

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **T.D. 9459, page 480.**

Final regulations under sections 401(a)(9) and 403(b) of the Code permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute.

#### **T.D. 9461, page 488.**

Final regulations under section 6050P of the Code will avoid premature information reporting from certain businesses and will reduce the number of information returns for cancellation of indebtedness required to be filed.

#### **REG-136563-07, page 497.**

Proposed regulations under section 6011 of the Code provide rules requiring the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax and conforming amendments under sections 6111 and 6112. The regulations also provide guidance under section 6112 regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to the reportable transaction and clarify the provisions regarding designation agreements.

### **EMPLOYEE PLANS**

#### **T.D. 9459, page 480.**

Final regulations under sections 401(a)(9) and 403(b) of the Code permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute.

#### **Notice 2009-82, page 491.**

**Guidance on 2009 required minimum distributions.** This notice provides guidance and transition relief relating to the waiver of 2009 required minimum distributions, described in section 401(a)(9) of the Code, from certain plans under the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), P.L. 110-458. The notice also provides two sample plan amendments that give recipients a choice as to whether to receive waived required minimum distributions and certain related payments and that specify the application of the direct rollover rules to the distributions. The sample amendments can be used by plan sponsors that are uncertain as to the treatment under plan terms of waived required minimum distributions and certain related payments or that otherwise desire to give recipients a choice as to whether to receive such distributions. Notice 2007-7 modified.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2009-72, page 500.**

The IRS has revoked its determination that A New Horizon, Credit Counseling Services, Inc., qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Code.

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Finding Lists begin on page ii.



## ESTATE TAX

### **REG-136563-07, page 497.**

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## EXCISE TAX

### **T.D. 9457, page 482.**

Final regulations under section 4980G of the Code provide guidance on employer contributions to Health Savings Accounts (HSAs), as amended by the Tax Relief and Health Care Act of 2006. The regulations provide guidance on contributions to nonhighly compensated employees, guidance for employers that offer qualified HSA distributions, and guidance for employers that choose to make the maximum annual HSA contribution on behalf of all employees who are eligible individuals during the last month of the taxable year. The regulations also provide guidance relating to the manner and method of reporting and paying the excise tax under section 4980B, 4980D, 4980E, or 4980G.

## ADMINISTRATIVE

### **T.D. 9461, page 488.**

Final regulations under section 6050P of the Code will avoid premature information reporting from certain businesses and will reduce the number of information returns for cancellation of indebtedness required to be filed.

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Proposed regulations under section 6011 of the Code provide rules requiring the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax and conforming amendments under sections 6111 and 6112. The regulations also provide guidance under section 6112 regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to the reportable transaction and clarify the provisions regarding designation agreements.

### **Announcement 2009-70, page 499.**

This announcement contains corrections and clarifications to Publication 1220, *Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G, Electronically*, revised (7-2009).

### **Announcement 2009-73, page 500.**

This document contains corrections to final regulations (T.D. 9456, 2009-33 I.R.B. 188) providing guidance regarding the treatment of controlled services transactions under section 482 of the Code and the allocation of income from intangible property, in particular with respect to contributions by a controlled party to the value of intangible property owned by another controlled party. The regulations modify regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the guidance under section 482.

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

the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

## Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(a)(9)-1: Minimum distribution requirement in general.

T.D. 9459

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

#### Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of governmental plans.

**DATES:** *Effective Date:* These regulations are effective on September 8, 2009.

*Applicability Date:* These regulations apply to all plan years to which section 401(a)(9) applies to the plan.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Cathy V. Pastor or Michael P. Brewer at (202) 622-6090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 401(a)(9) provides required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by

April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires ("the required beginning date"). If the entire interest of the participant is not distributed by the required beginning date, then section 401(a)(9)(A) provides that the entire interest of the participant must be distributed beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) provides the required minimum distribution rules after the death of the participant.

IRAs described in section 408, section 403(b) plans, and eligible deferred compensation plans under section 457(b), also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections.

In 2002, the IRS and the Treasury Department published final regulations under sections 401(a)(9), 403(b), and 408 in the **Federal Register** (T.D. 8987, 2002-1 C.B. 852 [67 FR 18987]). Section 1.401(a)(9)-1, A-2(a), provides that the final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. The rules for defined benefit plans and annuities were included in a temporary regulation, §1.401(a)(9)-6T, as well as in a proposed regulation (67 FR 18834) in order to allow taxpayers to comment on the rules.

In 2004, the IRS and the Treasury Department replaced the temporary regulations with final regulations under §1.401(a)(9)-6 (69 FR 33288). The final regulations contain a "grandfather rule" in Q&A-16, which provides that annuity distribution options provided under the terms of a governmental plan (within the meaning section 414(d)) as in effect on April 17, 2002, are treated as satisfying the requirements of section 401(a)(9) if

they satisfy a reasonable and good faith interpretation of the provisions of section 401(a)(9). In addition, Q&A-17 provides that, for distributions from any defined benefit plan or annuity contract during 2003, 2004, and 2005, the payments could satisfy a reasonable and good faith interpretation of section 401(a)(9) in lieu of §1.401(a)(9)-6. For governmental plans, §1.401(a)(9)-6, Q&A-17, extended this reasonable good faith standard to the end of the calendar year that contains the 90<sup>th</sup> day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90<sup>th</sup> day is later than December 31, 2005.

In 2003, the IRS and the Treasury Department published final regulations under section 457(b) in the **Federal Register** (T.D. 9075, 2003-2 C.B. 608 [68 FR 41230]). These regulations included §1.457-6(d), which provides that a section 457(b) eligible plan must meet the requirements of section 401(a)(9) and the regulations under that section.

In 2007, the IRS and the Treasury Department published final regulations under section 403(b) in the **Federal Register** (T.D. 9340, 2007-2 C.B. 487 [72 FR 41128]). These regulations, which become effective for tax years beginning after December 31, 2008, included §1.403(b)-6(e)(1), which provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)-6(e)(2) provides, with certain exceptions, that section 403(b) contracts apply the section 401(a)(9) required minimum distribution rules in accordance with §1.408-8.

Section 1.408-8, Q&A-1, provides, with certain exceptions, that in order to satisfy section 401(a)(9) for purposes of determining required minimum distributions, the rules of §§1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied.

Section 823 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA 06), instructs the Secretary of the Treasury to issue regulations under which, for all years to which section 401(a)(9) applies, a governmental plan, within the meaning of

section 414(d), shall be treated as having complied with section 401(a)(9) if such plan complies with a reasonable good faith interpretation of section 401(a)(9).

On July 10, 2008, the IRS and Treasury Department published a notice of proposed rulemaking (REG-142040-07, 2008-2 C.B. 451) in the **Federal Register** (73 FR 39630-01) proposing regulations that would implement section 823 of PPA 06 by amending the regulations under sections 401(a)(9) and 403(b) of the Code. The IRS and Treasury Department received no comments on the proposed regulations and no public hearing was requested or held. Accordingly, the provisions of these final regulations are identical to the proposed regulations.

### Explanation of Provisions

The final regulations amend the regulations under section 401(a)(9) to treat a governmental plan, within the meaning of section 414(d), as having complied with the rules of section 401(a)(9) if the governmental plan applies a reasonable and good faith interpretation of section 401(a)(9). The same rule applies to an eligible 457(b) plan maintained by a government. In addition, this rule applies to a section 403(b) contract that is part of a governmental plan, and the regulations under section 403(b) are amended accordingly. The final regulations also make conforming amendments to the regulations under section 401(a)(9) that eliminate other special rules for governmental plans which are rendered superfluous with this change.

### Effective/Applicability Date

These regulations are effective on September 8, 2009 and apply to all plan years to which section 401(a)(9) applies.

### Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because §§1.401(a)(9)-1 and 1.403(b)-6

do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal authors of these regulations are Michael P. Brewer and Cathy V. Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

\* \* \* \* \*

### 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. Section 1.401(a)(9)-1 is amended by adding a new paragraph (d) to A-2 as follows:

#### *§1.401(a)(9)-1 Minimum distribution requirement in general.*

\* \* \* \* \*

A-2. \* \* \* (d) *Special rule for governmental plans.* Notwithstanding anything to the contrary in this A-2, a governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in §1.457-2(f), is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

#### **§1.401(a)(9)-6 [Amended]**

Par. 3. Section 1.401(a)(9)-6 is amended by:

1. Removing Q&A-16.
2. Redesignating Q&A-17 as Q&A-16.
3. Removing the word “A-16” and adding “A-15” in the newly-designated A-16.
4. Removing the last sentence of the newly-designated A-16.

Par. 4. Section 1.403(b)-6 is amended by:

1. Revising the last sentence of paragraph (e)(2).
2. Adding a new paragraph (e)(8).

The revisions and addition are as follows:

#### *§1.403(b)-6 Timing of distributions and benefits.*

\* \* \* \* \*

(e) *Minimum required distributions for eligible plans.*

\* \* \* \* \*

(2) \* \* \* Consequently, except as otherwise provided in this paragraph (e), the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in §1.408-8 for purposes of determining required minimum distributions.

\* \* \* \* \*

(8) *Special rule for governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the contract complies with a reasonable and good faith interpretation of section 401(a)(9).

Linda E. Stiff,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved August 20, 2009.

Michael Mundaca,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 4, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 8, 2009, 74 F.R. 45993)

## Section 4980G.—Failure of Employer to Make Comparable Health Savings Account Contributions

26 CFR 54.4980B–0: Table of contents.

T.D. 9457

DEPARTMENT OF THE  
TREASURY  
Internal Revenue Service  
26 CFR part 54

### Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E, or 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The final regulations also provide guidance relating to the manner and method of reporting and paying the excise tax under sections 4980B, 4980D, 4980E, and 4980G of the Code. These final regulations would affect employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

**DATES:** *Effective Date.* These regulations are effective on September 8, 2009.

*Applicability Date.* The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G apply to employer contributions made on or after January 1, 2010. The sections of these

regulations that provide guidance relating to the excise tax under sections 4980B, 4980D, 4980E, and 4980G apply to any Form 8928 that is due on or after January 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Concerning the final regulations as they relate to sections 4980E or 4980G, Mireille Khoury at (202) 622–6080; and concerning the final regulations as they relate to section 4980B or 4980D, Russ Weinheimer at (202) 622–6080 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545–2146. The collection of information in these final regulations is in §54.6011–2. The collection of information results from the requirement to file a return for the payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. The likely respondents are employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

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

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

#### Background

This document contains final amendments to the Excise Tax Regulations (26 CFR part 54) under section 4980G of the Code, as amended by Sections 302 and

305 of the Tax Relief and Health Care Act of 2006 (the Act), Pub. L. No. 109–432, under paragraph (d) of section 4980G of the Code, as enacted by section 306 of the Act, and under Section 4980E of the Code.

Under section 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees. On July 31, 2006, final regulations on comparability were published in the **Federal Register**, REG–143797–06, 2007–1 C.B. 1495 [72 FR 30501], T.D. 9277, 2006–2 C.B. 226 [43066]. In addition, on April 17, 2008, final regulations were published in the **Federal Register**, 73 FR 20794, T.D. 9393, 2008–20 I.R.B. 975, providing guidance on employer comparable contributions to HSAs in instances where an employee has not established an HSA by December 31<sup>st</sup> and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. See §601.601(d)(2).

This document also contains final amendments to the Excise Tax Regulations (26 CFR part 54) under sections 4980B and 4980D. Under section 4980B, group health plans maintained by an employer with 20 or more employees must comply with continuation coverage requirements. If a plan does not satisfy these requirements, an excise tax is imposed of \$100 per day per affected beneficiary. Final regulations under section 4980B have been published, including provisions concerning the excise tax, but no return filing requirement has previously been imposed. See §54.4980B–2, Q&A–9 and Q&A–10. Moreover, under chapter 100 of the Code, group health plans must comply with various requirements, including limitations on preexisting condition exclusions, certification of creditable coverage, special enrollments, prohibitions against discrimination based on a health factor (including genetic information), parity between mental health benefits and medical/surgical benefits, minimum hospital lengths of stay in connection with childbirth, and continued coverage for post-secondary students with a serious medical condition. If a plan does not satisfy any of these requirements under chapter 100, section 4980D imposes an excise tax of \$100 per day per affected individual. Regulations interpreting the substantive requirements of chapter 100

have previously been published, but no regulations have been published concerning the excise tax under section 4980D.

On July 16, 2008, proposed regulations (REG-120476-07, 2008-36 I.R.B. 680) were published in the **Federal Register** (73 FR 40793) addressing comparable contributions to nonhighly compensated employees. The proposed regulations also provided guidance for employers that offer qualified HSA distributions and for employers that make the maximum annual HSA contribution on behalf of all employees who are eligible individuals on the first day of the last month of the employees' taxable year. Finally, the proposed regulations provided guidance on the requirement of a return to accompany payment of the excise taxes under sections 4980B, 4980D, 4980E, and 4980G and the time for filing that return. These final regulations adopt the provisions of the proposed regulations without substantive revision. The final regulations make certain minor clarifying changes to the rules of the proposed regulations.

## **Explanation of Provisions and Summary of Comments**

### *Special Rule for Contributions to Nonhighly Compensated Employees*

Paragraph (d) of section 4980G provides an exception to the comparability rules that allows, but does not require, employers to make larger contributions to the HSAs of nonhighly compensated employees than the employer makes to the HSAs of highly compensated employees. The final regulations address this exception to comparability in §54.4980G-4 and provide that employer contributions to the HSAs of nonhighly compensated employees may be larger than employer contributions to the HSAs of highly compensated employees with comparable coverage during a period. Conversely, employer contributions to the HSAs of highly compensated employees may not exceed employer contributions to the HSAs of nonhighly compensated employees with comparable coverage during a period.

The comparability rules still apply with respect to contributions to the HSAs of all nonhighly compensated employees who are comparable participating employees (eligible individuals who are in the same

category of employees with the same category of high deductible health plan (HDHP) coverage) and an employer must make comparable contributions to the HSA of each nonhighly compensated employee who is a comparable participating employee during the calendar year. Similarly, the comparability rules still apply with respect to contributions to the HSAs of all highly compensated employees who are comparable participating employees and an employer must make comparable contributions to the HSA of each highly compensated employee who is a comparable participating employee during the calendar year. Collectively bargained employees are disregarded for purposes of section 4980G, as are HSA contributions made through a cafeteria plan.

For purposes of section 4980G(d), highly compensated employee is defined under section 414(q) and includes any employee who was (1) a five-percent owner at any time during the year or the preceding year; or (2) for the preceding year, (A) had compensation from the employer in excess of \$110,000 (for 2009, indexed for inflation) and (B) if elected by the employer, was in the group consisting of the top 20 percent of employees when ranked based on compensation. Nonhighly compensated employees are employees that are not highly compensated employees.

### *Maximum HSA Contribution Permitted for Employees Who Become Eligible Individuals Mid-year*

Section 305 of the Act provides that individuals who are eligible individuals on the first day of the last month of the employees' taxable year (December 1 for calendar year taxpayers) may make or have made on their behalf the maximum annual HSA contribution based on their HDHP coverage (self only or family) on that date. A portion of the contribution is included in income and subject to an additional 10 percent tax if the individual fails to remain an eligible individual for 12 months after the last month of the taxable year. See section 223(b)(8). Section 54.4980G-6 of the final regulations provides that the employer can contribute up to this maximum contribution on behalf of all employees who are eligible individuals on the first day of the last month of the employees' taxable year (December 1 for calendar year tax-

payers), including employees who became eligible individuals after January 1<sup>st</sup> of the calendar year and eligible individuals who were hired after January 1<sup>st</sup> of the calendar year (both such classes of individuals are hereinafter referred to as "mid-year eligible individuals"). An employer who makes the maximum calendar year HSA contribution, or who contributes more than a *pro-rata* amount, on behalf of employees who are mid-year eligible individuals will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

Employers are not required to make these greater than *pro-rata* contributions and may instead *pro-rate* contributions based on the number of months that an individual was both employed by the employer and an eligible individual. However, if an employer contributes more than the monthly *pro-rata* amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must then contribute, on an equal and uniform basis, a greater than *pro-rata* amount to the HSAs of all comparable participating employees who are mid-year eligible individuals. Likewise, if the employer contributes the maximum annual contribution amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must contribute that same amount to the HSAs of all comparable participating employees who are mid-year eligible individuals.

### *Special Comparability Rules For Qualified HSA Distributions*

Section 302(a) of the Act provides for qualified HSA distributions. See section 106(e) and Notice 2007-22, 2007-1 C.B. 670). See §601.601(d)(2). A *qualified HSA distribution* is a direct distribution of an amount from a health flexible spending arrangement (health FSA) or a health reimbursement arrangement (HRA) to an HSA. The distribution must not exceed the lesser of the balance in the health FSA or HRA on September 21, 2006, or as of the date of the distribution. Section 54.4980G-7 of the final regulations provides that if an employer offers qualified HSA distributions to any employee who is an eligible



individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, an employer that offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

*Reporting and payment of the excise tax under section 4980B, 4980D, 4980E or 4980G.*

The regulations prescribe the manner and method of paying the excise taxes imposed under section 4980B, 4980D, 4980E, or 4980G. The final regulations, like the proposed regulations, provide that these excise taxes must be reported on Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code." The excise tax under section 4980B, 4980D, 4980E, or 4980G must be paid at the time prescribed for filing of the excise tax return (without extensions). With respect to the excise tax under section 4980B or 4980D for employers and third parties such as insurers or third party administrators, the return is due on or before the due date for filing the person's federal income tax return. An extension to file the person's income tax return does not extend the date for filing Form 8928. With respect to the excise tax under section 4980B or 4980D for multi-employer or specified multiple employer health plans, the return is due on or before the last day of the seventh month after the end of the plan year. Finally, with respect to the excise tax under section 4980E or 4980G for noncomparable contributions, the return is due on or before the 15<sup>th</sup> day of the fourth month following the calendar year in which the noncomparable contributions were made. The final regulations also provide guidance regarding the place for filing these excise tax returns, the signing of these excise returns, and the time and place for paying the tax shown on such returns.

Two comments were received regarding the reporting and filing of the excise taxes under sections 4980B, 4980D, 4980E, and 4980G. One commentator was

concerned that the noncompliance period under section 4980B or 4980D could extend beyond the due date for filing the excise tax return and suggested that the due date be extended to 90 days after the end of the noncompliance period. It is true that the noncompliance period under section 4980B, for example, could extend over four or more taxable years of the person responsible for payment of the tax. Therefore, extending the due date until 90 days after the end of the noncompliance period would in some cases defer the obligation to pay the excise tax for over four years, which would not be in the interest of sound tax administration. As such, the final regulations do not adopt this change.

Another commentator noted that the excise tax might be due before the person responsible for paying it had even discovered that a failure under section 4980B or 4980D had occurred. However, this concern is mitigated by the fact that sections 4980B and 4980D provide that the excise tax does not apply for any period for which the responsible party did not know, or exercising reasonable diligence would not have known, that the failure existed. Also, under sections 4980B and 4980D, the excise tax does not apply if the failure is corrected (that is, the failure is retroactively undone to the extent possible and the affected beneficiary is placed in a financial position as good as the beneficiary would have been had the failure not occurred).

Finally, a commentator also stated that there are some uncertainties about the application of the excise tax rules to various situations that could arise under section 4980B. The commentator suggested that the filing and payment requirement for the excise tax under section 4980B should not apply until additional guidance was issued that addressed these uncertainties. The Treasury Department and the IRS believe that the statutory and regulatory provisions in this area provide appropriate guidance. Therefore, the final regulations do not adopt this comment.

The guidance in the proposed regulations relating to the excise taxes imposed under section 4980B, 4980D, 4980E, or 4980G was contained in Q & A-11 in §4980B-2, Q & A-1 in §4980D-1, Q & A-1 in §4980E-1, and Q & A-5 in §4980G-1. The final regulations provide additional clarifying

information relating to the guidance previously provided in these Q & A's, and the final regulations also consolidate this guidance by including it under the following sections: §§54.6011-2, 54.6061-1, 54.6071-1, 54.6091-1 and 54.6151-1.

### **Effective/Applicability Date**

The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G apply to employer contributions made on or after January 1, 2010.

The sections of these regulations that provide guidance relating to the excise tax under sections 4980B, 4980D, 4980E, and 4980G apply to any Form 8928 that is due on or after January 1, 2010.

### **Special Analyses**

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

The principal authors of these final regulations are Mireille Khoury and Russ Weinheimer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

\* \* \* \* \*

**Adoption of Amendment to the Regulations**

Accordingly, 26 CFR part 54 is amended as follows:

**PART 54—PENSION EXCISE TAXES**

Paragraph 1. The authority citation for part 54 is amended by adding entries in numerical order to read in part as follows:

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

Section 54.4980G-6 also issued under 26 U.S.C. 4980G.

Section 54.4980G-7 also issued under 26 U.S.C. 4980G. \* \* \*

Par. 2. Section 54.4980B-0 is amended by adding a new Q-11 to §54.4980B-2 in the list of questions to read as follows:

§54.4980B-0 Table of contents.

\* \* \* \* \*

List Of Questions

\* \* \* \* \*

§54.4980B-2 Plans that must comply.

\* \* \* \* \*

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

\* \* \* \* \*

Par. 3. Section 54.4980B-2 is amended by adding a new Q&A-11 to read as follows:

§54.4980B-2 Plans that must comply.

\* \* \* \* \*

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-11: (a) *In general.* See §§54.6011-2 and 54.6151-1.

(b) *Due date for filing of return by employers or other persons responsible for benefits under a group health plan.* See §54.6071-1(a)(1).

(c) *Due date for filing of return by multiemployer plans.* See §54.6071-1(a)(2).

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A-11, the rules in this Q & A-11 are effective for taxable years beginning on or after January 1, 2010. In the case of a plan mentioned in paragraph (c) of this Q & A-11, the rules in

this Q & A-11 are effective for plan years beginning on or after January 1, 2010.

Par. 4. Section 54.4980D-1 is added to read as follows:

§54.4980D-1 Requirement of Return and Time for Filing of the excise tax under section 4980D.

Q-1: If a person is liable for the excise tax under section 4980D, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* See §§54.6011-2 and 54.6151-1.

(b) *Due date for filing of return by employers.* See §54.6071-1(b)(1).

(c) *Due date for filing of return by multiemployer plans or multiple employer health plans.* See §54.6071-1(b)(2).

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A-1, the rules in this Q & A-1 are effective for taxable years beginning on or after January 1, 2010. In the case of a plan mentioned in paragraph (c) of this Q & A-1, the rules in this Q & A-1 are effective for plan years beginning on or after January 1, 2010.

Par. 5. Section 54.4980E-1 is added to read as follows:

§54.4980E-1 Requirement of Return and Time for Filing of the excise tax under section 4980E.

Q-1: If a person is liable for the excise tax under section 4980E, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* See §§54.6011-2, 54.6151-1 and 54.6071-1(c).

(b) *Effective/applicability date.* The rules in this Q & A-1 are effective for plan years beginning on or after January 1, 2010.

Par. 6. Section 54.4980G-1 is amended by:

1. Revising the last sentence in A-1 and adding a new sentence at the end of paragraph (a) in A-2.

2. Adding a new Q & A-5.

The revisions and addition read as follows:

§54.4980G-1 Failure of employer to make comparable health savings account contributions.

\* \* \* \* \*

A-1: \* \* \* But see Q & A-6 in §54.4980G-3 for treatment of collectively bargained employees and Q & A-1 in §54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

\* \* \* \* \*

A-2: (a) \* \* \* See also §54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

\* \* \* \* \*

Q-5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-5: (a) *In general.* §§54.6011-2, 54.6151-1 and 54.6071-1(d).

(b) *Effective/applicability date.* The rules in this Q & A-5 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

Par. 7. Section 54.4980G-3 is amended by:

- 1. Revising the section heading.
- 2. Revising the introductory text in paragraph (a) of A-5.
- 3. Adding a new sentence at the end of paragraph (c) of A-5 and paragraph (a) of A-9.

The revision and additions read as follows:

§54.4980G-3 Failure of employer to make comparable health savings account contributions.

\* \* \* \* \*

A-5: (a) *Categories.* The categories of employees for comparability testing are as follows (but see Q & A-6 of this section for the treatment of collectively bargained employees and Q & A-1 of §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees)–

\* \* \* \* \*

(c) \* \* \* But see §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

\* \* \* \* \*

A-9: (a) \* \* \* See §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

\* \* \* \* \*

Par. 8. Section 54.4980G-4 is amended by:

1. Adding a new sentence at the end of paragraph (a) of A-1.
2. Adding paragraphs (h), (i) and (j) to A-2.

The additions read as follows:

*§54.4980G-4 Calculating comparable contributions.*

\* \* \* \* \*

A-1: (a) \* \* \* But see Q & A-1 of §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

\* \* \* \* \*

A-2: \* \* \*

\* \* \* \* \*

(h) *Maximum contribution permitted for all employees who are eligible individuals during the last month of the taxable year.* An employer may contribute up to the maximum annual contribution amount for the calendar year (based on the employees' HDHP coverage) to the HSAs of all employees who are eligible individuals on the first day of the last month of the employees' taxable year, including employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1<sup>st</sup> of the calendar year. For example, such contribution may be made on behalf of an eligible individual who is hired after January 1<sup>st</sup> or an employee who becomes an eligible individual after January 1<sup>st</sup>. Employers are not required to provide more than a *pro-rata* contribution based on the number of months that an individual was an eligible individual and employed by the employer during the year. However, if an employer contributes more than a *pro-rata* amount for the calendar year to the HSA of any eligible individual who is hired after January 1<sup>st</sup> of the calendar year or any employee who becomes an eligible individual any time after January 1<sup>st</sup> of the calendar year, the employer must contribute that same amount on an

equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A-1 in §54.4980G-1) who are hired or become eligible individuals after January 1<sup>st</sup> of the calendar year. Likewise, if an employer contributes the maximum annual contribution amount for the calendar year to the HSA of any eligible individual who is hired after January 1<sup>st</sup> of the calendar year or any employee who becomes an eligible individual any time after January 1<sup>st</sup> of the calendar year, the employer must contribute the maximum annual contribution amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A-1 in §54.4980G-1) who are hired or become eligible individuals after January 1<sup>st</sup> of the calendar year. An employer who makes the maximum calendar year contribution or more than a *pro-rata* contribution to the HSAs of employees who become eligible individuals after the first day of the calendar year or eligible individuals who are hired after the first day of the calendar year will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

(i) *Examples.* The following examples illustrate the rules in paragraph (h) in this Q & A-2. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

*Example 1.* On January 1, 2010, Employer Q contributes \$1,000 for the calendar year to the HSAs of employees who are eligible individuals with family HDHP coverage. In mid-March of the same year, Employer Q hires Employee A, an eligible individual with family HDHP coverage. On April 1, 2010, Employer Q contributes \$1,000 to the HSA of Employee A. In September of the same year, Employee B becomes an eligible individual with family HDHP coverage. On October 1, 2010, Employer G contributes \$1,000 to the HSA of Employee B. Employer Q does not make any other contributions for the 2010 calendar year. Employer Q's contributions satisfy the comparability rules.

*Example 2.* For the 2010 calendar year, Employer R only has two employees, Employee C and Employee D. Employee C, an eligible individual with family HDHP coverage, works for Employer R for the entire calendar year. Employee D, an eligible individual with family HDHP coverage works for Employer R from July 1<sup>st</sup> through December 31<sup>st</sup>. Employer R contributes \$1,200 for the calendar year to the HSA of Employee C and \$600 to the HSA of Employee D. Employer R does not make any other con-

tributions for the 2010 calendar year. Employer R's contributions satisfy the comparability rules.

(j) *Effective/applicability date.* The rules in paragraphs (h) and (i) of Q & A-2 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

\* \* \* \* \*

Par. 9. Section 54.4980G-6 is added to read as follows:

*§54.4980G-6 Special rule for contributions made to the HSAs of nonhighly compensated employees.*

Q-1: May an employer make larger contributions to the HSAs of nonhighly compensated employees than to the HSAs of highly compensated employees?

A-1: Yes. Employers may make larger HSA contributions for nonhighly compensated employees who are comparable participating employees than for highly compensated employees who are comparable participating employees. See Q & A-1 in §54.4980G-1 for the definition of comparable participating employee. For purposes of this section, highly compensated employee is defined under section 414(q). Nonhighly compensated employees are employees that are not highly compensated employees. The comparability rules continue to apply with respect to contributions to the HSAs of all nonhighly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each nonhighly compensated employee who is a comparable participating employee.

Q-2: May an employer make larger contributions to the HSAs of highly compensated employees than to the HSAs of nonhighly compensated employees?

A-2: (a) *In general.* No. Employer contributions to HSAs for highly compensated employees who are comparable participating employees may not be larger than employer HSA contributions for nonhighly compensated employees who are comparable participating employees. The comparability rules continue to apply with respect to contributions to the HSAs of all highly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each highly compensated comparable participating employee. See Q & A-1 in

§54.4980G-1 for the definition of comparable participating employee.

(b) *Examples.* The following examples illustrate the rules in Q & A-1 and Q & A-2 of this section. No contributions are made through a section 125 cafeteria plan and none of the employees in the following examples are covered by a collective bargaining agreement. All of the employees in the following examples have the same HDHP deductible for the same category of coverage.

*Example 1.* In 2010, Employer A contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A makes no contribution to the HSA of any full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A's HSA contributions for calendar year 2010 satisfy the comparability rules.

*Example 2.* In 2010, Employer B contributes \$2,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B also contributes \$1,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B's HSA contributions for calendar year 2010 satisfy the comparability rules.

*Example 3.* In 2010, Employer C contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C contributes \$2,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C's HSA contributions for calendar year 2010 do not satisfy the comparability rules.

*Example 4.* In 2010, Employer D contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer D also contributes \$1,000 to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. In addition, the employer contributes an additional \$500 to the HSA of each nonhighly compensated employee who participates in a wellness program. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer D's HSA contributions for calendar year 2010 do not satisfy the comparability rules.

*Example 5.* In 2010, Employer E contributes \$1,000 for the calendar year to the HSA of each full-time non-management nonhighly compensated employee who is an eligible individual with family HDHP coverage. Employer E also contributes \$500 for the calendar year to the HSA of each full-time management nonhighly compensated employee who is an eligible individual with family HDHP coverage. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer E's HSA contributions for calendar year 2010 do not satisfy the comparability rules.

Q-3: May an employer make larger HSA contributions for employees with self plus two HDHP coverage than employees with self plus one HDHP coverage even if the employees with self plus two are all highly compensated employees and the employees with self plus one are all nonhighly compensated employees?

A-3: (a) Yes. Q & A-1 in §54.4980G-4 provides that an employer's contribution with respect to the self plus two category of HDHP coverage may not be less than the contribution with respect to the self plus one category and the contribution with respect to the self plus three or more category may not be less than the contribution with respect to the self plus two category. Therefore, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus two category of HDHP coverage than to self plus one coverage, even if the employees with self plus two coverage are all highly compensated employees and the employees with self plus one coverage are all nonhighly compensated employees. Likewise, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus three category of HDHP coverage than to self plus two coverage, even if the employees with self plus three coverage are all highly compensated employees and the employees with self plus two coverage are all nonhighly compensated employees.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-3. In the following example, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

*Example.* In 2010, Employer F contributes \$1,000 for the calendar year to the HSA of each full-time employee who is an eligible individual with self plus one HDHP coverage. Employer F contributes \$1,500 for the calendar year to the HSA of each employee who is an eligible individual with self plus two HDHP coverage. The deductible for both the self plus one HDHP and the self plus two HDHP is \$2,000. Employee A, an eligible individual, is a nonhighly compensated employee with self plus one coverage. Employee B, an eligible individual, is a highly compensated employee with self plus two coverage. For the 2010 calendar year, Employer F contributes \$1,000 to Employee A's HSA and \$1,500 to Employee B's HSA. Employer F's HSA contributions satisfy the comparability rules.

Q-4: What is the effective date for the rules in this section?

A-4: The rules in this section are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

Par. 10. Section 54.4980G-7 is added to read as follows:

*§54.4980G-7 Special comparability rules for qualified HSA distributions contributed to HSAs on or after December 20, 2006 and before January 1, 2012*

Q-1: How do the comparability rules of section 4980G apply to qualified HSA distributions under section 106(e)(2)?

A-1: The comparability rules of section 4980G do not apply to amounts contributed to employee HSAs through qualified HSA distributions. However, in order to satisfy the comparability rules, if an employer offers qualified HSA distributions, as defined in section 106(e)(2), to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, if an employer offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP, the employer is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

Q-2: What is the effective date for the rules in this section?

A-2: The rules in this section are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

Par. 11. Section 54.6011-2 is added to read as follows:

*§54.6011-2 General requirement of return, statement, or list*

Effective for any Form 9928 that is due on or after January 1, 2010, any person liable for tax under section 4980B, 4980D, 4980E, or 4980G of the Code shall file a return with respect to the tax on Form 9928. The return must include the information required by Form 9928 and the instructions issued with respect to it.

Par. 12. Section 54.6061-1 is added to read as follows:

*§54.6061-1 Signing of returns and other documents*

Effective for any Form 8928 that is due on or after January 1, 2010, any return, statement, or other document required to be made with respect to a tax imposed by section 4980B, 4980D, 4980E, or 4980G of the Code or the regulations under section 4980B, 4980D, 4980E, or 4980G must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be *prima facie* evidence that the individual is authorized to sign the return, statement, or other document.

Par. 13. Section 54.6071-1 is added to read as follows:

*§54.6071-1 Time for filing returns*

(a) *Returns under section 4980B.* (1) *Due date for filing of return by employers or other persons responsible for benefits under a group health plan.* If the person liable for the excise tax is an employer or other person responsible for providing or administering benefits under a group health plan (such as an insurer or a third party administrator), the return required by §54.6011-2 must be filed on or before the due date for filing the person's income tax return and must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the person's taxable year. An extension to file the person's income tax return does not extend the date for filing Form 8928.

(2) *Due date for filing of return by multiemployer plans.* If the person liable for the excise tax is a multiemployer plan, the return required by §54.6011-2 must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the plan's plan year.

(b) *Returns under section 4980D.* (1) *Due date for filing of return by employers.* If the person liable for the excise tax is an employer, the return required by

§54.6011-2 must be filed on or before the due date for filing the employer's income tax return and must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the employer's taxable year. An extension to file the employer's income tax return does not extend the date for filing Form 8928.

(2) *Due date for filing of return by multiemployer plans or multiple employer health plans.* If the person liable for the excise tax is a multiemployer plan or a specified multiple employer health plan, the return required by §54.6011-2 must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the plan's plan year.

(c) *Returns under section 4980E.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing the return required by §54.6011-2 on or before the 15<sup>th</sup> day of the fourth month following the calendar year in which the noncomparable contributions were made.

(d) *Returns under section 4980G.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing the return required by §54.6011-2 on or before the 15<sup>th</sup> day of the fourth month following the calendar year in which the noncomparable contributions were made. See Q & A-4 of §54.4980G-1 for the rules on computation of the excise tax under section 4980G.

(e) *Effective/applicability date:* The rules in this section are effective for any Form 8928 that is due on or after January 1, 2010.

Par. 14. Section 54.6091-1 is added to read as follows:

*§54.6091-1 Place for filing excise tax returns under section 4980B, 4980D, 4980E, or 4980G*

Effective for any Form 8928 that is due on or after January 1, 2010, the return required by §54.6011-2 must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

Par. 15. Section 54.6151-1 is added to read as follows:

*§54.6151-1 Time and place for paying of tax shown on returns.*

Effective for any Form 8928 that is due on or after January 1, 2010, the tax shown on any return which is imposed under section 4980B, 4980D, 4980E, or 4980G shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§54.6071-1 and 54.6091-1.

Linda E. Stiff,  
*Deputy Commissioner for Services and Enforcement.*

Approved August 20, 2009.

Michael Mundaca,  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 4, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 8, 2009, 74 F.R. 45994)

## **Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities**

*26 CFR 1.6050P-1: Information reporting for discharges of indebtedness by certain entities.*

### **T.D. 9461**

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

### **Information Reporting for Discharges of Indebtedness**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to information returns for cancellation of indebtedness by certain entities under section 6050P of the Internal Revenue Code. The final regulations

will avoid premature information reporting from certain businesses and will reduce the number of information returns required to be filed. The final regulations will impact certain businesses required to file information returns under the existing regulations.

**DATES:** *Effective Date:* These regulations are effective on September 17, 2009.

*Applicability Date:* For dates of applicability, see §1.6050P-1(h).

**FOR FURTHER INFORMATION CONTACT:** Barbara Pettoni at (202) 622-4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of \$600 or more. The amendments in this document will avoid premature reporting of cancellation of indebtedness income by reducing the information reporting burden on certain entities that were not originally within the scope of section 6050P. The amendments will also protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

Final and temporary regulations (T.D. 9430, 2008-48 C.B. 1205) were published in the **Federal Register** (73 FR 66539) on November 10, 2008. On the same date, a notice of proposed rulemaking (REG-118327-08, 2008-48 C.B. 1218) cross-referencing to temporary regulations was published in the **Federal Register** (73 FR 66568). A correction to final and temporary regulations (73 FR 75326) and a correcting amendment (Announcement 2008-2 C.B. 1375 [73 FR 75326]) to the regulations were published in the **Federal Register** on December 11, 2008. Only one commenter responded to the proposed regulations, presenting oral comments at a public hearing on the proposed regulations at the IRS on March 13, 2009, as well

as written comments. After considering these oral and written comments, the IRS and the Treasury Department are adopting the proposed regulations without change and removing the corresponding temporary regulations.

### Explanation of Comments

The sole commenter agrees with the amendments in the proposed regulations to reduce the information reporting burden on certain entities that were not originally within the scope of section 6050P and thereby avoid premature reporting of cancellation of indebtedness income. The commenter, however, requested additional guidance on several other areas addressed in the existing regulations under section 6050P including: (1) the meaning of “stated principal” as used in §1.6050P-1(c) and (d)(3) when applied to transactions involving entities that acquire a loan from another person; (2) what information, if any, must be provided to a debtor prior to filing Form 1099-C, “*Cancellation of Debt*”; (3) what constitutes significant *bona fide* collection activity under §1.6050P-1(b)(2)(iv)(A); and (4) how to report the discharge of a debt that has been reduced to judgment. These other areas are beyond the scope of the proposed regulations and are therefore not addressed in these final regulations. The Treasury Department and the IRS will consider the concerns raised in these comments in determining whether to issue additional guidance under section 6050P.

No revisions were made to the proposed and temporary regulations or the corrections to those regulations. Accordingly, this Treasury decision adopts the proposed regulations without substantive change and removes the corresponding temporary regulations.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection

of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### 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 is amended by removing the entry for §1.6050P-1T to read in part as follows:

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

Par. 2. Section 1.6050P-0 is amended as follows:

1. The introductory text is revised.
2. The entry for §1.6050P-1(b)(2)(v) is added.
3. The entry for §1.6050P-1T is removed.

The revisions and addition read as follows:

#### *§1.6050P-0 Table of contents.*

This section lists the major captions that appear in §§1.6050P-1 and 1.6050P-2.

#### *§1.6050P-1 Information reporting for discharges of indebtedness by certain entities.*

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(v) Special rule for certain entities required to file in a year prior to 2008.

\* \* \* \* \*

Par. 3. Section 1.6050P-1 is amended by revising paragraphs (b)(2)(i)(H), (b)(2)(v) and (h)(1) to read as follows:

*§1.6050P-1 Information reporting for discharges of indebtedness by certain entities.*

\* \* \* \* \*

(b) \* \* \* (2) \* \* \*

(i) \* \* \*

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in §1.6050P-1(b)(2)(iv).

\* \* \* \* \*

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H) of this

section, and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

\* \* \* \* \*

(h) \* \* \*(1) *In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

\* \* \* \* \*

Par. 4. Section 1.6050P-1T is removed.

Linda E. Stiff,  
*Deputy Commissioner for Services and Enforcement.*

Approved August 28, 2009.

Michael F. Mundaca,  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 16, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2009, F.R. 47728)

# Part III. Administrative, Procedural, and Miscellaneous

## Guidance on 2009 Required Minimum Distributions

### Notice 2009-82

#### I. PURPOSE

This notice provides guidance relating to the waiver of 2009 required minimum distributions, described in § 401(a)(9) of the Internal Revenue Code (“Code”), from certain plans under the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”), P.L. 110-458. In particular, the notice:

- provides transition relief through November 30, 2009 for a plan that is not operated in accordance with its terms with respect to waived required minimum distributions and certain related payments;
- sets out rollover relief with respect to waived required minimum distributions and certain related payments, including an extension of the 60-day rollover period to November 30, 2009 for certain of the distributions; and
- answers questions that have been raised regarding the waiver of 2009 required minimum distributions under WRERA.

In the Appendix, the notice also provides two sample plan amendments that give recipients a choice as to whether to receive waived required minimum distributions and certain related payments and that specify the application of the direct rollover rules to the distributions. The sample amendments can be used by plan sponsors that are uncertain as to the treatment under plan terms of waived required minimum distributions and certain related payments or that otherwise desire to give recipients a choice as to whether to receive such distributions.

#### II. BACKGROUND

Section 401(a)(9) provides required minimum distribution (“RMD”) rules for stock bonus, pension, and profit-sharing

plans described in § 401(a) and for annuity contracts described in § 403(a). Individual Retirement Accounts and Individual Retirement Annuities (“IRAs”) described in § 408(a) and § 408(b), § 403(b) plans, and eligible deferred compensation plans under § 457(b) also are subject to the rules of § 401(a)(9) pursuant to §§ 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections.

Section 402(c) generally provides that the payment of any portion of an employee’s interest in a qualified trust to the employee or the employee’s surviving spouse in an eligible rollover distribution is not includible in gross income if the distribution is rolled over to an eligible retirement plan no later than the 60th day following the day of receipt. An eligible rollover distribution is defined in § 402(c)(4) as a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust other than a distribution that is one of a series of substantially equal periodic payments made over a specified period, a distribution required under § 401(a)(9), and a distribution made on account of the employee’s hardship. Section 402(c)(3)(B) provides that the Secretary may waive the 60-day rollover deadline under certain circumstances. Section 402(c)(11) provides for the direct rollover of a deceased employee’s interest in a qualified trust to an inherited IRA established for the deceased employee’s nonspouse designated beneficiary. Rules similar to those described in the preceding sentences in this paragraph apply to § 403(a) annuity plans, § 403(b) plans, and § 457 eligible governmental plans. (See §§ 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B).)

Section 408(d)(3) generally provides that an amount distributed from an IRA to the IRA owner, or to the surviving spouse of the IRA owner, is not included in gross income if the distribution is rolled over to an eligible retirement plan no later than the 60th day following the day of receipt. A distribution of an after-tax amount can only be rolled over to another IRA. Section 408(d)(3)(E) provides that an RMD cannot be rolled over. Section 408(d)(3)(I) provides that the Secretary may waive

the 60-day rollover deadline under certain circumstances.

In general, § 72(t) imposes a 10-percent additional tax on early distributions from a plan described in § 401(a), § 403(a), or § 403(b), or from an IRA. However, pursuant to § 72(t)(2)(A)(iv), certain individuals receiving substantially equal periodic payments from a plan or an IRA are exempted from the 10-percent additional tax under § 72(t). Notice 89-25, Q&A-12, 1989-1 C.B. 662, as modified by Rev. Rul. 2002-62, 2002-2 C.B. 710, provides three calculation methods for determining whether distributions are substantially equal periodic payments under § 72(t)(2)(A)(iv). One method, the RMD method, uses rules similar to those under § 401(a)(9) to determine the amount of the payments required each year. If a series of substantially equal periodic payments stops or is otherwise modified (other than by reason of death or disability) prior to age 59½ or 5 years, all of the payments made are subject to a recapture tax under § 72(t)(4).

Section 201(a) of WRERA added § 401(a)(9)(H) to the Code. Section 401(a)(9)(H)(i) provides that § 401(a)(9) does not apply to defined contribution plans and IRAs for 2009. Section 401(a)(9)(H)(ii)(I) provides that an individual’s required beginning date is determined without regard to § 401(a)(9)(H) for purposes of applying § 401(a)(9) for calendar years after 2009. Section 401(a)(9)(H)(ii)(II) provides that if the 5-year rule for post-death distributions described in § 401(a)(9)(B)(ii) applies, the 5-year period is determined without regard to 2009.

Section 201(b) of WRERA amended § 402(c)(4) of the Code to provide that any amount distributed during 2009 that is an eligible rollover distribution, but would not have been an eligible rollover distribution had § 401(a)(9) applied during 2009, is not treated as an eligible rollover distribution for purposes of § 401(a)(31) (relating to direct and automatic rollovers of eligible rollover distributions), § 402(f) (relating to notices to recipients of eligible rollover distributions), and § 3405(c) (relating to mandatory 20-percent withholding on eligible rollover distributions).



Section 201(c) of WRERA provides that a plan or contract amendment relating to the changes made by § 201 can be delayed until the last day of the first plan year beginning in 2011 (2012 in the case of a governmental plan), provided the plan or contract operates as if the amendment were in effect from its effective date.

The Joint Committee on Taxation's Technical Explanation of H.R. 7327, which became WRERA, provides that if a distribution is made from a plan during 2009 that would have been an RMD but for § 401(a)(9)(H), "the plan is permitted but not required to offer the employee a direct rollover of that amount and provide the employee with a written explanation of the requirement." (JCX-85-08, December 11, 2008, at page 27.)

On February 2, 2009, the Service published Notice 2009-9, 2009-5 I.R.B. 419, which provides guidance to financial institutions on reporting for distributions that would be RMDs if not for § 401(a)(9)(H) (referred to in this notice as "2009 RMDs").

The Service has received many comments indicating that plan sponsors are uncertain of the effect of new § 401(a)(9)(H) on plan operation due, in part, to plan terms intended to satisfy § 401(a)(9). For example, some plans may contain distribution language that satisfies § 401(a)(9) without referencing this Code section and thus, arguably, would not be affected by § 401(a)(9)(H); nevertheless, sponsors of such plans may want to suspend 2009 RMDs. Also, some sponsors may want to give participants and beneficiaries the choice whether to continue or stop 2009 RMDs, but are uncertain if their current plan language permits such a choice. In addition, questions have been received concerning the permissibility of offering direct rollovers in the case of certain types of distributions that include 2009 RMDs (as indicated in the Joint Committee on Taxation's Technical Explanation described above), particularly where a payment consists of a 2009 RMD amount and an additional amount that is an eligible rollover distribution without regard to § 401(a)(9)(H). The Service has also received questions on whether distributions that include 2009 RMDs can be rolled over even if such distributions would be substantially equal periodic payments without regard to § 401(a)(9)(H). This notice pro-

vides guidance on these and other issues relating to 2009 RMDs.

### III. PLAN AMENDMENTS

To address the concerns of plan sponsors, two alternative sample plan amendments are provided in the Appendix that individual plan sponsors and sponsors of pre-approved plans can adopt or use in drafting individualized plan amendments. Both sample amendments provide participants and beneficiaries the choice between receiving and not receiving distributions related to 2009 RMDs, but only if the distributions would otherwise be equal to the 2009 RMDs or be one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years. All other distributions, including distributions that consist partly of 2009 RMDs, will be made. For example, a 75-year-old retiree's request to have his remaining plan account balance distributed in 2009 in a lump-sum, or in five approximately equal annual installments over a period that includes 2009, would not be affected by the sample amendments. The first sample amendment provides that the plan default that applies in the absence of a participant's or beneficiary's election will be to pay out distributions that include 2009 RMDs, and the second sample amendment provides that the plan default that applies in the absence of a participant's or beneficiary's election will be to not pay out distributions that include 2009 RMDs.

Both sample amendments also provide direct rollover choices (in addition to ones already provided for in the plan), with the default in each amendment being that the plan will offer a direct rollover option only for pre-WRERA eligible rollover distributions (*i.e.*, a direct rollover option will not be offered for 2009 RMDs nor for amounts that can be rolled over solely due to the transition relief provided in Section IV of this notice). One option provides for the direct rollover of 2009 RMDs and of other amounts that may be rolled over pursuant to the transition relief for plans provided in Section IV of this no-

tice (the latter amounts referred to as "Extended 2009 RMDs" in the sample amendments). Another option provides for the direct rollover of the entire amount of a distribution but only where the distribution consists of part or all of a 2009 RMD amount and an additional amount that is an eligible rollover distribution without regard to § 401(a)(9)(H).

Either plan amendment may be chosen by a plan sponsor, regardless of current plan language. Plan sponsors may have to modify the sample amendment chosen to conform to their plan's terms and administrative procedures.

The amendment must be adopted no later than the last day of the first plan year beginning on or after January 1, 2011 (January 1, 2012 for governmental plans), and, except as provided in Section IV of this notice, must reflect the operation of the plan to either cease or continue distributions that include 2009 RMDs in the absence of a participant's or beneficiary's choice. The timely adoption of the amendment must be evidenced by a written document that is signed and dated by the employer (including an adopting employer of a pre-approved plan).

In either case, the amendment (as modified, if necessary, to conform to the plan's terms and administrative procedures) will not result in the loss of reliance on a favorable opinion, advisory, or determination letter. Also, the Service will not treat the adoption of one of the sample plan amendments (as modified, if necessary, to conform to the plan's terms and administrative procedures) as affecting the pre-approved status of a master and prototype (M&P) or volume submitter plan. That is, such an amendment to an M&P plan that is adopted by an employer will not cause the plan to fail to be an M&P plan. Similarly, such an amendment to a volume submitter plan that is adopted by an employer will not cause the plan to fail to be a volume submitter plan.

The format of the sample plan amendments generally follows the design of pre-approved plans, including all M&P plans, that employ a "basic plan document" and an "adoption agreement." Thus, the sample plan amendment includes language designed for inclusion in a basic plan document and language designed for inclusion in an adoption agreement to allow the employer to select among options related to

the application of the basic plan document provision. Sponsors of plans that do not use an adoption agreement should modify the format of the amendment to incorporate the appropriate adoption agreement options in the terms of the amendment. In such case, the notes in the adoption agreement portion of the sample amendment should not be included in the amendment that will be signed and dated by the employer.

#### IV. TRANSITION RELIEF

*Plan operation relief.* The Service understands that, due to the enactment of WRERA late in 2008, many plan administrators were unable to timely modify procedures relating to 2009 RMDs to accommodate the new rules. Also, prior to the issuance of the guidance in this notice, plan sponsors were unsure of the options available to them. A plan will not be treated as failing to satisfy the requirement that it be operated in accordance with its terms merely because, during the period beginning on January 1, 2009, and ending on November 30, 2009: (1) distributions that equal the 2009 RMDs or that are one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years were or were not paid, (2) participants and beneficiaries were not given the option of receiving or not receiving distributions that include 2009 RMDs, or (3) a direct rollover option was or was not offered for 2009 RMDs or for other amounts that can be rolled over pursuant to the rollover relief provided in the following paragraph.

*Rollover relief for plans.* Payments to a plan participant in 2009 will not be treated as ineligible for rollover on account of § 402(c)(4)(A) if the payments equal the 2009 RMDs or are one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years. Accordingly, such

payments can be rolled over, provided the other rules of § 402(c) are satisfied. To assist plan participants who have already received distributions in 2009 but may have been unsure of which amounts could be rolled over, the Service, under the authority of § 402(c)(3)(B), is hereby extending the 60-day rollover period, for any 2009 RMD and for any additional payments that are part of a series described in the first sentence of this paragraph, so that it ends no earlier than November 30, 2009.

*Rollover relief for IRAs.* In the case of IRA owners who have already received distributions of 2009 RMDs in 2009, the Service, under the authority of § 408(d)(3)(I), is hereby extending the 60-day rollover period for any such distribution so that it ends no earlier than November 30, 2009. However, because of the one-rollover-per-year rule in § 408(d)(3), which was unchanged by WRERA, no more than one distribution from an IRA in 2009 will be eligible for this rollover relief.

#### V. OTHER ISSUES

Q-1. Do IRAs have to be amended for § 401(a)(9)(H)?

A-1. Pending the issuance of further guidance, IRAs do not have to be amended for § 401(a)(9)(H).

Q-2. In a plan that permits an employee or beneficiary to elect whether the 5-year rule in § 401(a)(9)(B)(ii) or the life expectancy rule in § 401(a)(9)(B)(iii) and (iv) applies, does § 401(a)(9)(H) extend the time for making the election?

A-2. Yes, when the deadline for making the election, in the absence of § 401(a)(9)(H), would be in 2009. Section 1.401(a)(9)-3, A-4(c), of the Income Tax Regulations requires the election to be made no later than the earlier of the end of the calendar year in which distribution would be required to commence in order to satisfy the life expectancy rule in § 401(a)(9)(B)(iii) and (iv) or the end of the calendar year which contains the fifth anniversary of the date of death of the employee. Pursuant to § 401(a)(9)(H), no RMDs are required for 2009, effectively extending the deadline to the end of 2010 if the deadline, without regard to § 401(a)(9)(H), would be the end of 2009. Thus, for example, if a 50-year-old participant in a plan providing the election

described in § 1.401(a)(9)-3, A-4(c), died in 2008 with his sister as his designated beneficiary, the sister has until the end of 2010 to choose between the 5-year rule and the life expectancy rule. Similarly, where a participant's spouse is the designated beneficiary, the spouse has until the end of 2010 to make the election if the deadline, in the absence of § 401(a)(9)(H), would be the end of 2009.

Q-3. In a plan that permits direct rollovers by nonspouse designated beneficiaries pursuant to § 402(c)(11), does § 401(a)(9)(H) extend the time for making the direct rollover?

A-3. Yes, if the participant died in 2008. The "special rule" at A-17(c)(2) in Notice 2007-7, 2007-1 C.B. 395, provides that if the 5-year rule applies to a benefit under a plan, the nonspouse designated beneficiary may determine the RMD using the life expectancy rule in the case of a distribution made prior to the end of the year following the year of death. The special rule in Notice 2007-7 is hereby modified so that if the employee's death occurred in 2008, the nonspouse designated beneficiary has until the end of 2010 to make the direct rollover and use the life expectancy rule.

Q-4. Besides the extensions provided in Q&A-2 and Q&A-3 of this notice and the rollover relief provided in Section IV of this notice, are any other deadlines extended or rollover requirements waived?

A-4. No, § 201 of WRERA only provides relief from certain deadlines and rollover requirements. Thus, for example, the deadline of September 30 following the year of death, in § 1.401(a)(9)-4, Q&A-4 (relating to the determination of designated beneficiaries); the October 31 deadline in § 1.401(a)(9)-4, A-6(b) (relating to the date by which the trustee of a trust that is a plan's designated beneficiary must provide the plan administrator certain information); and the last-day-of-the-year deadline in § 1.401(a)(9)-8, A-2(a)(2) (relating to the date by which separate accounts must be established) are not extended. Similarly, for example, with respect to rollovers, the one-rollover-per-year rule in § 408(d)(3) and the restrictions on rollovers by nonspouse beneficiaries and on rollovers of after-tax amounts were not changed by WRERA and still apply.

Q-5. For a plan subject to §§ 401(a)(11) and 417, is spousal consent required to suspend distributions that include 2009 RMDs and restart such distributions in 2010?

A-5. A plan subject to §§ 401(a)(11) and 417 can follow the procedures described in Q&A-8 of Notice 97-75, 1997-2 C.B. 337, choosing to have either a new annuity starting date or no new annuity starting date upon recommencement. If no new annuity starting date is chosen under those procedures, spousal consent is not required under most circumstances. If the plan provides that there is a new annuity starting date, spousal consent may be required under those procedures to suspend distributions that include 2009 RMDs and to restart such distributions in 2010, depending on the form of distribution.

Q-6. Can distributions that include 2009 RMDs made from a plan be rolled over back into the same plan?

A-6. Yes, provided the plan permits such rollovers and the rollover satisfies the requirements of § 402(c), taking into account the relief provided in Section IV of this notice.

Q-7. Can a 2009 RMD paid from a plan in 2009 be treated as an eligible rollover distribution for purposes of withholding under § 3405(c) at the 20-percent rate?

A-7. No, a 2009 RMD that is paid from a plan in 2009 is not treated as an eligible rollover distribution for purposes of § 3405(c). For example, if a plan makes a distribution in 2009 to a retiree of his entire account balance under the plan and part of the distribution is a 2009 RMD, the portion of the distribution that is not a 2009 RMD is subject to the 20-percent mandatory withholding rules under § 3405(c) and the portion of the distribution that is a 2009 RMD is subject to the 10-percent optional withholding rules under § 3405(b). On the other hand, if the retiree was receiving monthly distributions from the plan that exceeded his RMDs and that are expected to last for a period of at least 10 years, then the whole amount of each distribution is subject to the periodic-payment optional withholding rules under § 3405(a). The rule in this Q&A-7 only applies to 2009 RMDs paid from a plan in 2009. Withholding for a 2009 RMD that is paid in 2010 (for example, where the employee turns 70½ in 2009 and delays payment until April 1, 2010) is determined without regard to § 201(b) of WRERA or this Q&A-7.

Q-8. How does a plan determine which distributions during 2009 are 2009 RMDs?

A-8. The first distributions in 2009 are any RMDs from prior years not yet distributed, followed by 2009 RMDs.

Q-9. Does § 401(a)(9)(H) apply to payments that are part of a series of substantially equal periodic payments under the "RMD method" (a series of payments described in Notice 89-25 and Rev. Rul. 2002-62 that are designed to satisfy the § 72(t)(2)(A)(iv) exception to the 10-percent additional tax under § 72(t)) so that stopping such payments for 2009 would not be considered a modification under § 72(t)(4)?

A-9. No, § 401(a)(9)(H) does not apply to such payments; accordingly, if they are stopped in 2009 (other than because of death or disability) prior to age 59½ (or prior to 5 years from the date of the first payment), all the payments made under the series are subject to a recapture tax under § 72(t)(4).

## VI. EFFECT ON OTHER DOCUMENTS

Notice 2007-7 is modified by Q&A-3 of this notice.

## DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to [retirementplanquestions@irs.gov](mailto:retirementplanquestions@irs.gov).





# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Generation-Skipping Transfers (GST) Section 6011 Regulations and Amendments to the Section 6112 Regulations

#### REG-136563-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under section 6011 of the Internal Revenue Code (Code), conforming amendments under sections 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under section 6112. The regulations affect taxpayers participating in listed transactions and transactions of interest and material advisors to such transactions. The proposed regulations also contain rules under section 6112 that affect material advisors to reportable transactions. These regulations provide guidance regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to a reportable transaction. These regulations also clarify guidance regarding designation agreements.

**DATES:** Written or electronic comments and requests for a public hearing must be received by December 10, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-136563-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-136563-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW,

Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-136563-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles D. Wien, (202) 622-3070; concerning the submissions of comments and requests for hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1686. Responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

On August 3, 2007, the IRS published final regulations under §301.6112-1 (T.D. 9352, 2007-2 C.B. 621 [72 FR 43154]). These regulations propose to modify those regulations.

The estimated annual burden per recordkeeper for the collection of information in §301.6112-1T is 100 hours and the estimated number of recordkeepers is 500.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

#### Background

This document proposes to amend 26 CFR part 26 to provide rules for purposes of the generation-skipping transfer tax that require the disclosure of listed transactions and transactions of interest by certain taxpayers on their Federal tax returns under section 6011. This document also proposes to modify and clarify some of the rules under 26 CFR part 301 relating to the disclosure obligations of material advisors under section 6111 and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112.

On July 31, 2007, the IRS and Treasury Department issued final regulations under section 6011 (T.D. 9350, 2007-2 C.B. 607 [72 FR 43146]), 6111 (T.D. 9351, 2007-2 C.B. 616 [72 FR 43157]) and 6112 (T.D. 9352, 2007-2 C.B. 621 [72 FR 43154]) (the July 2007 regulations) that were published in the **Federal Register** on August 3, 2007. In the July 2007 regulations, the IRS and Treasury Department amended 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide that certain taxpayers would be required to disclose transactions of interest, in addition to listed transactions, on their Federal tax returns under section 6011. These regulations propose to amend 26 CFR part 26 to add similar rules under section 6011 for the tax on generation-skipping transfers. The July 2007 regulations also amended 26 CFR part 301 to provide rules relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under section 6112. These proposed regulations make minor clarifications and modifications to the rules under section 6112.

#### Explanation of Provisions

The regulations should encompass transactions that purport to reduce or eliminate the generation-skipping transfer tax as listed transactions or transactions of interest and require the disclosure of these

transactions under section 6011. Although these regulations are being proposed, the IRS and Treasury Department do not have plans to identify any such transaction at this time. Clarifying amendments are being made to the regulations under sections 6111 and 6112 as a result of the generation-skipping transfer tax rules proposed under section 6011.

The IRS and Treasury Department are proposing to amend the regulations under section 6112 to provide that, before a material advisor must make available to the IRS the list as described in §301.6112-1(b), the material advisor will have a specified period of time to prepare the list after the list maintenance requirement first arises with respect to a reportable transaction. The specified period of time for a material advisor to prepare a list will be 30 calendar days or a period greater than 30 calendar days as may be specifically described in the published guidance designating a transaction as a reportable transaction. A request for a list under section 6112 made during the list preparation time period will be treated as having been made on the day after the list preparation time period ends.

In addition, the regulations make clarifications to the rules regarding designation agreements. A group of material advisors to a reportable transaction may designate by written agreement one material advisor from the group to maintain the list required under section 6112. The existence of a designation agreement, however, does not affect the ability of the IRS to request the list from any party to the designation agreement, or the obligation of any party receiving a request from the IRS to furnish the list as required under section 6112 and the related regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most

of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Also, the collection of information referenced in these regulations has been approved under OMB control number 1545-1686. The clarification and new information required by these proposed regulations add little or no new burden to those existing requirements. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that submits timely written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Charles D. Wien, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 26 and 301 are proposed to be amended as follows:

## PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 is amended to read in part as follows:

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

Section 26.6011-4 also issued under 26 U.S.C. 6011 \* \* \*

Par. 2. Section 26.6011-4 is added to read as follows:

*§26.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.*

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in §1.6011-4 of this chapter by the Commissioner in published guidance, and the listed transaction or transaction of interest involves a tax on generation-skipping transfers under chapter 13 of subtitle B of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions and transactions of interest entered into on or after the date these regulations are published as final regulations in the **Federal Register**.

## PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111-3 is amended as follows:

1. Paragraphs (b)(2)(i)(A) and (b)(3)(i)(B) are amended by adding the language “26.6011-4,” after each occurrence of “25.6011-4,”.

2. Paragraphs (c)(2) and (c)(13) are amended by adding the language “26.6011-4,” after “25.6011-4,”.

3. Paragraph (i)(1) is revised.

The revision reads as follows:

*§301.6111-3 Disclosure of reportable transactions.*

\* \* \* \* \*

(i) *Effective/applicability date*—(1) *In general.* This section applies to transactions with respect to which a material advisor makes a tax statement on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor makes a tax statement under this section on or after November 2, 2006. Paragraphs (b)(2)(i)(A), (b)(3)(i)(B), (c)(2), and (c)(13) of this section apply to transactions with respect to which a material advisor makes a tax statement under this section after the date these regulations are published as final regulations in the **Federal Register**. Paragraph (h) of this section applies to ruling requests received on or after November 2, 2006. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 301 revised as of April 1, 2009).

\* \* \* \* \*

Par. 5. Section 301.6112-1 is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraphs (c)(3) and (c)(12) are amended by adding the language “26.6011-4,” after “25.6011-4.”
3. Paragraphs (f) and (g) are revised.

The revisions read as follows:

*§301.6112-1 Material advisors of reportable transactions must keep lists of advisees, etc.*

\* \* \* \* \*

(b) \* \* \* (1) *In general.* A separate list must be prepared and maintained for each reportable transaction. However, one list must be maintained for substantially similar transactions. A material advisor will have 30 calendar days from the date the list maintenance requirement first arises (see §301.6111-3(b)(4) and paragraph (a) of this section) with respect to a reportable transaction to prepare the list that must be maintained under this section with respect to that transaction. The Commissioner in his discretion also may provide in published guidance designating a transaction as a reportable transaction a list preparation time period greater than 30 calendar

days. If a list is requested under this section during the list preparation time period, the request for the list will be treated as having been made on the day after the list preparation time period ends. A list must be maintained in a form that enables the IRS to determine without undue delay or difficulty the information required in paragraph (b)(3) of this section. The Commissioner in his discretion may provide in published guidance a form or method for maintaining or furnishing the list.

\* \* \* \* \*

(f) *Designation agreements.* If more than one material advisor is required to maintain a list of persons for a reportable transaction, in accordance with paragraph (b) of this section, the material advisors may designate by written agreement a single material advisor (the designated material advisor) to maintain the list or a portion of the list. A designation agreement does not relieve material advisors from their obligation to maintain the list in accordance with paragraph (b) of this section or to furnish the list to the IRS in accordance with paragraph (e)(1) of this section, but a designation agreement may allow one material advisor to maintain the list on behalf of the other material advisors who are a party to the designation agreement. A material advisor is not relieved from the requirement of this section because a material advisor is unable to obtain the list from any designated material advisor, any designated material advisor did not maintain a list, or the list maintained by any designated material advisor is not complete. The existence of a designation agreement does not affect the ability of the IRS to request the list from any party to the designation agreement. The IRS may request the list from any party to the designation agreement, and the party receiving the request must furnish the list to the IRS in accordance with paragraph (e)(1) of this section, regardless of whether the list was maintained by another party pursuant to the terms of a designation agreement.

(g) *Effective/applicability date.* In general, this section applies to transactions with respect to which a material advisor makes a tax statement under §301.6111-3 on or after August 3, 2007. However, this section applies to transactions of interest entered into on or after November 2, 2006, with respect to which a material advisor

makes a tax statement under §301.6111-3 on or after November 2, 2006. Paragraphs (b)(1), (c)(3), (c)(12), and (f) of this section apply to transactions with respect to which a material advisor makes a tax statement under §301.6111-3 after the date these regulations are published as final regulations in the **Federal Register**. Otherwise, the rules that apply on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect prior to the date these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 301 revised as of April 1, 2009).

Linda E. Stiff,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on September 10, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 11, 2009, 74 F.R. 46705)

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## **Corrections and Clarifications to Publication 1220, Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G, Electronically, Revised July 2009**

### **Announcement 2009-70**

The following announcement clarifies and corrects certain items in Publication 1220, *Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G, Electronically*, revised July 2009. Use this announcement along with Publication 1220 when filing information returns for TY2009.

In Part A, Sec. 8, Corrected Returns, there is a change to the 2 step correction process. Item (d) incorrect payee address, under Error Type 2, should be deleted. Only items (a) No payee TIN (SSN, EIN, ITIN, QI-EIN), (b) Incorrect payee TIN, (c) Incorrect payee name, and (e) Wrong type of return indicator, require 2 transactions to properly correct the information. In addition, Sec 2. Nature of Changes-Current Year (Tax Year 2009) .01 a. General (3) states changes in correction procedure are to include incorrect TIN, payee name



and/or address requires a two step correction. It should read incorrect TIN or payee name requires a two step correction.

In the Payee 'B' Record, two new Payment Amount Fields, F and G were added. These amount fields were added in anticipation of expanded reporting requirements on certain information returns. Currently, there are no corresponding Amount Codes in the Payer 'A' Record. Filers must allow for these amount fields in their Payee 'B' Records and like any unused amount fields they must be zero filled. In addition, in Part C, Sec. 7, .01 the last two sentences should read: 'In the "B" Record, the filer **must** allow for all *sixteen* Payment Amount Fields. **For those fields not used, enter "0s" (zeros).**' These statements also apply to the End of Payer 'C' Record and the State Totals 'K' Record.

For Form 5498, Payee 'B' Record, Special Data Entries, positions 663-722, the Note about delayed contributions for U.S. Armed Forces should have been deleted. Form 5498 now has specific fields and codes for many types of reporting for Armed Forces personnel. The Special Data Entry field can still be used for any reporting not covered in the new reporting fields.

If you have any questions regarding the announcement or the information in Publication 1220, *Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G, Electronically*, revised July 2009, call toll-free 866-455-7438.

## Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

### Announcement 2009-72

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer

qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 13, 2009, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

A New Horizon, Credit Counseling Services Inc  
Ft Lauderdale, FL

## Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Apportionment of Stewardship Expense; Correction

### Announcement 2009-73

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 9456, 2009-33 I.R.B. 188) that were published in the **Federal Register** on Tuesday, August 4, 2009 (74 FR 38830) providing guidance

regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangible property, in particular with respect to contributions by a controlled party to the value of intangible property owned by another controlled party. These final regulations modify regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the guidance under section 482.

DATES: This correction is effective on September 9, 2009, and is applicable on August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Carol B. Tan or Gregory A. Spring, (202) 435-5265 for matters relating to section 482, or Richard L. Chewning, (202) 622-3850 for matters relating to stewardship expenses (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are the subject of this document are under sections 482, 861, 6038, and 6662 of the Internal Revenue Code.

##### Need for Correction

As published, the final regulations (T.D. 9456) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9456), which was the subject of FR Doc. E9-18326, is corrected as follows:

1. On page 38830, column 1, in the title, the language "Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Stewardship Expense" is corrected to read "Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Apportionment of Stewardship Expense".

2. On page 38830, column 3, in the preamble, under the paragraph heading "Background", first paragraph of the column, third line from the bottom of the

paragraph, the language “years after December 31, 2006) as the” is corrected to read “years beginning after December 31, 2006) as the”.

3. On page 38832, column 1, in the preamble, under the paragraph heading “e. Business Judgment Rule”, first paragraph, eleventh line, the language “one or more trades or business of the” is corrected to read “one or more trades or businesses of the”.

4. On page 38833, column 1, in the preamble, under the paragraph heading “g. Shared Services Arrangements”, second paragraph, fifth line, the language “under an SSA to the service provider” is cor-

rected to read “under a SSA to the service provider”.

5. On page 38835, column 2, in the preamble, under the paragraph heading “7. Controlled Services Transactions and Shareholder Activities — Treas. Reg. §1.482–9(1)”, second paragraph of the column, lines 1 and 2 from the bottom of the paragraph, the language “aggregate activity; rather than a component activity-by-activity basis.” is corrected to read “aggregate-activity basis; rather than a component activity-by-activity basis.”.

6. On page 38835, column 3, in the preamble, under the paragraph heading “b. Global Dealing Operations”, last line of the paragraph, the language “of global

dealing regulations.” is corrected to read “of new global dealing regulations.”.

On page 38837, column 1, in the first paragraph heading, the language “*D. Stewardship Expenses—§1.861–8*” is corrected to read “*D. Apportionment of Stewardship Expenses—§1.861–8*”.

LaNita Van Dyke,  
*Chief, Publications and  
Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).*

(Filed by the Office of the Federal Register on September 8, 2009, 8:45 a.m., and published in the issue of the Federal Register for September 9, 2009, 74 F.R. 46346)

# Definition of Terms

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

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

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

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

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

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.





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