filer may request that the IRS waive the electronic-filing requirement if the filer's cost to comply with the rule would cause a financial hardship. The cost to electronically-file for a filer varies by form and by how many types of forms the filer is required to file. For example, low volume information return filers can electronically-file for approximately \$3.25 per form, with options available for filing an unlimited number of information returns starting at \$120. Commercial software is available for business returns such as Forms 1120 for as low as \$125. The IRS routinely grants meritorious hardship-waiver requests. Accordingly, the economic burden on the limited number of small entities that are not currently filing electronically will be slight; small entities that would experience a financial hardship because of these eight rules may seek a waiver. Requesting a waiver will impose a minor cost in the form of time to read the expanded instructions, gather and prepare for submission the information and documents substantiating the request (if needed), and to complete the form itself.

Under section 6050I of the Code and §§1.6050I-1 and 1.6050I-2, filers are required to file Forms 8300 if, in the course of their trade or business, they receive more than \$10,000 in cash (as that term is defined in section 6050I(d)) in one transaction or in two or more related transactions. The rule under §301.6011-2(b) (3) requires filers of Forms 8300 to file those forms electronically if such filers are also required to file returns electronically under paragraphs (b)(1) and (2) of §301.6011-2. The Treasury Department and the IRS expect filers of Form 8300 to use FinCEN's BSA E-Filing System, which is free and may be accessed with an internet connection. See <https://bsaefiling.fincen.treas.gov/main.html> (last visited January 13, 2023). The filers may incur minor costs in the form of time needed to enroll in FinCEN's BSA E-Filing System and to become familiar with the system, but the enrollment process should only take several minutes. The economic impact on small entities should thus not be significant.

Under section 6011(e)(4) of the Code and §301.1474-1, financial institutions defined in section 1471(d)(5) of the Code already are required to electronically file Forms 1042-S. The rule under §301.1474-1(a) extends this filing requirement to Forms 1042 filed by the same financial institutions. Small entities that would experience a financial hardship because of this rule may seek a hardship waiver.

Under section 6011(h) of the Code, as amended by section 3101 of the TFA, organizations required to file annual returns relating to any tax imposed by section 511 must file those returns in electronic form. Because the regulation §301.6011-10 implements this statutory requirement, the economic impact of the regulation on small organizations should thus be insignificant.

Under section 6033(n), as amended by section 3101 of the TFA, organizations required to file returns under section 6033 must file those returns in electronic form. Because the regulations under §§1.6033-4, 53.6011-1, and 301.6033-4 implement this statutory requirement, the economic impact of these regulations on small organizations should thus be insignificant.

The seven regulations under §§54.6011-3, 301.6011-11, 301.6011-12, 301.6011-13, 301.6011-14, 301.6011-15, and 301.6012-2 require electronic filing for certain returns not currently required to be filed electronically. Because electronic filing has become more common, accessible, and economical, the economic impact of these rules on small entities should be insignificant. Moreover, as discussed above, if the cost to comply with these electronic-filing requirements would cause a financial hardship, an entity may request a waiver. The IRS routinely grants meritorious hardship waiver requests. Accordingly, the burden on small entities affected by these rules will be slight.

Accordingly, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy

of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

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

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C 804(2).

Statement of Availability of IRS Documents

IRS revenue procedures, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent

of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these final regulations is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and record-keeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, 54, and 301 are amended as follows:

PART 1-INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

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

Section 1.6033-4 also issued under 26 U.S.C. 6033.

* * * * *

Section 1.6037-2 also issued under 26 U.S.C. 6037.

Par. 2. Section 1.1461-1 is amended by removing paragraph (c)(5); redesignating paragraph (i) as paragraph (j); adding a new paragraph (i); and revising newly redesignated paragraph (j).

The addition and revision read as follows:

§1.1461-1 Payment and returns of tax withheld.

(i) *Reporting in electronic form.* See §§301.6011-2(b) and 301.6011-15 of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042-S and 1042 in electronic form. See §301.1474-1(a) of this chapter, which applies for purposes of this section to a withholding agent that is a financial institution with respect to the filing of Forms 1042 and 1042-S in electronic form.

(j) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023. (For returns required to be filed for taxable years ending before December 31, 2023, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2022.)

Par. 3. Section 1.1471-0 is amended by revising:

- a. The entries in the table of contents for §1.1474-1(e) and (j);
- b. The heading for §301.1474-1; and
- c. §301.1474-1(d)(1) and (e).

The revisions read as follows:

§1.1471-0 Outline of regulation provisions for sections 1471 through 1474.

§1.1474-1 Liability for withheld tax and withholding agent reporting.

(e) Reporting in electronic form.

(j) Applicability date.

§301.1474-1 Required use of electronic form for financial institutions filing Form 1042, Form 1042-S, or Form 8966.

(d) ***

(1) Magnetic media or electronic form.

(e) Applicability date.

Par. 4. Section 1.1474-1 is amended by revising paragraphs (e) and (j) to read as follows:

§1.1474-1 Liability for withheld tax and withholding agent reporting.

(e) *Reporting in electronic form.* See §§301.6011-2(b) and 301.6011-15 of this chapter, which apply for purposes of this section, for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042-S and Form 1042 in electronic form. See §301.1474-1(a) of this chapter for the requirements applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042 and 1042-S in electronic form.

(j) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023. (For returns required to be filed for taxable years ending before December 31, 2023, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2022.)

Par. 5. Section 1.6033-4 is revised to read as follows:

§1.6033-4 Required filing in electronic form for returns by organizations required to file returns under section 6033.

(a) *In general.* The return of an organization that is required to be filed in electronic form under §301.6033-4 of this chapter must be filed in accordance with IRS revenue procedures, publications, forms, instructions, or other guidance.

(b) *Applicability date.* The rules of this section apply for returns required to be filed for taxable years ending on or after February 23, 2023.

Par. 6. Section 1.6037-2 is revised to read as follows:

§1.6037-2 Required use of electronic form for income tax returns of electing small business corporations.

(a) *In general.* The return of an electing small business corporation that is required to be filed electronically under §301.6037-2 of this chapter must be filed in accordance with IRS revenue procedures, publications, forms, or instructions, including those posted electronically.

(b) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 7. Section 1.6045-2 is amended by revising paragraphs (g)(2) and (i) to read as follows:

§1.6045-2 Furnishing statement required with respect to certain substitute payments.

(g) ***

(2) *Reporting in electronic form.* For information returns filed after December 31, 1996, see §301.6011-2 of this chapter for rules relating to filing information returns in electronic form and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 electronically, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g) (4) of this section.

(i) *Applicability date.* This section applies to substitute payments received by a broker after December 31, 1984. Section 1.6045-2(c) (as contained in 26 CFR part 1, revised July 15, 2014) applies to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, §1.6045-2(c) (as contained in 26 CFR part 1, revised April 2013) applies. Paragraph (g)(2) of this section applies to information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 8. Section 1.6045-4 is amended by removing and reserving paragraph (k) and revising paragraph (s).

The revision reads as follows:

§1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

(s) *Applicability date.* This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991. Section 1.6045-4(b)(2)(i)(E), (b)(2)(ii), and (c)(2)(i) (as contained in 26 CFR part 1, revised May 28, 2009) applies to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009. Section 1.6045-4(m)(1) (as contained in 26 CFR part 1, revised July 15, 2014) applies to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, §1.6045-4(m)(1) (as contained in 26 CFR part 1, revised April 2013) applies. The removal of paragraph (k) of this section applies for information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 9. Section 1.6050I-0 is amended by revising the entry in the table of contents for §1.6050I-1(d)(2)(ii) to read as follows:

§1.6050I-0 Table of contents.

§1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.

(d) ***

(2) ***

(ii) Casinos exempt under 31 CFR 1010.970(c).

Par. 10. Section 1.6050I-1 is amended by:

a. Revising paragraphs (a)(3)(ii), (c)(1)(iv), and (d)(2)(i) and (ii).

b. In paragraph (d)(2)(iv), redesignating the example as paragraph (d)(2)(iv)(A).

c. Revising newly redesignated paragraph (d)(2)(iv)(A) and adding a reserved paragraph (d)(2)(iv)(B).

d. Revising paragraphs (e)(1) and (e)(3)(i).

e. Adding paragraph (h).

The revisions and additions read as follows:

§1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.

(a) ***

(3) ***

(ii) *Exception.* An agent who receives cash from a principal and uses all of the cash within 15 days in a cash transaction (second cash transaction) which is reportable under section 6050I or section 5331 of title 31 of the United States Code and the corresponding regulations (31 CFR Chapter X), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash under this section.

(c) ***

(1) ***

(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(I) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR Chapter X).

(d) ***

(2) ***

(i) *In general.* If a casino receives cash in excess of \$10,000 and is required to report the receipt of such cash directly to the Department of the Treasury (Treasury Department) under 31 CFR 1021.310 or 1010.360 and is subject to the recordkeeping requirements of 31 CFR 1021.400, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and these regulations.

(ii) *Casinos exempt under 31 CFR 1010.970(c).* Under the authority of section 6050I(c)(1)(A), the Secretary may exempt from the reporting requirements of section 6050I casinos with gross annual gaming revenue in excess of \$1,000,000 that are exempt under 31 CFR 1010.970(c) from reporting certain cash transactions to the Treasury Department under 31 CFR 1021.310 or 1010.360. The determination whether a casino which is granted an exemption under 31 CFR 1010.970(c) will be required to report under section 6050I will be made on a case-by-case basis,

concurrently with the granting of such an exemption.

(iv) ***

(A) *Example.* A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in cash from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under 31 CFR 1021.310 and 1010.360. Casino B's hotel division receives \$15,000 in cash from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in cash from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under section 6050I or these regulations because the exception for certain casinos provided in paragraph (d)(2)(i) of this section (casino exception) applies. Casino B's hotel division is required to report under section 6050I and these regulations because the casino exception does not apply to the receipt of cash by a nongaming business division. Casino C is required to report under section 6050I and these regulations because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under 31 CFR 1021.310 and 1010.360.

(B) [Reserved]

(e) ***

(1) *Time of reporting.* The reports required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash is received. However, in the case of multiple payments relating to a single transaction (or two or more related transactions), see paragraph (b) of this section.

(3) ***

(i) *Where to file.* A person making a return of information under this section must file Form 8300 in accordance with the form instructions and related publications.

(h) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after December 31, 2023.

Par. 11. Section 1.6050I-2 is amended by revising paragraphs (c)(1)(i), (c)(3)(i), and (f) to read as follows:

§1.6050I-2 Returns relating to cash in excess of \$10,000 received as bail by court clerks.

(c) * * *

(1) * * *

(i) *In general.* The information return required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash bail is received.

* * * * *

(3) * * *

(i) *Where to file.* Returns required by this section must be filed in accordance with the Form 8300 instructions and related publications. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

* * * * *

(f) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after December 31, 2023.

Par. 12. Section 1.6050M-1 is amended by revising paragraphs (d)(2) and (3) and (f) to read as follows:

§1.6050M-1 Information returns relating to persons receiving contracts from certain Federal executive agencies.

* * * * *

(d) * * *

(2) *Form of reporting*—(i) *General rule concerning electronic filing.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter must be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required returns must be made in electronic form (within the meaning of §301.6011-2(a)(1) of this chapter) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Exceptions from electronic filing.* Any Federal executive agency that, on October 1, has a reasonable expectation of entering into, during the one-year period beginning on that date, fewer than 10 contracts subject to the reporting requirements under this section that are to be filed during the calendar years

after 2023, may make the information returns required by this section for each quarter of that one-year period on the prescribed paper Form 8596 in accordance with the instructions accompanying such form.

(iii) *Exclusions from electronic-filing requirements*—(A) *Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under paragraph (a) of this section) and the period to which it applies.

(B) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Place of filing*—(i) *Returns in electronic form.* Information returns made under this section in electronic form must be filed with the Internal Revenue Service in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on paper Form 8596 must be filed with the Internal Revenue Service at the location specified in the instructions for that form.

* * * * *

(f) *Applicability date*—(1) *Contracts required to be reported.* Except as otherwise provided in this paragraph (f), this section applies to each Federal executive agency with respect to its contracts entered into on or after January 1, 1989 (including any increase in amount obligated on or after January 1, 1989, that is treated as a new contract under paragraph (e) of this section).

(2) *Contracts not required to be reported.* A Federal executive agency is not required to report—

(i) Any basic or initial contract entered into before January 1, 1989,

(ii) Any increase contract action occurring before January 1, 1989, that is treated as a new contract under paragraph (e) of this section, or

(iii) Any increase contract action that is treated as a new contract under paragraph (e) of this section if the basic or initial contract to which that contract action relates was entered into before January 1, 1989, and—

(A) The increase occurs before April 1, 1990, or

(B) The amount of the increase does not exceed \$50,000.

(3) *Illustration.* (i) If a Federal executive agency enters into an initial contract on December 1, 1988, and the amount of money obligated under the contract is increased by \$55,000 on April 15, 1990, then there is no reporting requirement with respect to the contract when entered into on December 1, 1988. However, the April 15, 1990, increase, which is treated as a new contract under paragraph (e) of this section, is subject to the reporting requirements of this section because it is considered to be a new contract entered into on April 15, 1990.

(ii) If the \$55,000 increase had occurred before April 1, 1990, there would not have been a reporting requirement with respect to that increase.

(4) *Filing requirements for contracts required to be reported.* Section 1.6050M-1(d)(2) and (3) (as contained in 26 CFR part 1, revised February 23, 2023) applies to information returns required to be filed during calendar years beginning after December 31, 2023.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 13. The authority citation for part 53 is amended by adding an entry in numerical order to read in part as follows:

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

Section 53.6011-1 also issued under 26 U.S.C. 6011.

* * * * *

Par. 14. Section 53.6011-1 is amended by:

- a. Removing paragraph (c).
 - b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
 - c. Adding a new paragraph (e).
- The addition reads as follows:

§53.6011-1 General requirement of return, statement or list.

(e) The rules of this section apply to any returns required to be filed under this section on or after January 11, 2021.

PART 54—PENSION EXCISE TAXES

Par. 15. The authority citation for part 54 is amended by adding an entry in numerical order to read in part as follows:

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

Section 54.6011-3 also issued under 26 U.S.C. 6011.

Par. 16. Section 54.6011-3 is added to read as follows:

§54.6011-3 Required use of electronic form for the filing requirements for the return for certain excise taxes related to employee benefit plans.

(a) *Excise tax returns required in electronic form.* Any employer or individual required to file an excise tax return on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, under §54.6011-1 of this chapter must file the excise tax return electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns of any type during the calendar year that the Form 5330 is due. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic-filing requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue

hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §54.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a filer required to file the Form 5330 fails to file the report electronically when required to do so by this section, the filer has failed to file the report. See generally section 6651(a)(1) for the penalty for the failure to file a tax return or to pay tax. For general rules relating to the failure to file a tax return or to pay tax, see the regulations under 26 CFR 301.6651-1 (Regulations on Procedure and Administration).

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Calculating the number of returns a filer is required to file—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns during a calendar year if the filer is required to file at least

10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer.* For purposes of this section, the term *filer* means the person required to report the tax on the Form 5330. For general rules on who is required to report the tax on the Form 5330, see the Instructions to the Form 5330.

(e) *Example.* The following example illustrates the provisions of paragraph (d) (2) of this section:

(1) In 2023, Employer A (the plan sponsor and plan administrator of Plan B) is required to file Form 5330 for its nondeductible contribution under section 4972 to Plan B. During the 2024 calendar year, Employer A is required to file 20 returns (including 19 Forms 1099-R *Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, and one Form 5500 series, *Annual Return/Report of the Employee Benefit Plan*). Plan B's plan year is the calendar year. Because Employer A is required to file at least 10 returns during the 2024 calendar year, Employer A must file the 2023 Form 5330 for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to any Form 5330 required to be filed for taxable years ending on or after December 31, 2023.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 17. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.6011-10 also issued under 26 U.S.C. 6011.

Section 301.6011-11 also issued under 26 U.S.C. 6011.

Section 301.6011-12 also issued under 26 U.S.C. 6011.

Section 301.6011-13 also issued under 26 U.S.C. 6011.

Section 301.6011-14 also issued under 26 U.S.C. 6011.

Section 301.6011-15 also issued under 26 U.S.C. 6011.

Section 301.6012-2 also issued under 26 U.S.C. 6012. *****

Section 301.6057-3 also issued under 26 U.S.C. 6011 and 6057.

Section 301.6058-2 also issued under 26 U.S.C. 6011 and 6058.

Section 301.6059-2 also issued under 26 U.S.C. 6011 and 6059.

Section 301.6721-1 also issued under 26 U.S.C. 6011 and 6721.

Par. 18. Section 301.1474-1 is amended by revising the section heading and paragraphs (a) through (c), (d)(1), and (e) to read as follows:

§301.1474-1 Required use of electronic form for financial institutions filing Form 1042, Form 1042-S, or Form 8966.

(a) *Financial institutions filing certain returns.* If a financial institution is required to file a Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, (or successor form) under §1.1474-1(c) of this chapter, the financial institution must file the return information required by the applicable forms and schedules electronically. If a financial institution is required to file a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, (or such other form as the IRS may prescribe) under §1.1474-1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules electronically. Additionally, if a financial institution is required to file Form 8966, *FATCA Report*, (or such other form as the IRS may prescribe) to report certain information about U.S. accounts, substantial U.S. owners of foreign entities, or owner-documented FFIs as required under this chapter, the financial institution must file the required information in electronic form. Returns filed electronically must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions, and the *IRS.gov* internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the *IRS.gov* internet site, the Commissioner may direct the type of electronic filing.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in

determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.1474-1(c) or (d) of this chapter, or a Form 8966) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a financial institution fails to file a Form 1042 electronically when required to do so by this section, the financial institution has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply. If a financial institution fails to file a Form 1042-S or a Form 8966 electronically when required to do so by this section, the financial institution has failed to comply with the information reporting requirements under section 6721 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *****

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted

under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(e) *Applicability date.* This section applies to any Form 1042 (or successor form) required to be filed for taxable years ending on or after December 31, 2023. This section applies to any Form 1042-S or Form 8966 (or any other form that the IRS may prescribe) filed with respect to calendar years ending after December 31, 2013, except that paragraph (b)(2) of this section only applies to Forms 1042-S or Forms 8966 required to be filed for taxable years ending on or after December 31, 2023.

Par. 19. Section 301.6011-2 is amended by revising the section heading and paragraphs (a)(1), (b), (c), and (g) to read as follows:

§301.6011-2 Required use of electronic form.

(a) *****

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, or publications.

(b) *Returns required electronically.* (1) If the use of Form 1042-S, Form 1094 series, Form 1095-B, Form 1095-C, Form 1097-BTC, Form 1098, Form 1098-C, Form 1098-E, Form 1098-Q, Form 1098-T, Form 1099 series, Form 3921, Form 3922, Form 5498 series, Form 8027, or Form W-2G is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this

section. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), or Form W-2AS (American Samoa Wage and Tax Statement) is required for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b) (2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

(3) If a person is required to make a return for the purpose of section 6050I, and such person is required to file returns described in paragraphs (b)(1) and (2) of this section electronically, then such person must also file the information required by section 6050I electronically. Returns described in this paragraph (b)(3) must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website, as well as instructions and guidance on the *FinCEN.gov* website.

(4) The Commissioner may exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(c) *Electronic-filing threshold*—(1) *In general*. No person is required to file information returns electronically in a calendar year unless the person is required to file at least 10 returns during that calendar year. Persons required to file fewer than 10 returns during the calendar year may make the returns on the prescribed paper form or, alternatively, electronically in accordance with paragraph (b) of this section.

(2) *Machine-readable forms*. Returns made on a paper form under paragraph (c) (1) of this section must be machine-readable, as described in paragraph (a)(2) of

this section, if applicable revenue procedures provide for a machine-readable paper form.

(3) *Special rule for partnerships*. Notwithstanding paragraph (c)(1) of this section, a partnership with more than 100 partners is required to file its information returns covered under paragraph (b) of this section electronically.

(4) *Calculating the number of returns*—(i) *Aggregation of returns*. In calculating whether a person is required to file at least 10 returns under paragraph (c)(1) of this section, all the information returns described in paragraphs (b)(1) and (2) of this section required to be filed during the calendar year are counted in the aggregate. Neither corrected information returns, information returns described in paragraph (b)(3) of this section, nor returns other than those described in paragraphs (b)(1) and (2) of this section are taken into account in calculating whether a person is required to file at least 10 returns.

(ii) *Corrected returns*. (A) If an original information return covered by paragraph (b) of this section is required to be filed electronically, any corrected information return corresponding to that original return must also be filed electronically.

(B) If an original information return is permitted to be filed on paper and is filed on paper, any corrected information return corresponding to that original return must be filed on paper.

(5) *Examples*. The provisions of paragraphs (c)(3) and (4) of this section are illustrated by the following examples:

(i) *Example 1*. During the 2024 calendar year, Company W, is required to file five Forms 1099-INT, *Interest Income*, and five Forms 1099-DIV, *Dividends and Distributions*, for a total of 10 returns covered by paragraphs (b)(1) and (2) of this section. Because Company W is required to file 10 returns as calculated under paragraph (c)(4) of this section during the 2024 calendar year, Company W must file all its 2023 Forms 1099-INT and 1099-DIV electronically.

(ii) *Example 2*. Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except after electronically filing its 10 Forms 1099-DIV and 1099-INT, Company W files two corrected Forms 1099-DIV and four corrected Forms 1099-INT. Because Company W electronically filed its original 2023 Forms 1099-DIV and 1099-INT, Company W must electronically file its corrected 2023 Forms 1099-DIV and 1099-INT.

(iii) *Example 3*. Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except on May 16, 2024, Company W received cash in excess of \$10,000 and must file a Form 8300 by May 31, 2024. Because

Company W is required to file information returns covered under paragraphs (b)(1) and (2) of this section electronically during the 2024 calendar year, Company W must also file all its Forms 8300 electronically during the 2024 calendar year.

(iv) *Example 4*. Same facts as paragraph (c)(5)(i) of this section (*Example 1*), except Company W is not required to file any Forms 1099-INT during calendar year 2024. On December 19, 2023, Company W receives cash in excess of \$10,000 and must file a Form 8300 by January 3, 2024. Because Company W is not required to file information returns covered under paragraphs (b)(1) and (2) of this section electronically during the 2024 calendar year, Company W is not required to file this Form 8300 electronically.

(v) *Example 5*. During the 2024 calendar year, Partnership P, a partnership with 15 partners, is required to file eight Forms 1099-MISC, *Miscellaneous Information*, and five Forms 1099-INT. Because Partnership P is required to file at least 10 returns covered by paragraphs (b)(1) and (2) of this section during the 2024 calendar year, Partnership P must electronically file all its 2022 Forms 1099-MISC and 1099-INT.

(6) *Exclusions from electronic-filing requirements*—(i) *Waivers*. The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under paragraph (b) of this section) and the period to which it applies. For purposes of paragraph (b) (3) of this section, a waiver granted for a return under paragraph (b)(1) or (2) will be deemed to have waived the electronic-filing requirement for any returns required to be filed under section 6050I.

(ii) *Exemptions*. The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(iii) *Additional Exclusion.* If an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, or Form W-2AS is required, if the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically (see §31.6071(a)-1(a)(3)(ii) of this chapter).

(g) *Applicability date.* The rules of this section apply to information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 20. Section 301.6011-3 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d)(1).
- c. Redesignating paragraph (d)(5) as (d)(6) and adding new paragraph (d)(5).
- d. Revising newly redesignated paragraph (d)(6).
- e. Revising paragraphs (e) and (f).

The revisions and addition read as follows:

§301.6011-3 Required use of electronic form for partnership returns.

(a) *Partnership returns required electronically.* (1) Except as otherwise provided in paragraph (b) of this section, a partnership required to file a partnership return pursuant to §1.6031(a)-1 of this chapter, must file the information required by the applicable forms and schedules electronically, if

(i) the partnership is required by the Internal Revenue Code or regulations to file at least 10 returns (as described in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the partnership, or

(ii) the partnership has more than 100 partners during the partnership's taxable year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue proce-

dures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6031(a)-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(d) ***

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(5) *Calculating the number of returns.* For purposes of this section, a partnership is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the partnership, the partnership is required to file at least

10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and information returns (for example, Forms W-2 and Forms 1099, but not including schedules required to be included with a partnership return). In the case of a short-period return, a partnership is required to file at least 10 returns if, during the calendar year in which the partnership's short taxable year ends, the partnership is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099, but not including schedules required to be included with a partnership return), income tax returns, employment tax returns, and excise tax returns.

(6) *Partnerships with more than 100 partners.* A partnership has more than 100 partners if, over the course of the partnership's taxable year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(6), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership's taxable year.

(e) *Examples.* The following examples illustrate the provisions of this section. In the examples, the partnerships' taxable year is the calendar year 2023 and the partnerships had fewer than 10 returns required to be filed during calendar year 2023:

(1) *Example 1.* Partnership P had five general partners and 90 limited partners on January 1, 2023. On March 15, 2023, 10 more limited partners acquired an interest in P. On September 29, 2023, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 2023, P had the same five general partners and 90 limited partners it had on January 1, 2023. P had a total of 105 partners over the course of partnership taxable year 2023. Therefore, P must file its 2023 partnership return electronically.

(2) *Example 2.* Partnership Q is a general partnership that had 95 partners on January 1, 2023. On March 15, 2023, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 29, 2023, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 2023, Q had a total of 91 partners, and on no date in 2023 did Q have more than 100 partners. Over the course of the year, however, Q had 101

partners. Therefore, Q must file its 2023 partnership return electronically.

(3) *Example 3.* Partnership G is a general partnership with 100 partners on January 1, 2023. There are no new partners added to G in 2023. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 2023 partnership return electronically.

(4) *Example 4.* Same facts as paragraph (e)(3) of this section (*Example 3*), except partnership G is also required to file nine Forms 1099-MISC during calendar year 2023 in addition to its 2022 partnership return. Because partnership G is required to file at least 10 returns of any type during calendar year 2023, partnership G must file its 2023 partnership return electronically.

(f) *Applicability date.* The rules of this section apply to partnership returns required to be filed during calendar years beginning after December 31, 2023.

Par. 21. Section 301.6011-5 is amended by revising the section heading, and paragraphs (a), (b), (d)(1) and (5), (e), and (f) to read as follows:

§301.6011-5 Required use of electronic form for corporate income tax returns.

(a) *Corporate income tax returns required electronically.* (1) A corporation required to file a corporate income tax return on Form 1120, *U.S. Corporation Income Tax Return*, under §1.6012-2 of this chapter must file its corporate income tax return electronically if the corporation is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the corporation.

(2) All members of a controlled group of corporations must file their corporate income tax returns electronically if the aggregate number of returns required to be filed by the controlled group of corporations is at least 10 (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the controlled group of corporations.

(3) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue proce-

dures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6012-2 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

* * * * *

(d) * * *

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(5) *Calculating the number of returns.* For purposes of this section, a corporation or controlled group of corporations is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the corporation

or the controlled group, the corporation or the controlled group is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. If the corporation is a member of a controlled group, calculating the number of returns the corporation is required to file includes all returns required to be filed by all members of the controlled group during the calendar year ending with or within the taxable year of the controlled group.

(e) *Example.* The following example illustrates the provisions of this section:

(1) The taxable year of Corporation X, a fiscal-year taxpayer, ends on September 30. During the calendar year ending December 31, 2023, X was required to file one Form 1120, *U.S. Corporation Income Tax Return*, six Forms W-2, *Wage and Tax Statement*, three Forms 1099-DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 10 returns of any type during calendar year 2023, the calendar year that ended within its taxable year ending September 30, 2024, X is required to file its Form 1120 electronically for its taxable year ending September 30, 2024.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to corporate income tax returns required to be filed during calendar years beginning after December 31, 2023.

Par. 22. Section 301.6011-10 is added to read as follows:

§301.6011-10 Certain organizations, including trusts, required to file unrelated business income tax returns in electronic form.

(a) *Unrelated business income tax returns required in electronic form.* (1) Organizations, including trusts, subject to tax under section 511 that are required to file a return under § 1.6012-2(e) or § 1.6012-3(a)(5) of this chapter to report

gross income included in computing unrelated business taxable income, as defined in section 512, or that are otherwise required to file Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, are required to file that return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file.* If an organization or trust fails to file an unrelated business income tax return in electronic form when required to do so by this section, the organization or trust has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) will apply.

(c) *Applicability date.* The rules of this section apply to unrelated business income tax returns required to be filed during calendar years beginning after February 23, 2023.

Par. 23. Section 301.6011-11 is added to read as follows:

§301.6011-11 Required use of electronic form for certain returns for tax-advantaged bonds.

(a) *Return for credit payments to issuers of qualified bonds.* (1) An issuer of a qualified bond required to file a return for credit payments on Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds*, must file the return electronically if the issuer is required to file at least 10 returns (as determined under paragraph (d) of this section) during the calendar year.

(2) Returns filed electronically must be completed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this

section exceeds the cost of filing a paper return. An issuer's request for a waiver must be submitted in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request must specify the type of filing (that is, the return required to be filed electronically under this section), the name of the issuer, the name of the bond issue, the issue date of the tax-advantaged bond (as defined in §1.150-1(b) of this chapter), and any other information specified in the applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(2) *Exemptions.* The Commissioner may provide an exemption from the electronic-filing requirement of paragraph (a) (1) of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website, to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file a return electronically under this section.

(c) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Qualified bond.* The term *qualified bond* means a tax-advantaged bond that is a taxable bond that provides a refundable Federal tax credit payable directly to the issuer of the bond under former section 6431 or any other tax-advantaged bond (as defined in §1.150-1(b) of this chapter) that provides a refundable Federal tax credit payment to an issuer of such bond.

(3) *Return for credit payments to issuers of qualified bonds.* The term *return for credit payments to issuers of qualified bonds* means a Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds*, or such other form prescribed by the Commissioner for the purpose of filing a return for credit payment with respect to a qualified bond.

(d) *Calculating the number of returns—(1) Aggregation of returns.* For purposes of this section, an issuer of a tax-advantaged bond is required to file at least 10 returns if, during the calendar year, the issuer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(2) *Corrected returns.* (i) If an original return covered by this section is required to be filed electronically, any corrected return corresponding to that original return must also be filed electronically.

(ii) If an original return covered by this section is permitted to be filed on paper and is filed on paper, any corrected return corresponding to that original return must be filed on paper.

(e) *Applicability date.* The rules of this section apply to returns for tax-advantaged bonds filed after December 31, 2023.

Par. 24. Section 301.6011-12 is added to read as follows:

§301.6011-12 Required use of electronic form for returns of certain excise taxes under Chapters 41 and 42 of the Internal Revenue Code.

(a) *Excise tax returns required electronically.* (1) Any person required to file an excise tax return on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, under §53.6011-1 of this chapter must file its excise tax return electronically if the person is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including

postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(3) Paragraph (a)(1) of this section is not applicable to private foundations that are subject to the filing requirements of §301.6033-4.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers*. The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §53.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions*. The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion*. If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file*. If a person fails to file an excise tax return electronically when required to do so by this section, the person has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form*. The terms *magnetic media or electronic form* mean any media or form permitted

under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Excise tax return*. The term *excise tax return* means a Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, along with all other related forms, schedules, and statements that are required to be attached to the Form 4720, including amended and superseding returns.

(3) *Calculating the number of returns*. For purposes of this section, a person is required to file at least 10 returns if, during the calendar year ending with or within the person's taxable year, the person is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a person is required to file at least 10 returns if, during the calendar year in which the person's short taxable year ends, the person is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example*. The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Trust X was required to file one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, which related to the 2022 taxable year, and 10 Forms W-2, *Wage and Tax Statement*, which reported wages paid to employees during 2022. Because X is required to file 11 returns during calendar year 2023, X is required to file its Form 4720 electronically for its taxable year ended December 31, 2023.

(2) [Reserved]

(f) *Applicability date*. The rules of this section apply to excise tax returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 25. Section 301.6011-13 is added to read as follows:

§301.6011-13 Required use of electronic form for split-interest trust returns.

(a) *Split-interest trust returns required electronically*. (1) Any trust required to

file an information return on Form 5227, *Split-Interest Trust Information Return*, under §53.6011-1 of this chapter must file its return electronically if the trust is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers*. The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §53.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions*. The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion*. If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file*. If a trust fails to file an excise tax return electronically when required to do so by this section, the trust has failed to file the return. See section 6652 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652-1(f) and rules similar

to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Split-Interest Trust return.* The term *split-interest trust return* means a Form 5227, *Split-Interest Trust Information Return*, along with all other related forms, schedules, and statements that are required to be attached to the Form 5227, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, a trust is required to file at least 10 returns if, during the calendar year ending with or within the trust's taxable year, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a trust is required to file at least 10 returns if, during the calendar year in which the trust's short taxable year ends, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Trust X was required to file one Form 5227, *Split-Interest Trust Information Return*, one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, and 10 Forms 1099-DIV, *Dividends and Distributions*. Because X is required to file 12 returns during the calendar year 2023, X is required to file its Form 5227 electronically for its taxable year ending December 31, 2023.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to Split-Interest Trust re-

turns required to be filed for taxable years ending on or after December 31, 2023.

Par. 26. Section 301.6011-14 is added to read as follows:

§301.6011-14 Required use of electronic form or other machine-readable form for material advisor disclosure statements.

(a) *Material advisor disclosure statements required electronically or in other machine-readable form.* (1) Any material advisor required to file a return on Form 8918, *Material Advisor Disclosure Statement*, under §301.6111-3(a) of this chapter must file its return electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, if the material advisor is required by the Internal Revenue Code or regulations to file at least 10 returns (as determined under paragraph (d)(4) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic or other machine-readable form through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically or in other machine-readable form must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §301.6111-3(a) of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective

and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a material advisor fails to file Form 8918 electronically or in other machine-readable form when required to do so by this section, the material advisor has failed to file the return. See section 6707 for the penalty for failure to file the return.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Machine-readable form.* The term *machine-readable form* means any machine-readable form specifically permitted under applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Material advisor disclosure statement.* The term *material advisor disclosure statement* means a Form 8918, *Material Advisor Disclosure Statement*, along with all other related forms, schedules, and statements that are required to be attached to the Form 8918, including amended material advisor disclosure statements.

(4) *Calculating the number of returns.* (i) Except as provided in paragraph (d)(4)(ii) of this section, for purposes of this section, a material advisor is required to file at least 10 returns if during the calendar year the material advisor is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) Form 8918 is not taken into account in calculating whether a material advisor

is required to file at least 10 returns during a calendar year.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2024, Material Advisor X was required to file one Form 1040, *U.S. Individual Income Tax Return*, and 10 Forms 1099-NEC, *Nonemployee Compensation*. Because Material Advisor X is required to file 11 returns during the calendar year 2024, X is required to file its Forms 8918 electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, during the calendar year ending December 31, 2024.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to Material Advisor Disclosure Statements required to be filed after December 31, 2023.

Par. 27. Section 301.6011-15 is added to read as follows:

§301.6011-15 Required use of electronic form for withholding tax returns.

(a) *Withholding tax returns required electronically.* (1) A withholding agent required to file an income tax return on Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, under §1.1461-1(b) of this chapter must file its return electronically if the withholding agent is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year in which the Form 1042 is required to be filed. Notwithstanding the previous sentence, a withholding agent that is an individual, estate, or trust is not required to file its Form 1042 electronically.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue

hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.1461-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a withholding agent fails to file a withholding tax return electronically when required to do so by this section, the withholding agent has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, and diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, or instructions.

(2) *Withholding agent.* The term *withholding agent* means a withholding agent as defined in §1.1441-7(a) of this chapter.

(3) *Withholding tax return.* The term *withholding tax return* means a Form

1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1042, including amended and superseding returns.

(4) *Special rule for partnerships.* Notwithstanding paragraph (d)(5) of this section, a withholding agent that is a partnership with more than 100 partners (as determined under §301.6011-3(d)(6)) is required to file a return described in paragraph (a) of this section electronically.

(5) *Calculating the number of returns.* For purposes of this section, a withholding agent is required to file at least 10 returns if, during the calendar year in which the Form 1042 is required to be filed, the withholding agent is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, Forms 1042-S), income tax returns (for example, Form 1042), employment tax returns, and excise tax returns.

(e) *Special rule for returns filed by financial institutions.* For rules that require withholding agents that are financial institutions to file returns electronically, see §301.1474-1.

(f) *Applicability date.* The rules of this section apply to withholding tax returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 28. Section 301.6012-2 is added to read as follows:

§301.6012-2 Required use of electronic form for income tax returns of certain political organizations.

(a) *Income tax returns of certain political organizations required electronically.*

(1) Any organization required to file an income tax return on Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, under §1.6012-6 of this chapter must file its income tax return, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns, electronically if the organization is required by the Internal Revenue Code or regulations to file at least 10 returns of any type (as defined in paragraph (d)(2) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements*—(1) *Waivers*. The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6012-6 of this chapter) and the period to which it applies.

(2) *Exemptions*. The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion*. If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file*. If an organization fails to file an income tax return electronically when required to do so by this section, the organization has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form*. The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Income tax return for certain political organizations*. The term *income tax return for certain political organizations* means a Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns.

(3) *Calculating the number of returns*. For purposes of this section, an organization is required to file at least 10 returns if, during the calendar year ending with or within the organization's taxable year, the organization is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, an organization is required to file at least 10 returns if, during the calendar year in which the organization's short taxable year ends, the organization is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example*. The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Organization X was required to file one Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, four (quarterly) Forms 8872, *Political Organization Report of Contributions and Expenditures*, two Forms W-2, *Wage and Tax Statement*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 12 returns during the calendar year, X is required to file its Form 1120-POL electronically for its taxable year ending December 31, 2023.

(2) [Reserved]

(f) *Applicability date*. The rules of this section apply to income tax returns re-

quired to be filed for taxable years ending on or after December 31, 2023.

Par. 29. Section 301.6033-4 is revised to read as follows:

§301.6033-4 Required filing in electronic form for returns by organizations required to file returns under section 6033.

(a) *Returns by organizations required to file returns under section 6033 in electronic form*. (1) An organization required to file a return under section 6033 must file its return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file*. If an organization required to file a return under section 6033 fails to file an information return in electronic form when required to do so by this section, the organization has failed to file the return. See section 6652 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652-2(f) will apply.

(c) *Meaning of terms*. For purposes of this section the term *return required under section 6033* means a Form 990, *Return of Organization Exempt From Income Tax*; Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*; and Form 990-PF, *Return of Private Foundation or Section 4947(a) (1) Trust Treated as Private Foundation*, along with all other related forms, schedules, and statements that are required to be attached to the Form 990, Form 990-EZ, or Form 990-PF, and all members of the Form 990 series of returns, including amended and superseding returns. A Form 4720 filed by a private foundation is a form required to be filed under section 6033.

(d) *Applicability date*. The rules of this section apply to any returns under section 6033 required to be filed during calendar years beginning after February 23, 2023.

Par. 30. Section 301.6037-2 is amended by revising the section heading and paragraphs (a), (b), (d)(1) and (5), (e), and (f) to read as follows:

§301.6037-2 Required use of electronic form for returns of electing small business corporation.

(a) *Returns of electing small business corporation required electronically.* (1) An electing small business corporation required to file an electing small business return on Form 1120-S, *U.S. Income Tax Return for an S Corporation*, under §1.6037-1 of this chapter must file its Form 1120-S electronically if the small business corporation is required by the Internal Revenue Code and regulations to file at least 10 returns during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under section 6037) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

* * * * *

(d) * * *

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

* * * * *

(5) *Calculating the number of returns.* For purposes of this section, a corporation is required to file at least 10 returns if, during the calendar year ending with or within the corporation's taxable year, the corporation is required to file at least 10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return). In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section. In the example, the corporation is a calendar-year taxpayer.

(1) In 2023, Corporation S, an electing small business corporation, is required to file one 2022 Form 1120-S, *U.S. Income Tax Return for an S Corporation*, two Forms W-2, *Wage and Tax Statement*, two Forms 1099-DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because S is required to file 10 returns during the calendar year 2023, S is required to file its 2023 Form 1120-S electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to electing small business corporation returns required to be filed during calendar years beginning after December 31, 2023.

Par. 31. Section 301.6057-3 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d) (1).
- c. Revising the heading of paragraph (d)(4) and revising paragraph (d)(4)(i).
- d. In paragraph (e), redesignating the example as paragraph (e)(1).
- e. Revising newly redesignated paragraph (e)(1).
- f. Adding a reserved paragraph (e)(2).
- g. Revising paragraph (f).

The revisions and addition read as follows:

§301.6057-3 Required use of electronic form for filing requirements relating to deferred vested retirement benefit.

(a) *Electronic-filing requirements under section 6057.* A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements—(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms,

instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a registration statement or notification under section 6057) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(d) ***

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(4) *Calculating the number of returns—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) ***

(1) *Example.* In 2024, P, the plan administrator of Plan B, is required to file 12 returns (including Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*; Form 8955-SSA; Form 5500, *Annual Return/Report of Employee Benefit Plan*; and Form 945, *Annual Return of Withheld Federal Income Tax*). Plan B's plan year is the calendar year. Because P is required to file at least 10 returns during the 2024 calendar year, P must file the 2024 Form 8955-SSA for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to registration statements

and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2024.

Par. 32. Section 301.6058-2 is amended by:

a. Revising the section heading.

b. Revising paragraphs (a), (b), and (d) (1).

c. Revising the heading of paragraph (d)(3).

d. Revising paragraphs (d)(3)(i) and (iii), (e), and (f).

The revisions read as follows:

§301.6058-2 Required use of electronic form for filing requirements relating to information required in connection with certain plans of deferred compensation.

(a) *Electronic-filing requirements under section 6058.* A return required under section 6058 with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under section 6058) and the period to which it applies.

(d) ***

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Calculating the number of returns—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. See section 6011(e) (6), Application of numerical limitation to returns relating to deferred compensation plans.

(iii) *Special rules relating to calculating the number of returns.* For purposes of applying paragraph (d)(3)(ii) of this section, the aggregation rules of section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series electronically if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 10 returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d) (3) of this section:

(1) In 2024, Employer X (the plan sponsor and plan administrator of Plan A) is required to file 12 returns. The sole shareholder of X and his spouse are the only participants in Plan A. Employer X is required to file the following: one Form 1120, *U.S. Corporation Income Tax Return*; two Forms W-2, *Wage and Tax Statement*; one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; four Forms 941, *Employer's Quarterly Federal Tax Return*; one Form 945, *Annual Return of Withheld Federal Income Tax*; and two Forms 1099-DIV, *Dividends and Distributions*. Employer X is required to file one Form 5500-EZ. Plan A's plan year is the calendar year. Because Employer X is required to file at least 10 returns during the 2024 calendar year, the 2024 Form 5500-EZ must be filed electronically.

(2) [Reserved]

(f) *Applicability date.* This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2024.

Par. 33. Section 301.6059-2 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d) (1).
- c. Revising the heading for paragraph (d)(3) and revising paragraph (d)(3)(i).
- d. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e).
- e. Revising newly redesignated paragraph (e).

The revisions read as follows:

§301.6059-2 Required use of electronic form for filing requirements relating to periodic report of actuary.

(a) *Electronic-filing requirements under section 6059.* An actuarial report required under section 6059 with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Actuarial reports filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, an actuarial report required under 6059) and the period to which it applies.

(d) ***

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Calculating the number of returns—(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (or example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Applicability date.* This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1, 2024.

Par. 34. Section 301.6721-1 is amended by:

- a. Revising paragraphs (a)(2)(ii) and (b)(5) introductory text.
- b. Redesignating *Examples 1* through *4 in paragraph (d)(5)* as paragraphs (b)(5) (i) through (iv).
- c. Revising newly designated paragraphs (b)(5)(iii) and (iv).
- d. Adding paragraphs (b)(5)(v) and (vi) and (h).

The revisions and additions read as follows:

§301.6721-1 Failure to file correct information returns.

(a) ***

(2) ***

(ii) A failure to include all the information required to be shown on the return or including incorrect information (failure to include correct information). A failure to file timely includes a failure to file in the required manner, for example, electronically or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)

(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that the failure occurs with respect to more than 10 returns, or with respect to a return described in section 6011(e)(4). If a partnership return under section 6031(a) is required to be filed electronically, each schedule required to be included with such return with respect to each partner will be treated as a separate information return for purposes of this section. See section 6724(e). Filers who are required to file information returns electronically and who file those information returns electronically are considered to have satisfied the electronic-filing requirement. Except as provided in paragraph (c)(1) or (e)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information-reporting statutes or by any administrative pronouncements (such as regulations, revenue rulings, revenue procedures, or information-reporting forms, and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on an electronic submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the electronic submission, that error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure. For purposes of paragraph (b) of this section, a failure to file corrected information returns in the format required under §301.6011-2(c)(4) (ii) is a failure to correct the corresponding original information returns.

(b) ***

(5) *Examples.* The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small-business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, adjustments for inflation under

section 6721(f), or the reasonable-cause waiver under §301.6724-1(a):

* * * * *

(iii) *Example 3.* In calendar year 2024, Corporation U timely files on paper 12 Forms 1099-MISC for the 2023 calendar year with correct information. Under §301.6011-2, a person required to file at least 10 returns during calendar year 2024 must file those returns electronically. Corporation U does not correct its failures to file these returns electronically by August 1, 2024. See section 6721(b)(2). Corporation U is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, under section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely electronically applies only to the extent the number of returns exceeds 10. As Corporation U was required to file 12 returns electronically, it is subject to a penalty of \$500 for two returns ($\$250 \times 2 = \500).

(iv) *Example 4.* In calendar year 2024, Corporation W timely electronically files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) with incorrect information. On August 1, 2024, Corporation W discovers the errors and files 25 corrected Forms 1099-B on paper. Under §301.6011-2(c)(4)(ii)(A), a person required to file an original information return covered by §301.6011-2(b) electronically must file any corrected information return corresponding to that original return electronically. Under paragraph (a)(2)(ii) of this section, a failure to file a corrected information return electronically when required to do so is a failure to correct the corresponding original information return. As Corporation W was required to file its 25 corrected information returns electronically, it has failed to correct the original information returns and is subject to a penalty of \$6,250 for failure to include correct information on its 25 original Forms 1099-B ($\$250 \times 25 = \$6,250$), without any reductions for correcting the information on or before August 1.

(v) *Example 5.* During the 2024 calendar year, Corporation V files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) on paper. The forms were filed on March 15, 2024, rather than on the required filing date of February 28, 2024. Under §301.6011-2, a person required to file at least 10 returns during calendar years 2024 and after must file those returns electronically. Corporation V does not correctly file these returns electronically by August 1, 2024. See section 6721(b)(2). Corporation V is subject to a penalty of \$500 for filing 10 of the returns late, but within 30 days after the required filing date ($\$50 \times 10$). In addition, Corporation V is subject to a penalty of \$3,750 for failing to file 15 returns electronically ($\$250 \times 15$).

(vi) *Example 6.* Partnership X has 120 partners in calendar year 2023. In calendar year 2024, it timely files on paper its 2023 Form 1065 and 230 accompanying Schedules K-1 and Schedules K-3 (120 Schedules K-1 and 110 Schedules K-3). Partnership X filed no other returns during calendar year 2024. Under §301.6011-3(a)(1)(ii), a partnership with more than 100 partners must electronically file its partnership return, including Schedules K-1 and K-3. Under section 6724(e), Schedules K-1 and K-3 are treated as separate information returns for purposes of penalties under section 6721, even though they are not listed under §301.6011-2(b) as information returns

required to be filed electronically and are not defined as information returns under section 6724(d). Under section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely electronically applies only to the extent the number of returns exceeds 10. Partnership X would be subject to a penalty of \$55,000 for failing to electronically file 220 Schedules K-1 and K-3 required to be included with the partnership return: the 11th through the 230th of the required schedules ($\$250 \times 220 = \$55,000$). See section 6698 for the penalty for the failure to file the partnership return.

* * * * *

(h) *Applicability date.* The rules of paragraph (a)(2)(ii) of this section apply to information returns required to be filed during calendar years beginning after December 31, 2023. For the rules that apply under paragraph (a)(2)(ii) of this section to information returns required to be filed during calendar years beginning before January 1, 2024, see 26 CFR part 301, revised as of April 1, 2022.

Melanie R. Krause,
*Acting Deputy Commissioner for
Services and Enforcement.*

Approved: August 7, 2022.

Lily Batchelder,
*Assistant Secretary of the Treasury
(Tax Policy).*

(Filed by the Office of the Federal Register on February 21, 2023, 11:15 a.m., and published in the issue of the Federal Register for February 23, 2023, 88 F.R. 11754)

26 CFR 1.1502-80(j): Special rules for application of section 951(a)(2)(B) to distributions to which section 959(b) applies

T.D. 9973

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Single-Entity Treatment of Consolidated Groups for Specific Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that treat members of a consolidated group as a single United States shareholder in certain cases for purposes of section 951(a)(2)(B) of the Internal Revenue Code (the “Code”). The document finalizes proposed regulations published on December 14, 2022. The final regulations affect consolidated groups that own stock of foreign corporations.

DATES: *Effective date:* These regulations are effective on February 23, 2023.

Applicability date: These regulations apply to taxable years for which the original consolidated return is due (without extensions) after February 23, 2023.

FOR FURTHER INFORMATION CONTACT: Austin Diamond-Jones, (202) 317-5085 (Corporate) and Julie T. Wang, (202) 317-6975 (Corporate) regarding section 1502 and the amendments to §1.1502-80, and Joshua P. Roffenbender, (202) 317-6934 (International) regarding sections 951, 951A, and 959.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2022, the Department of the Treasury (“Treasury Department”) and the IRS published a notice of proposed rulemaking (REG-113839-22) in the **Federal Register** (87 FR 76430) under sections 1502 and 7805(a) of the Code (the “proposed regulations”). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations as final regulations without modification.

Applicability Date

The final regulations apply to taxable years for which the original consolidated return is due (without extensions) after February 23, 2023. See section 1503(a).

Special Analyses

I. Regulatory Planning and Review — Economic Analysis

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

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

III. Section 7805(f)

Pursuant to section 7805(f), the proposed regulations (REG-113839-22) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies

assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

Drafting Information

The principal authors of these regulations are Joshua P. Roffenbender, Office of Associate Chief Counsel (International), and Jeremy Aron-Dine and Gregory J. Galvin, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In §1.1502-80, reserved paragraph (i) and paragraph (j) are added to read as follows:

§1.1502-80 Applicability of other provisions of law.

* * * * *

(i) [Reserved]

(j) *Special rules for application of section 951(a)(2)(B) to distributions to which section 959(b) applies*—(1) *Single United States shareholder treatment.* In determining the amount described in section 951(a)(2)(B) that is attributable to distributions to which section 959(b) applies, members of a group are treated as a single United States shareholder (within the meaning of section 951(b) (or section 953(c)(1)(A), if applicable)) for purposes of determining the part of the year during which such shareholder did not own (within the meaning of section 958(a)) the stock described in section 951(a)(2)(A). The purpose of this paragraph (j) is to facilitate the clear reflection of income of a consolidated group by ensuring that the location of ownership of stock of a foreign corporation within the group does not affect the amount of the group’s income by reason of sections 951(a)(1)(A) and 951A(a).

(2) *Examples.* The following examples illustrate the application of paragraph (j) (1) of this section. For purposes of the examples in this paragraph (j)(2): M1 and M2 are members of a consolidated group of which P is the common parent (P group); each of CFC1, CFC2, and CFC3 is a controlled foreign corporation (within the meaning of section 957(a)) with the U.S. dollar as its functional currency (within the meaning of section 985); the taxable year of all entities is the calendar year for Federal income tax purposes; and a reference to stock owned means stock owned within the meaning of section 958(a). These examples do not address common law doctrines or other authorities that might apply to recast a transaction or to otherwise affect the tax treatment of a transaction.

(i) *Example 1: Intercompany transfer of stock of a controlled foreign corporation*—(A) *Facts.* Throughout Year 1, M1 directly owns all the stock of CFC1, which directly owns all the stock of CFC2. In Year 1, CFC2 has \$100x of subpart F income (as defined in section 952). M1’s pro rata share of CFC2’s

subpart F income for Year 1 is \$100x, which M1 includes in its gross income under section 951(a)(1)(A). In Year 2, CFC2 has \$80x of subpart F income and distributes \$80x to CFC1 (the CFC2 Distribution). Section 959(b) applies to the entire CFC2 Distribution. On December 29, Year 2, M1 transfers all of its CFC1 stock to M2 in an exchange described in section 351(a). As a result, on December 31, Year 2 (the last day of Year 2 on which CFC2 is a controlled foreign corporation), M2 owns 100% of the stock of CFC1, which owns 100% of the stock of CFC2.

(B) *Analysis.* Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the CFC2 Distribution, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own the stock of CFC2. Thus, the ratio of the number of days in Year 2 that such United States shareholder did not own the stock of CFC2 to the total number of days in Year 2 is 0/365. The amount described in section 951(a)(2)(B) is \$0, M2's pro rata share of CFC2's subpart F income for Year 2 is \$80x (\$80x - \$0), and M2 must include \$80x in its gross income under section 951(a)(1)(A).

(ii) *Example 2: Transfer of stock of a controlled foreign corporation between controlled foreign cor-*

porations—(A) Facts. The facts are the same as in paragraph (j)(2)(i)(A) of this section (the facts in *Example 1*), except that M1 does not transfer its CFC1 stock to M2. Additionally, throughout Year 1 and from January 1, Year 2, to December 29, Year 2, M2 directly owns all 90 shares of the only class of stock of CFC3. Further, on December 29, Year 2, CFC3 acquires all the CFC2 stock from CFC1 in exchange for 10 newly issued shares of the same class of CFC3 stock in a transaction described in section 368(a)(1)(B). As a result, on December 31, Year 2, M1 owns 10% of the stock of CFC2, and M2 owns 90% of the stock of CFC2.

(B) *Analysis.* Under paragraph (j)(1) of this section, in determining the amount described in section 951(a)(2)(B) that is attributable to the portion of the CFC2 Distribution with respect to each of the CFC2 stock that M1 owns on December 31, Year 2, and the CFC2 stock that M2 owns on that day, all members of the P group are treated as a single United States shareholder for purposes of determining the part of Year 2 during which such shareholder did not own such stock. In each case, the ratio of the number of days in Year 2 that such United States shareholder did not own such stock to the total number of days in Year 2 is 0/365, and the amount described in section 951(a)(2)(B) is \$0. M1's and M2's pro rata shares of

CFC2's subpart F income for Year 2 are \$8x (\$8x - \$0) and \$72x (\$72x - \$0), respectively, and M1 and M2 must include \$8x and \$72x in gross income under section 951(a)(1)(A), respectively.

(3) *Applicability date.* This paragraph (j) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after February 23, 2023.

Melanie R. Krause,
*Acting Deputy Commissioner for
Services and Enforcement.*

Approved: February 6, 2023.

Lily L. Batchelder,
*Assistant Secretary of the Treasury
(Tax Policy).*

(Filed by the Office of the Federal Register on February 22, 2023, 8:45 a.m., and published in the issue of the Federal Register for February 23, 2023, 88 F.R. 11393)

Part III

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

Notice 2023-19

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

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC

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

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from January 2023 data is in Table 2023-1 at the end

of this notice. The spot first, second, and third segment rates for the month of January 2023 are, respectively, 4.74, 4.98, and 4.84.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2022 and 2023 were published in Notice 2021-54, 2021-41 I.R.B. 457 and Notice 2022-40, 2022-40 I.R.B. 266, respectively. The applicable minimum and maximum percentages are 95% and 105% for a plan year beginning in 2022 or 2023.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

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

<i>24-Month Average Segment Rates Without 25-Year Average Adjustment</i>			
Applicable Month	First Segment	Second Segment	Third Segment
February 2023	2.31	3.72	4.00

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The

24-month averages applicable for January 2023, adjusted to be within the applicable minimum and maximum percentages of

the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

<i>Adjusted 24-Month Average Segment Rates</i>				
For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2022	February 2023	4.75	5.18	5.92
2023	February 2023	4.75	5.00	5.74

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multi-

employer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) pro-

vides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treas-

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

sury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate

of interest on 30-year Treasury securities for January 2023 is 3.67 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November

2052. For plan years beginning in February 2023, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

For Plan Years Beginning In	<i>Treasury Weighted Average Rates</i>	
	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
February 2023	2.48	2.23 to 2.60

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates

under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum pres-

ent value segment rates. Pursuant to that notice, the minimum present value segment rates determined for January 2023 are as follows:

Month	<i>Minimum Present Value Segment Rates</i>		
	First Segment	Second Segment	Third Segment
January 2023	4.74	4.98	4.84

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate

Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of

this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 not toll-free numbers).

Table 2023-1
Monthly Yield Curve for January 2023
 Derived from January 2023 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	4.93	20.5	5.01	40.5	4.82	60.5	4.77	80.5	4.74
1.0	4.89	21.0	5.00	41.0	4.82	61.0	4.77	81.0	4.74
1.5	4.86	21.5	4.99	41.5	4.82	61.5	4.77	81.5	4.74
2.0	4.81	22.0	4.98	42.0	4.82	62.0	4.77	82.0	4.74
2.5	4.75	22.5	4.98	42.5	4.82	62.5	4.77	82.5	4.74
3.0	4.70	23.0	4.97	43.0	4.81	63.0	4.76	83.0	4.74
3.5	4.65	23.5	4.96	43.5	4.81	63.5	4.76	83.5	4.74
4.0	4.62	24.0	4.95	44.0	4.81	64.0	4.76	84.0	4.74
4.5	4.60	24.5	4.94	44.5	4.81	64.5	4.76	84.5	4.74
5.0	4.60	25.0	4.93	45.0	4.81	65.0	4.76	85.0	4.74
5.5	4.62	25.5	4.93	45.5	4.81	65.5	4.76	85.5	4.74
6.0	4.64	26.0	4.92	46.0	4.80	66.0	4.76	86.0	4.74
6.5	4.68	26.5	4.92	46.5	4.80	66.5	4.76	86.5	4.73
7.0	4.72	27.0	4.91	47.0	4.80	67.0	4.76	87.0	4.73
7.5	4.77	27.5	4.91	47.5	4.80	67.5	4.76	87.5	4.73
8.0	4.81	28.0	4.90	48.0	4.80	68.0	4.76	88.0	4.73
8.5	4.86	28.5	4.90	48.5	4.80	68.5	4.76	88.5	4.73
9.0	4.90	29.0	4.89	49.0	4.80	69.0	4.75	89.0	4.73
9.5	4.94	29.5	4.89	49.5	4.79	69.5	4.75	89.5	4.73
10.0	4.98	30.0	4.88	50.0	4.79	70.0	4.75	90.0	4.73
10.5	5.01	30.5	4.88	50.5	4.79	70.5	4.75	90.5	4.73
11.0	5.04	31.0	4.88	51.0	4.79	71.0	4.75	91.0	4.73
11.5	5.06	31.5	4.87	51.5	4.79	71.5	4.75	91.5	4.73
12.0	5.08	32.0	4.87	52.0	4.79	72.0	4.75	92.0	4.73
12.5	5.09	32.5	4.87	52.5	4.79	72.5	4.75	92.5	4.73
13.0	5.10	33.0	4.86	53.0	4.78	73.0	4.75	93.0	4.73
13.5	5.11	33.5	4.86	53.5	4.78	73.5	4.75	93.5	4.73
14.0	5.11	34.0	4.86	54.0	4.78	74.0	4.75	94.0	4.73
14.5	5.11	34.5	4.85	54.5	4.78	74.5	4.75	94.5	4.73
15.0	5.11	35.0	4.85	55.0	4.78	75.0	4.75	95.0	4.73
15.5	5.11	35.5	4.85	55.5	4.78	75.5	4.75	95.5	4.73
16.0	5.10	36.0	4.85	56.0	4.78	76.0	4.75	96.0	4.73
16.5	5.09	36.5	4.84	56.5	4.78	76.5	4.74	96.5	4.73
17.0	5.09	37.0	4.84	57.0	4.78	77.0	4.74	97.0	4.73
17.5	5.08	37.5	4.84	57.5	4.77	77.5	4.74	97.5	4.73
18.0	5.07	38.0	4.84	58.0	4.77	78.0	4.74	98.0	4.73
18.5	5.06	38.5	4.83	58.5	4.77	78.5	4.74	98.5	4.72
19.0	5.05	39.0	4.83	59.0	4.77	79.0	4.74	99.0	4.72
19.5	5.04	39.5	4.83	59.5	4.77	79.5	4.74	99.5	4.72
20.0	5.02	40.0	4.83	60.0	4.77	80.0	4.74	100.0	4.72

Lookback Periods for Claims for Credit or Refund for Returns with Due Dates Postponed by Notice 2020-23 or Notice 2021-21

Notice 2023-21

SECTION 1. PURPOSE

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” Pursuant to the Emergency Declaration, this notice provides relief under § 7508A(a) of the Internal Revenue Code (Code) for the persons described in section 3.A of this notice determined to be affected by the COVID-19 emergency.¹

SECTION 2. BACKGROUND

Section 7508A of the Code provides the Secretary of the Treasury or her delegate (Secretary) with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary to be affected by a Federally declared disaster as defined in § 165(i)(5)(A). Pursuant to § 7508A(a), a period of up to one year may be disregarded in determining under the internal revenue laws, in respect of any tax liability of such taxpayer, whether the performance of certain acts is timely; the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date; and the amount of any credit or refund. Under § 301.7508A-1(b)(4) of the Procedure and Administration Regula-

tions (26 CFR part 301), a postponement of time under § 7508A to perform an act is not an extension of the due date for the act.

Section 6511(a) requires a taxpayer to file a claim for credit or refund within three years from the time the taxpayer’s return was filed or two years from the time the tax was paid, whichever period expires later. Under § 6511(b)(2), the amount of a credit or refund is limited to the amount of tax *paid* within a specified period immediately preceding the filing of the claim for credit or refund (lookback period). When a taxpayer files a claim within three years of filing the taxpayer’s return, the lookback period is equal to three years plus the period of any extension of time for filing the return. Otherwise, the lookback period is two years. For a calendar-year taxpayer, withheld and estimated income taxes are deemed paid on the due date of the tax return, generally April 15 of each year. *See* § 6513(b)(1) and (2).

Among other things, Notice 2020-23, 2020-18 I.R.B. 742 (April 27, 2020), which amplified Notice 2020-18 and Notice 2020-20, postponed certain Federal tax return filing and payment obligations that were due to be performed on or after April 1, 2020, and before July 15, 2020, to July 15, 2020. Similarly, Notice 2021-21, 2021-15 I.R.B. 986 (April 12, 2021), postponed the due date for both filing Federal income tax returns in the Form 1040 series with an original due date of April 15, 2021, and making Federal income tax payments in connection with one of these forms, to May 17, 2021. Under § 6511, taxpayers who timely filed their tax returns by the postponed due dates provided by Notice 2020-23 and Notice 2021-21 have three years from the date of filing their return for each year to timely file a claim for credit or refund for that year.

Although Notice 2020-23 and Notice 2021-21 *postponed* certain return filing due dates, those notices did not *extend* the time for filing the returns because a postponement is not an extension. As a result, the postponements did not lengthen the lookback periods under § 6511(b)(2)(A).

The dates on which withheld taxes are deemed paid under § 6513(b)(1) or (2) were not affected by Notice 2020-23 or Notice 2021-21. Accordingly, absent the relief granted in this notice, although some calendar-year taxpayers may have until July 15, 2023,² or May 17, 2024, to timely file a claim for credit or refund for their taxable years postponed by Notice 2020-23 and Notice 2021-21, in order for the applicable lookback period to include all available amounts, taxpayers who did not receive an extension of time for filing a return must file a claim for credit or refund within three years of the due date of the return (generally April 15, 2020 or April 15, 2021, respectively). The relief granted in section 3 of this notice permits taxpayers who had a return filing due date postponed by Notice 2020-23 or Notice 2021-21, who did not receive an extension of time for filing such return, and who file timely claims for credit or refund to be credited or refunded amounts deemed paid on April 15 of each year.

SECTION 3. GRANT OF RELIEF

A. Taxpayers Affected by COVID-19 Emergency. The Secretary has determined that any person with a Federal tax return filing or payment obligation that was postponed by Notice 2020-23 to July 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in this section 3 (Affected Taxpayer). The Secretary has also determined that any person with a filing or payment obligation with respect to a Federal income tax return in the Form 1040 series that was postponed by Notice 2021-21 to May 17, 2021, is an Affected Taxpayer.

B. Relief for Determining the Lookback Period for Claims for Credit or Refund. For an Affected Taxpayer with a due date postponed by Notice 2020-23, the period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in determining the beginning of the lookback period for the purpose of determining the amount of a credit or refund under § 6511(b)(2)(A) relating

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code.

² Because July 15, 2023, is a Saturday, a claim for credit or refund for a return with a due date postponed by Notice 2020-23 would be considered timely if a taxpayer filed the claim on Monday, July 17, 2023. *See* § 7503. In that scenario, for the purposes of calculating the lookback period under § 6511(b)(2)(A), the claim for credit or refund would be treated as if it were filed on July 15, 2023 (not July 17), and the lookback period would run back to July 15, 2020, absent the relief granted in this notice. *See* Rev. Rul. 66-118, 1966-1 C.B. 290; Rev. Rul. 2003-41, 2003-17 I.R.B. 814 (April 28, 2003).

to the tax for which the return filing or payment due date was postponed. In addition, for an Affected Taxpayer with a due date postponed by Notice 2021-21, the period beginning on April 15, 2021, and ending on May 17, 2021, will be disregarded in determining the beginning of the lookback period for the purpose of determining the amount of a credit or refund under § 6511(b)(2)(A) relating to the tax for which the return filing or payment due date was postponed.

C. Example. Taxpayer is a calendar-year filer with a 2019 Federal income tax return due date of April 15, 2020. Taxpayer's employer withheld income taxes from Taxpayer's wages throughout 2019 and remitted the withheld income taxes to the IRS. Per § 6513(b), these withheld income taxes are deemed paid on April 15, 2020. The due date for Taxpayer's 2019 Federal income tax return was postponed by Notice 2020-23 to July 15, 2020. Pur-

suant to the postponed due date, Taxpayer timely filed their return on June 22, 2020. Under § 6511(a), Taxpayer may timely file a claim for credit or refund until three years from the return filing date, or June 22, 2023. But if Taxpayer files a claim for credit or refund on June 22, 2023, absent the relief granted in this notice, the amount of Taxpayer's credit or refund would be limited to tax paid during the period beginning three years before the filing of the claim, or June 22, 2020. As a result, a credit or refund of Taxpayer's withheld income taxes would be barred because they were deemed paid on April 15, 2020, outside of the lookback period in § 6511(b)(2)(A). This notice provides relief by disregarding the period beginning on April 15, 2020, and ending on July 15, 2020, in determining the beginning of the lookback period. Accordingly, under the relief provided by this notice, if Taxpayer files a claim for credit or refund

on or before June 22, 2023, the lookback period extends three years back from the date of the claim, disregarding the period beginning on April 15, 2020, and ending on July 15, 2020. As a result, the limit to the amount of the credit or refund would include Taxpayer's withheld income taxes deemed paid on April 15, 2020.

The relief provided under § 7508A in this notice is automatic. Affected Taxpayers do not have to call the IRS, file any form, or send letters or other documents to receive this relief.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Andrew C. Keaton of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Mr. Keaton at (202) 317-6833 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Use of forfeitures in qualified retirement plans.

REG-122286-18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking

SUMMARY: This document sets forth proposed regulations that would provide rules relating to the use of forfeitures in qualified retirement plans, including a deadline for the use of forfeitures in defined contribution plans. These proposed regulations would affect participants in, beneficiaries of, administrators of, and sponsors of qualified retirement plans.

DATES: Written or electronic comments must be received by May 30, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-122286-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish to the IRS's public docket, for public availability, any comments submitted, whether electronically or on paper. Send paper submissions to: CC:PA:LPD:PR (REG-122286-18), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Brandon M. Ford or

Joyce I. Kahn at (202) 317-4148; concerning submission of comments and requests for a public hearing, call Vivian Hayes at (202) 317-5306 (not toll-free numbers) or email publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background

General Forfeiture Rules for Qualified Plans

Section 401(a)(7) of the Internal Revenue Code (Code) provides that a trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries will not constitute a qualified trust under section 401(a) unless its related stock bonus, pension, or profit-sharing plan satisfies the requirements of section 411 (relating to minimum vesting standards).¹ Section 411(a) generally provides that an employee's right to accrued benefits derived from employer contributions must become nonforfeitable after a specified period of service. Section 411(a) also provides exceptions to this general rule under which an employee's benefit is permitted to be forfeited without violating section 411, conditions under which forfeited amounts must be restored upon a participant's repayment of a withdrawal, and other rules related to vesting.

Section 2(2) of the Self-Employed Individuals Tax Retirement Act of 1962, Pub. L. No. 87-792, 76 Stat. 809, added section 401(a)(8) of the Code, providing that a trust forming part of a pension plan will not constitute a qualified trust under section 401(a) unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

Section 1.401-7(a), promulgated in 1963, generally provides, in the case of a trust forming a part of a qualified pension plan, that the plan must expressly provide that forfeitures arising from severance of employment, from death, or for any other

reason may not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions under the plan, and that the amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan. Section 1.401-7(a) also provides that a qualified pension plan may anticipate the effect of forfeitures in determining costs under the plan, and that a qualified plan will not be disqualified merely because a determination of the amount of forfeitures under the plan is made only once during each taxable year of the employer.

Section 1.401-1(b)(1)(i) provides that a pension plan is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Section 1.401-1(b)(1)(i) further provides that benefits under a pension plan are not definitely determinable if funds arising from forfeitures on termination of service, or other reason, may be used to provide increased benefits for the remaining participants. Section 1.401-1(b)(1)(i) specifically refers to §1.401-7, relating to the treatment of forfeitures under a qualified pension plan, in setting forth the requirement that forfeitures not be used to provide increased benefits for participants.

Section 1119(a) of the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (TRA 86), amended section 401(a)(8) of the Code to replace the term "pension plan" (which includes a defined contribution money purchase pension plan) with the term "defined benefit plan" (which does not include a money purchase pension plan). The conference report accompanying TRA 86 (Conference Report) explained that, prior to TRA 86, forfeitures under a money purchase pension plan could not be used to increase benefits, but were required to be applied to reduce future employer contributions or to offset

¹ There are parallel vesting requirements in section 203 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (ERISA). The IRS has interpretive authority over that section pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1, 92 Stat. 3790. (Reorganization Plan No. 4).

administrative expenses of the plan, and that forfeitures in a defined contribution plan that is not a money purchase pension plan could be reallocated to the remaining participants under a nondiscriminatory formula, used to reduce future employer contributions, or used to offset administrative expenses of the plan. H.R. Rept. No. 99-841, at II-442 (1986). The Conference Report also noted that the changes made by TRA 86 provided uniform rules regarding the use of forfeitures under any defined contribution plan and stated that, following these changes, “forfeitures arising in any defined contribution plan (including a money purchase pension plan) can be either (1) reallocated to the accounts of other participants in a nondiscriminatory fashion, or (2) used to reduce future employer contributions or administrative costs.” Id.

Forfeitures in Defined Contribution Plans

Section 414(i) provides that a defined contribution plan is a plan that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant’s account.

Section 1.401-1(b)(1) provides rules related to specific types of qualified retirement plans. Section 1.401-1(b)(1)(i) provides that a pension plan (including a money purchase pension plan) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits and that a plan will be considered a pension plan if employer contributions can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits. Section 1.401-1(b)(1)(ii) provides that a profit-sharing plan must provide a definite predetermined formula for allocating the contributions

made to the plan among the participants and for distributing the funds accumulated under the plan. Section 1.401-1(b)(1)(iii) applies similar requirements to a stock bonus plan.

Rev. Rul. 80-155, 1980-1 CB 84, provides that profit-sharing plans, stock bonus plans, and money purchase pension plans are required to provide for distributions in accordance with amounts stated or ascertainable and credited to participants. The revenue ruling further provides that amounts that are to be allocated or distributed to a particular participant are ascertainable only if the plan provides for a valuation at least annually.

A 2010 Newsletter of the Employee Plans office of the IRS’s Tax Exempt and Government Entities Division (*Retirement News for Employers*, Vol. 7, Spring 2010) (the 2010 Newsletter)² noted that some defined contribution plan administrators place forfeited amounts into a plan suspense account, allowing them to accumulate over several years, but that the Code does not allow this practice. It advised that a plan document should have provisions detailing how and when a plan will use or allocate plan forfeitures, and it described deadlines for the use or allocation of forfeitures.³

Forfeitures in Defined Benefit Plans

As originally enacted, section 401(a)(8) provided that a trust forming part of a pension plan will not constitute a qualified trust under section 401(a) unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan. As noted in the section of this preamble titled “General Forfeiture Rules for Qualified Plans,” section 1119(a) of TRA 86 amended section 401(a)(8) of the Code to replace the term “pension plan” with the term “defined benefit plan,” with the result that defined benefit plans continue to be subject to the rule that forfeitures may not be used to increase benefits.

The use of forfeitures in defined benefit plans has also changed since the issuance in 1963 of §1.401-7 (which provides that amounts forfeited in pension plans must be used as soon as possible to reduce employer contributions), due to the enactment of new minimum funding requirements applicable to defined benefit plans. For example, in 1974 ERISA added section 412 to the Code, which requires qualified defined benefit plans (and certain qualified defined contribution plans) to satisfy a minimum funding standard.⁴ Subsequently, the minimum funding standards have been modified to provide differing standards for different types of plans. See sections 430, 431, and 433.

None of the provisions that set forth minimum funding requirements for qualified defined benefit plans allow required contributions to be offset by forfeitures of accrued benefits. Instead, all of these provisions require the use of reasonable actuarial assumptions to determine the effect of expected forfeitures on plan liabilities. See sections 430(h), 431(c)(3), and 433(c)(3). Any difference between actual forfeitures and expected forfeitures is reflected in future contributions required under section 412 pursuant to the funding method used for the plan under section 430, 431, or 433.

Explanation of Provisions

Use of Forfeitures in Defined Contribution Plans

Consistent with changes made by TRA 86 providing uniform rules for the use of forfeitures in defined contribution plans (as described in the Conference Report), the proposed regulations would clarify that forfeitures arising in any defined contribution plan (including in a money purchase pension plan) may be used for one or more of the following purposes, as specified in the plan: (1) to pay plan administrative expenses, (2) to reduce employer contributions under the plan, or (3) to increase benefits in other participants’

² www.irs.gov/pub/irs-pdf/p4278.pdf

³ In particular, the newsletter advised that generally “[n]o forfeitures in a suspense account should remain unallocated beyond the end of the plan year in which they occurred,” and that “[f]or those plans that use forfeitures to reduce plan expenses or employer contributions, there should be plan language and administrative procedures to ensure that current year forfeitures will be used up promptly in the year in which they occurred or in appropriate situations no later than the immediately succeeding plan year.”

⁴ Section 302 of Title I of ERISA sets forth minimum funding standards that are parallel to the minimum funding standards in section 412 of the Code. The IRS has interpretive authority over section 302 of title I of ERISA pursuant to Reorganization Plan No. 4.

accounts in accordance with plan terms.⁵ The use of forfeitures to reduce employer contributions includes the restoration of inadvertent benefit overpayments and the restoration of conditionally forfeited participant accounts that might otherwise require additional employer contributions, for example, the restoration of accounts conditionally forfeited under §1.411(a)-7(d) (relating to certain distributions and cash-outs of accrued benefits).

Timing for Use of Forfeitures in a Defined Contribution Plan

The proposed regulations would generally require that plan administrators use forfeitures no later than 12 months after the close of the plan year in which the forfeitures are incurred. This deadline is intended to simplify administration by providing a single deadline for the use of forfeitures that applies for all types of defined contribution plans and to alleviate administrative burdens that may arise in using or allocating forfeitures if forfeitures are incurred late in a plan year. The deadline in the proposed regulations is similar to the deadline under §1.401(k)-2(b)(2)(v) for a section 401(k) plan to correct excess contributions by making corrective distributions, which is 12 months after the close of the plan year in which the excess contributions arise. The proposed regulations would not affect generally applicable deadlines related to the timing of contributions and allocations under a plan, such as the deadline for correcting excess contributions to avoid excise taxes under section 4979 as set forth in §1.401(k)-2(b)(5)(i).

The proposed regulations provide a transition rule related to the 12-month deadline. Under this rule, forfeitures incurred during any plan year that begins before January 1, 2024, are treated as having been incurred in the first plan year that begins on or after January 1, 2024; accordingly, those forfeitures must be used no later than 12 months after the end of that first plan year. As described in the section of this preamble titled “Proposed Applicability Date,” these regulations are

proposed to apply for plan years beginning on or after January 1, 2024.

Although nothing in the proposed regulations would preclude a plan document from specifying only one use for forfeitures, the plan may fail operationally if forfeitures in a given year exceed the amount that may be used for that one purpose. For example, if (1) a plan provides that forfeitures may be used solely to offset plan administrative expenses, (2) plan participants incur \$25,000 of forfeitures in a plan year, and (3) the plan incurs only \$10,000 in plan administrative expenses before the end of the 12-month period following the end of that plan year, there will be \$15,000 of forfeitures that remain unused after the deadline established in these proposed regulations. Thus, the plan would incur an operational qualification failure because forfeitures remain unused at the end of the 12-month period following the end of that plan year. The plan could avoid this failure if it were amended to permit forfeitures to be used for more than one purpose.

Use of Forfeitures in Defined Benefit Plans

The proposed regulations would update rules relating to the use of forfeitures in defined benefit plans to reflect the enactment, after the issuance of §1.401-7, of new minimum funding requirements applicable to defined benefit plans. In addition, the requirement in existing §1.401-7(a) that forfeitures under pension plans be used as soon as possible to reduce employer contributions would be eliminated because it is inconsistent with those minimum funding requirements. The minimum funding requirements of sections 412, 430, 431, and 433 do not allow the use of forfeitures to reduce required employer contributions to a defined benefit plan in the manner contemplated by existing § 1.401-7. Instead, reasonable actuarial assumptions are used to determine the effect of expected forfeitures on the present value of plan liabilities under the plan’s funding method. Differences between actual forfeitures and expected forfeitures will increase or decrease the

plan’s minimum funding requirement for future years pursuant to the plan’s funding method.

Proposed Applicability Date

These regulations are proposed to apply for plan years beginning on or after January 1, 2024. Thus, for example, the deadline for the use of defined contribution plan forfeitures incurred in a plan year beginning during 2024 will be 12 months after the end of that plan year. Taxpayers, however, may rely on these proposed regulations for periods preceding the applicability date.

Special Analyses

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

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Treasury Department and the IRS understand that (1) plans typically provide for the use of (and use) forfeitures in a manner consistent with the proposed regulations and (2) defined contribution plans typically use forfeitures by the deadline set forth in the proposed regulations (consistent with the 2010 Newsletter). Accordingly, for most plans, the proposed regulations are not expected to require changes to plan terms or plan operations, or otherwise have a significant economic impact on plans or plan sponsors. If any plans have terms or operations that are inconsistent with the proposed regulations, it is not expected that these proposed regulations will have a significant economic impact on those plans or the sponsors of those plans. For example, the proposed regulations do not require any additional employer contributions or impose burdensome operational requirements. Notwithstanding this

⁵ Additionally, under section 6001, plan administrators must keep records necessary to demonstrate compliance with the qualification requirements of section 401(a), including records related to the use of forfeitures.

certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and 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. Specifically, comments are requested on the following topics:

- Whether the rules for the use of forfeitures in defined benefit and defined contribution plans can be further simplified to reduce administrative costs and burdens; and
- Whether any issues arise concerning other unallocated amounts (in addition to forfeitures) with respect to qualified retirement plans, and, if issues do arise, whether guidance should be provided addressing those issues.

All comments will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the Federal Register.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Proposed Amendments to the Regulations

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

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

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

§1.401-1 [Amended]

Par. 2. Section 1.401-1 is amended by removing the fourth sentence of paragraph (b)(1)(i).

Par. 3. Section 1.401-7 is revised to read as follows:

§1.401-7 Forfeitures under a qualified retirement plan.

(a) *Forfeitures under a qualified defined benefit plan.* In the case of a trust forming a part of a qualified defined benefit plan (as described in section 414(j)), the plan must expressly provide that forfeitures may not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer

contributions thereunder. However, the effect of forfeitures may be anticipated in determining the costs under the plan. See sections 430(h)(1), 431(c)(3), and 433(c)(3), as applicable, regarding the use of reasonable actuarial assumptions in determining the amount of contributions required to be made under a plan to which one of those sections applies.

(b) *Forfeitures under a qualified defined contribution plan.* In the case of a trust forming a part of a qualified defined contribution plan (as described in section 414(i)) that provides for forfeitures, the plan must provide that—

(1) Forfeitures will be used for one or more of the following purposes—

(i) To pay plan administrative expenses;

(ii) To reduce employer contributions under the plan; or

(iii) To increase benefits in other participants' accounts in accordance with plan terms; and

(2) Forfeitures will be used no later than 12 months following the close of the plan year in which the forfeitures were incurred under plan terms.

(c) *Transition rule for forfeitures incurred during plan years beginning before January 1, 2024.* For purposes of paragraph (b)(2) of this section, forfeitures incurred during any plan year that begins before January 1, 2024, will be treated as having been incurred in the first plan year that begins on or after January 1, 2024.

(d) *Applicability date.* This section applies for plan years beginning on or after January 1, 2024.

Melanie R. Krause,
*Acting Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register February 24, 2023, 8:45a.m., and published in the issue of the Federal Register for February 27, 2023, 88 FR 12282)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletin 2023–11

Announcements:

2023-2, 2023-2 I.R.B. 344
2023-1, 2023-3 I.R.B. 422
2023-3, 2023-5 I.R.B. 447
2023-4, 2023-7 I.R.B. 470
2023-5, 2023-9 I.R.B. 499
2023-6, 2023-9 I.R.B. 501

AOD:

2023-1, 2023-10 I.R.B. 502
2023-2, 2023-11 I.R.B. 529

Notices:

2023-4, 2023-2 I.R.B. 321
2023-5, 2023-2 I.R.B. 324
2023-6, 2023-2 I.R.B. 328
2023-8, 2023-2 I.R.B. 341
2023-1, 2023-3 I.R.B. 373
2023-2, 2023-3 I.R.B. 374
2023-3, 2023-3 I.R.B. 388
2023-7, 2023-3 I.R.B. 390
2023-9, 2023-3 I.R.B. 402
2023-10, 2023-3 I.R.B. 403
2023-11, 2023-3 I.R.B. 404
2023-12, 2023-6 I.R.B. 450
2023-13, 2023-6 I.R.B. 454
2023-16, 2023-8 I.R.B. 479
2023-17, 2023-10 I.R.B. 505
2023-18, 2023-10 I.R.B. 508
2023-20, 2023-10 I.R.B. 523
2023-19, 2023-11 I.R.B. 560
2023-21, 2023-11 I.R.B. 563

Proposed Regulations:

REG-100442-22, 2023-3 I.R.B. 423
REG-146537-06, 2023-3 I.R.B. 436
REG-114666-22, 2023-4 I.R.B. 437
REG 122286-18, 2023-11 I.R.B. 565

Revenue Procedures:

2023-1, 2023-1 I.R.B. 1
2023-2, 2023-1 I.R.B. 120
2023-3, 2023-1 I.R.B. 144
2023-4, 2023-1 I.R.B. 162
2023-5, 2023-1 I.R.B. 265
2023-7, 2023-1 I.R.B. 305
2023-8, 2023-3 I.R.B. 407
2023-10, 2023-3 I.R.B. 411
2023-11, 2023-3 I.R.B. 417
2023-14, 2023-6 I.R.B. 466
2023-9, 2023-7 I.R.B. 471

Revenue Rulings:

2023-1, 2023-2 I.R.B. 309
2023-3, 2023-6 I.R.B. 448
2023-4, 2023-9 I.R.B. 480
2023-5, 2023-10 I.R.B. 503

Treasury Decisions:

9970, 2023-2 I.R.B. 311
9771, 2023-3 I.R.B. 346
9772, 2023-11 I.R.B. 530
9773, 2023-11 I.R.B. 557

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

Finding List of Current Actions on Previously Published Items¹

Bulletin 2023–11

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