

## **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. 9587, page 953.**

Final regulations under section 42 of the Code provide guidance concerning taxpayers' request to housing credit agencies to obtain a qualified contract for the acquisition of a low-income housing credit building.

### **EMPLOYEE PLANS**

#### **REG-117645-12, page 965.**

This document requests public comments regarding the use of stop loss insurance under section 9815 of the Code by group health plans and their plan sponsors.

#### **Notice 2012-36, page 962.**

##### **Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.**

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in May 2012; the 24-month average segment rates; the funding transitional segment rates applicable for May 2012; and the minimum present value transitional rates for April 2012.

### **EXCISE TAX**

#### **REG-117645-12, page 965.**

This document requests public comments regarding the use of stop loss insurance under section 9815 of the Code by group health plans and their plan sponsors.

### **ADMINISTRATIVE**

#### **T.D. 9586, page 960.**

Final regulations remove the regulations under section 3402(t) of the Code, which related to 3% withholding by government entities on payments for property or services, and make conforming amendments to other regulations. The 3% Withholding Repeal and Job Creation Act, Public Law 112-56, repealed section 3402(t) before section 3402(t) became effective.

#### **Announcement 2012-23, page 967.**

This announcement withdraws a notice of proposed rulemaking (REG-151687-10, 2011-23 I.R.B. 867) under section 3402(t) of the Code because the 3% Withholding Repeal and Job Creation Act, Public Law 112-56, repealed section 3402(t).



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force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

## Section 42.—Low-Income Housing Credit

26 CFR 1.42–18: *Qualified contracts.*

**T.D. 9587**

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

#### Section 42 Qualified Contract Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

**SUMMARY:** This document contains final regulations that provide guidance concerning taxpayers' (that is, owners') requests to housing credit agencies to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. Section 42(h)(6)(F) requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 42(h)(6)(F), including regulations to prevent the manipulation of the qualified contract amount. The regulations will affect owners requesting a qualified contract, potential buyers, and low-income housing credit agencies responsible for the administration of the low-income housing credit program.

**DATES:** *Effective Date:* These regulations are effective May 3, 2012.

*Applicability Date:* For the applicability date, see §1.42–18(e).

**FOR FURTHER INFORMATION CONTACT:** David Selig at (202) 622–3040 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information contained in these final 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 1545–2088. The collection of information is required for an owner to provide a written request to a housing credit agency to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The collecting of information is voluntary to obtain a benefit.

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 regulations that amend the Income Tax Regulations (26 CFR part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code (Code). On June 19, 2007, a notice of proposed rulemaking (REG–114084–04, 2007–2 C.B. 359) and notice of public hearing relating to the qualified contract provisions under section 42(h)(6)(F) was published in the **Federal Register** (72 FR 33706). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on the proposed regulations on October 15, 2007. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

#### General Overview

Section 42 provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. The section 42 credit is a general business credit subject to the provisions of section 38.

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B) provides in part that the term commitment means any agreement between the owner and the housing credit agency (Agency) that requires that the applicable fraction (as defined in section 42(c)(1)(B)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in the commitment. Section 42(h)(6)(E)(ii) prohibits the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42 until three years after the termination of such an agreement.

Section 42(h)(6)(D) defines the term extended use period as the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project and ending on the later of: (1) the date specified by the Agency in the commitment, or (2) the date which is 15 years after the close of the compliance period.

Section 42(h)(6)(E)(i)(II) provides for the termination of the extended use period if the Agency is unable to present within a specified period of time a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Section 42(h)(6)(F) defines the term qualified contract as a *bona fide* contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the commitment) of the sum of: (I) the outstanding indebtedness secured by, or with respect to the building, (II) the adjusted investor equity in the building,

plus (III) other capital contributions not reflected in these amounts; reduced by cash distributions from (or available for distribution from) the project.

Section 42(h)(6)(F) also provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out that paragraph, including regulations to prevent the manipulation of the amount determined under section 42(h)(6)(F).

Section 42(h)(6)(I) provides that the Agency must present the qualified contract within the 1-year period beginning on the date (after the 14th year of the compliance period) the owner submits a written request to the Agency to find a person to acquire the owner's interest in the low-income portion of the building.

The proposed regulations addressed the application of the qualified contract provisions of section 42. Section 1.42-18(c)(1) of the proposed regulations defined the qualified contract formula used to compute the purchase price amount of the low-income housing building generally as: (1) the non low-income portion of the building for fair market value; plus (2) the low-income portion of the building for the low-income portion amount.

Section 1.42-18(c)(2) of the proposed regulations defined the low-income portion amount as an amount not less than the applicable fraction (as specified in the commitment) of the total of: (a) outstanding indebtedness secured by, or with respect to the building; plus (b) the adjusted investor equity in the building; plus (c) other capital contributions, not including amounts described in (a) and (b); minus (d) cash distributions from (or available for distribution from) the building.

## Summary of Comments

### *Fair-Market-Value Cap*

Prior to the issuance of the proposed regulations, comments were received recommending the inclusion of a fair-market-value cap for the low-income portion of the qualified contract amount as defined in section 42(h)(6)(F). These comments noted that the qualified contract price may, in some cases, exceed the fair market value of a project. One reason given to explain why the qualified contract price might exceed the fair market value of a project is the formula component for adjusted

investor equity, which includes the Consumer-Price-Index-based cost of living adjustments. As explained in the preamble to the proposed regulations, this recommendation was not adopted as a proposed rule because section 42(h)(6)(F) defines a qualified contract, in part, as a contract to acquire the low-income portion of the building for an amount "not less than" the applicable fraction of the statutorily provided formula. Similar comments were received after publication of the proposed regulations. The IRS and the Treasury Department continue to believe that they do not have the authority under section 42(h)(6)(F) to adopt a fair-market-value cap. Accordingly, the final regulations do not provide a rule providing a fair-market-value cap under section 42(h)(6)(F).

The IRS and the Treasury Department in the preamble to the proposed regulations requested comments on the extent of Agency and State authority to provide more stringent requirements than those contained in section 42(h)(6)(F). The preamble referenced the flush language of section 42(h)(6)(E)(i), which provides that the qualified contract exception to the termination of an extended use period shall not apply to the extent more stringent requirements are provided in the agreement or in State law. Specifically, the IRS and the Treasury Department requested comments on the authority of Agency or State regulators to require in agreements a fair-market-value cap that would restrict any qualified contract price to fair market value. In response, two comments were received, both opining that an Agency did not possess authority under section 42(h)(6)(E) to set a fair market value limitation. The commentators reasoned that the language "more stringent requirements" relates to the date the extended use period will terminate, rather than to the qualified contract formula. The IRS and Treasury Department received no comment asserting the view that section 42(h)(6)(E)(i) authorizes an Agency or State regulators to require in agreements a fair-market-value cap that would restrict a qualified contract price to fair market value. The IRS and Treasury Department do not believe that section 42(h)(6)(E)(i) was intended to authorize a fair-market-value cap on the low-income portion of the building, and, accordingly, the final regulations do not provide for such a cap.

### *Adjustments to Fair Market Value of the Non-Low-Income Portion of the Building*

Some commentators questioned the provision in the proposed regulations that would allow Agencies to adjust the fair market value of a building, if, after a reasonable period of time within the one-year offer-of-sale period, no buyer has made an offer or market values have adjusted downward. One commentator noted that, as a result of this provision, in order to secure a more favorable price for the building, prospective buyers might wait out the qualified contract process until an Agency reduces the qualified contract price. Another commentator noted the unfairness of granting Agencies the unilateral right to reduce the fair market value of the non low-income portion of the building, particularly when the proposed regulations provide no limitation on how much the Agency may reduce the fair market value.

The IRS and the Treasury Department believe these concerns are valid. Accordingly, the final regulations revise this provision to provide that the Agency may adjust the fair market value of the non low-income portion of the building after the Agency's offer of sale of the building to the general public and before the close of the one-year offer of sale period only with the consent of the owner. If no agreement between the Agency and owner is reached, the fair market value of the non low-income portion of the building determined at the time of the Agency's offer of sale of the building to the general public remains unchanged.

### *Land*

The proposed regulations provide that the fair market value of the non low-income portion of a building is determined at the time of an Agency's offer of sale of the building to the general public. This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The non low-income portion also includes the fair market value of the land underlying the entire building, including the land underlying the low-income portion of the building.

Commentators questioned the statutory authority of the IRS under section 42(h)(6)(F) to include land value in the qualified contract amount. Specifi-

cally, commentators noted that the language under section 42(h)(6)(F) refers to the fair market value of the non low-income portion of the building without addressing the issue of land valuation. Other commentators asserted that adopting a fair market value approach for land underlying the entire building may decrease the likelihood of finding a qualified buyer willing to pay the qualified contract price while continuing to operate the building as a low income building.

The IRS and the Treasury Department believe that land is inherently part of the cost underlying the acquisition or construction of a building and should not be ignored in determining the qualified contract amount. Applying fair market value to land is consistent with industry practice regarding land valuation and provides an equitable means for arriving at a contract price between buyers and owners. By valuing land underlying the entire building at fair market value, taking into account the existing and continuing requirements contained in the commitment for the building, the proposed regulations provided an approach that maintains industry practice for valuing land and provided an objective and equitable solution that favors neither the buyer nor the owner. Accordingly, the final regulations provide that the land underlying the entire building (both low-income and non low-income units) is valued at fair market value subject to the existing and continuing restrictions contained in the commitment for the building.

#### *Responsibility to Adjust the Qualified Contract Price to Reflect the Changing Amount of Outstanding Indebtedness*

One commentator expressed concern that the proposed regulations would impose too much burden on Agencies by requiring them to adjust the qualified contract amount between the date on which the sales price under a qualified contract is first determined and the sale's actual closing date. (For example, an adjustment is needed to reflect mortgage payments that reduce outstanding indebtedness.) The IRS and the Treasury Department concur with this comment, and the final regulations provide that the buyer and owner, and not the Agency, must adjust the amount of the low-income portion of the qualified contract formula to reflect

changes in the components of the qualified contract formula, such as mortgage payments that reduce outstanding indebtedness between the time the Agency first offers the property for sale and the actual sale closing date.

#### *Cash Distributions*

One commentator recommended that the final regulations clarify that the rule in the proposed regulations providing that cash available for distribution includes reserve funds should apply only to the extent that the reserve funds are not legally required to remain with the project after the sale. Other commentators noted the potential for double-counting if cash available for distribution includes the proceeds from refinancing indebtedness or additional mortgages, while simultaneously any refinancing indebtedness or additional mortgages in excess of qualifying building costs are not outstanding indebtedness for purposes of section 42(h)(6)(F).

The IRS and the Treasury Department agree with these comments. Accordingly, the final regulations provide that cash available for distribution includes reserve funds that are not legally required by mortgage restrictions, regulatory agreements, or third party contractual agreements to remain with the building following the sale of the building. The final regulations further provide that proceeds from refinancing indebtedness or additional mortgages that are in excess of qualifying building costs are not considered cash available for distribution. The text of the final regulations also adopts the rule discussed in the preamble to the proposed regulations, but not stated in the text of the proposed regulations, that any refinancing indebtedness or additional mortgages in excess of qualifying building costs do not qualify as outstanding indebtedness for purposes of section 42(h)(6)(F).

#### *Discounting Indebtedness Removed*

Some commentators questioned the rationale for the requirement in the proposed regulations that would discount outstanding indebtedness having an interest rate below the applicable Federal rate (AFR) under section 1274 of the Code. In response, the final regulations remove the provision of discounting indebtedness altogether. Instead, the final regulations de-

fine outstanding indebtedness to include only those amounts secured by, or with respect to, the building that (1) do not exceed qualifying building costs, (2) are indebtedness under general principles of Federal income tax law, and (3) upon the sale of the building, are actually paid to the lender or are assumed by the buyer as part of the sale.

#### *Appraiser Standards*

Several commentators noted the absence of any uniform standards for appraisal methodology and qualifications for appraisers. Rather than adopt appraisal standards, the final regulations provide that Agencies shall not utilize any individual or organization as an appraiser if that individual or organization is currently on any list for active suspension or revocation for performing appraisals in any State or is listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government. The final regulations also provide the Agencies with the discretion to select the appraisers involved in the qualified contract process and to require all appraisers to be State-certified general appraisers.

#### *Actual Offer of Sale*

The proposed regulations provide that in order to satisfy the qualified contract requirements under section 42(h)(6)(F), the Agency must offer the building for sale to the general public at the determined qualified contract price upon receipt of a written request by the owner to find a buyer to acquire the building. In addressing the issue of how Agencies should advertise the availability of a building to the general public, the final regulations provide a reasonable efforts standard for guiding Agencies in their efforts to find a qualified buyer during the one year offer period. If the determined qualified contract price is not a multiple of \$1,000, the final regulations permit the Agency to round up the offering price of the building to the next highest multiple of \$1,000.

#### *Definition of Bona Fide Contract and Resolution of Disputes*

Some commentators suggested the inclusion of a specific definition of a *bona*

*fide* contract under section 42(h)(6)(F), addressing issues such as whether the terms and conditions of any offered contract are unreasonable or impractical. Further, commentators suggested the creation of a mechanism for resolving disputes among the parties concerning the meaning of a *bona fide* contract. The IRS and the Treasury Department believe that because of variations under State laws concerning the terms of a *bona fide* contract and methods for resolving disputes, the final regulations should not explicitly address these issues. Instead, the final regulations provide that an Agency has the administrative discretion to specify other conditions applicable to the qualified contract consistent with section 42 of the Code and the final regulations.

#### *Adjusted Investor Equity*

To avoid ambiguity in the determination of the qualified contract amount, the final regulations require adjusted investor equity to be calculated in a manner that is consistent with inflation adjustments made under section 1(f). Thus, as was required in the proposed regulations, the calculations must use not seasonally adjusted values of the Consumer Price Index for all urban consumers (the data series that the Bureau of Labor Statistics refers to as “CPI-U”). The final regulations provide a computational process that is mathematically equivalent to the process described in the proposed regulations but that will be simpler to implement. Because of the uncertainty that can be introduced when one number is divided by another and because different people might choose to retain in the answer different numbers of digits, the regulations require the quotient in this process to be carried out to 10 decimal places. (If standard, off-the-shelf spreadsheet software is used to compute the adjusted investor equity, the computations will generally have at least this degree of accuracy by default.) In addition, the example in the final regulations has been updated to use more recent data. Finally, the final regulations make it possible for the Commissioner to reduce the computational burden by, for example, providing the possible adjustment factors in annual publications or creating a calculator on the IRS website.

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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. The information required to be provided by a taxpayer (that is, by the owner of a low-income building) to a State agency to determine the qualified contract amount is already maintained by the taxpayer for other purposes of the low-income tax credit under section 42. Because only a minimal amount of additional time is required for a taxpayer to access and provide the information, this collection of information does not impose a significant burden on the taxpayer. Accordingly, a Regulatory Flexibility Analysis under the provisions of 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 regulations preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

#### **Drafting Information**

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

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

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

#### PART 1—INCOME TAXES

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

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

Section 1.42–18 also issued under 26 U.S.C. 42(h)(6)(F) and 42(h)(6)(K); \* \* \*

Par. 2. Section 1.42–18 is added to read as follows:

#### *§1.42–18 Qualified contracts.*

(a) *Extended low-income housing commitment*—(1) *In general.* No credit under section 42(a) is allowed by reason of section 42 with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of such taxable year. A commitment must be in effect for the extended use period (as defined in paragraph (a)(1)(i) of this section).

(i) *Extended use period.* The term *extended use period* means the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project (as defined in section 42(g)(1)) and ending on the later of—

(A) The date specified by the low-income housing credit agency (Agency) in the commitment; or

(B) The date that is 15 years after the close of the compliance period.

(ii) *Termination of extended use period.* The extended use period for any building will terminate—

(A) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Commissioner determines that such acquisition is part of an arrangement with the taxpayer (“the owner”) a purpose of which is to terminate such period; or

(B) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) on which the owner submits a written request to the Agency to find a person to acquire the owner’s interest in the low-income portion of the building if the Agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who

will continue to operate such portion as a qualified low-income building (as defined in section 42(c)(2)).

(iii) *Owner non-acceptance.* If the Agency provides a qualified contract within the one-year period and the owner rejects or fails to act upon the contract, the building remains subject to the existing commitment.

(iv) *Eviction, gross rent increase concerning existing low-income tenants not permitted.* Prior to the close of the three year period following the termination of a commitment, no owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent for such unit in a manner or amount not otherwise permitted by section 42.

(2) *Exception.* Paragraph (a)(1)(ii)(B) of this section shall not apply to the extent more stringent requirements are provided in the commitment or under State law.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) As provided by section 42(h)(6)(G)(iii), *base calendar year* means the calendar year with or within which the first taxable year of the credit period ends.

(2) The *low-income portion* of a building is the portion of the building equal to the applicable fraction (as defined in section 42(c)(1)(B)) specified in the commitment for the building.

(3) The *fair market value of the non-low-income portion* of the building is determined at the time of the Agency's offer of sale of the building to the general public. The fair market value of the non-low-income portion also includes the fair market value of the land underlying the entire building (both the non-low-income portion and the low-income portion). This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The fair market value of the non-low-income portion also includes the fair market value of items of personal property not included in eligible basis under section 42(d) that convey under the contract with the building.

(4) *Qualifying building costs include—*

(i) Costs that are included in eligible basis of a low-income housing building under section 42(d) and that are included in the adjusted basis of depreciable property

that is subject to section 168 and that is residential rental property for purposes of section 142(d) and §1.103-8(b);

(ii) Costs that are included in eligible basis of a low-income housing building under section 42(d) and that are included in the adjusted basis of depreciable property that is subject to section 168 and that is used in a common area or is provided as a comparable amenity to all residential rental units in the building; and

(iii) Costs of the type described in paragraph (b)(4)(i) and (ii) of this section incurred after the first year of the low-income housing building's credit period under section 42(f).

(5) The *qualified contract amount* is the sum of the fair market value of the non-low-income portion of the building (within the meaning of section 42(h)(6)(F) and paragraph (b)(3) of this section) and the price for the low-income portion of the building (within the meaning of section 42(h)(6)(F) and paragraph (b)(2) of this section) as calculated in paragraph (c)(2) of this section. If this sum is not a multiple of \$1,000, then when the Agency offers the building for sale to the general public, the Agency may round up the offering price to the next highest multiple of \$1,000.

(c) *Qualified contract purchase price formula—*(1) *In general.* For purposes of this section, *qualified contract* means a *bona fide* contract to acquire the building (within a reasonable period after the contract is entered into) for the qualified contract amount.

(i) *Initial determination.* The qualified contract amount is determined at the time of the Agency's offer of sale of the building to the general public.

(ii) *Mandatory adjustment by the buyer and owner.* The buyer and owner under a qualified contract must adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments that reduce outstanding indebtedness between the time of the Agency's offer of sale to the general public and the building's actual sale closing date.

(iii) *Optional adjustment by the Agency and owner.* The Agency and owner may agree to adjust the fair market value of the non low-income portion of the building after the Agency's offer of sale of the

building to the general public and before the close of the one-year period described in paragraph (a)(1)(ii)(B) of this section. If no agreement between the Agency and owner is reached, the fair market value of the non-low-income portion of the building determined at the time of the Agency's offer of sale of the building to the general public remains unchanged.

(2) *Low-income portion amount.* The low-income portion amount is an amount not less than the applicable fraction specified in the commitment, as defined in section 42(h)(6)(B)(i), multiplied by the total of—

(i) The outstanding indebtedness for the building (as defined in paragraph (c)(3) of this section); plus

(ii) The adjusted investor equity in the building for the calendar year (as defined in paragraph (c)(4) of this section); plus

(iii) Other capital contributions (as defined in paragraph (c)(5) of this section), not including any amounts described in paragraphs (c)(2)(i) and (ii) of this section; minus

(iv) Cash distributions from (or available for distribution from) the building (as defined in paragraph (c)(6) of this section).

(3) *Outstanding indebtedness.* For purposes of paragraph (c)(2)(i) of this section, *outstanding indebtedness* means the remaining stated principal balance (which is initially determined at the time of the Agency's offer of sale of the building to the general public) of any indebtedness secured by, or with respect to, the building that does not exceed the amount of qualifying building costs described in paragraph (b)(4) of this section. Thus, any refinancing indebtedness or additional mortgages in excess of such qualifying building costs are not outstanding indebtedness for purposes of section 42(h)(6)(F) and this section. Examples of outstanding indebtedness include certain mortgages and developer fee notes (excluding developer service costs not included in eligible basis). Outstanding indebtedness does not include debt used to finance nondepreciable land costs, syndication costs, legal and accounting costs, and operating deficit payments. Outstanding indebtedness includes only obligations that are indebtedness under general principles of Federal income tax law and that are actually paid to the lender upon the sale of the

building or are assumed by the buyer as part of the sale of the building.

(4) *Adjusted investor equity*—(i) *Application of cost-of-living factor.* For purposes of paragraph (c)(2)(ii) of this section, the *adjusted investor equity* for any calendar year equals the unadjusted investor equity, as described in paragraph (c)(4)(ii) of this section, multiplied by the qualified-contract cost-of-living adjustment for that year, as defined in paragraph (c)(4)(iii) of this section.

(ii) *Unadjusted investor equity.* For purposes of this paragraph (c)(4), *unadjusted investor equity* means the aggregate amount of cash invested by owners for qualifying building costs described in paragraph (b)(4)(i) and (ii) of this section. Thus, equity paid for land, credit adjuster payments, Agency low-income housing credit application and allocation fees, operating deficit contributions, and legal, syndication, and accounting costs all are examples of cost payments that do not qualify as unadjusted investor equity. Unadjusted investor equity takes an amount into account only to the extent that, as of the beginning of the low-income building's credit period (as defined in section 42(f)(1)), there existed an obligation to invest the amount. Unadjusted investor equity does not include amounts included in the calculation of outstanding indebtedness as defined in paragraph (c)(3) of this section.

(iii) *Qualified-contract cost-of-living adjustment.* For purposes of this paragraph (c)(4), the *qualified-contract cost-of-living adjustment for a calendar year* is the number that is computed under the general rule in paragraph (c)(4)(iv) of this section or a number that may be provided by the Commissioner as described in paragraph (c)(4)(v) of this section.

(iv) *General rule.* Except as provided in paragraph (c)(4)(v) of this section, the *qualified-contract cost-of-living adjustment* is the quotient of—

(A) The sum of the 12 monthly Consumer Price Index (CPI) values whose average is the CPI for the calendar year that precedes the calendar year in which the Agency offers the building for sale to the general public (The term “CPI for a calendar year” has the meaning given to it by section 1(f)(4) for purposes of computing annual inflation adjustments to the rate brackets.); divided by

(B) The sum of the 12 monthly CPI values whose average is the CPI for the base calendar year (within the meaning of section 1(f)(4)), unless that sum has been increased under paragraph (c)(4)(iii)(D) of this section.

(v) *Provision by the Commissioner of the qualified-contract cost-of-living adjustment.* The Commissioner may publish in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) a process pursuant to which the Internal Revenue Service will compute the qualified-contract cost-of-living adjustment for a calendar year and make available the results of that computation.

(vi) *Methodology.* The calculations in paragraph (c)(4)(iv) of this section are to be made in the following manner:

(A) The CPI data to be used for purposes of this paragraph (c)(4) are the not seasonally adjusted values of the CPI for all urban consumers. (The U.S. Department of Labor's Bureau of Labor Statistics (BLS) sometimes refers to these values as “CPI-U.”) The BLS publishes the CPI data on-line (including a History Table that contains monthly CPI-U values for all years back to 1913). See [www.BLS.gov/data](http://www.BLS.gov/data).

(B) The quotient is to be carried out to 10 decimal places.

(C) The Agency may round adjusted investor equity to the nearest dollar.

(D) If the CPI for any calendar year (within the meaning of section 1(f)(4)) during the extended use period after the base calendar year exceeds by more than 5 percent the CPI for the preceding calendar year (within the meaning of section 1(f)(4)), then the sum described in paragraph (c)(4)(i)(B) is to be increased so that the excess is never taken into account under this paragraph (c)(4).

(vii) *Example.* The following example illustrates the calculations described in this paragraph (c)(4):

*Example.* (i) *Facts.* Owner contributed \$20,000,000 in equity to a building in 1997, which was the first year of the credit period for the building. In 2011, Owner requested Agency to find a buyer to purchase the building, and Agency offered the building for sale to the general public during 2011. The CPI for 1997 (within the meaning of section 1(f)(4)) is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31, 1997. The sum of the CPI values for the twelve months from September 1996 through August 1997 is 1913.9. The CPI for 2010 (within the meaning of section 1(f)(4)) is the average of the Consumer Price Index as of the close of the 12-month period

ending August 31, 2010. The sum of the CPI values for the twelve months from September 2009 through August 2010 is 2605.959. At no time during this period (after the base calendar year) did the CPI for any calendar year exceed the CPI for the preceding calendar year by more than 5 percent.

(ii) *Determination of adjusted investor equity.* The qualified-contract cost-of-living adjustment is 1.3615962171 (the quotient of 2605.959, divided by 1913.9). Owner's adjusted investor equity, therefore, is \$27,231,924, which is \$20,000,000, multiplied by 1.3615962171, rounded to the nearest dollar.

(5) *Other capital contributions.* For purposes of paragraph (c)(2)(iii) of this section, other capital contributions to a low-income building are qualifying building costs described in paragraph (b)(4)(ii) of this section paid or incurred by the owner of the low-income building other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. For example, other capital contributions may include amounts incurred to replace a furnace after the first year of a low-income housing credit building's credit period under section 42(f), provided any loan used to finance the replacement of the furnace is not secured by the furnace or the building. Other capital contributions do not include expenditures for land costs, operating deficit payments, credit adjuster payments, and payments for legal, syndication, and accounting costs.

(6) *Cash distributions*—(i) *In general.* For purposes of paragraph (c)(2)(iv) of this section, the term *cash distributions from (or available for distribution from) the building* include—

(A) All distributions from the building to the owners or to persons whose relationship to the owner is described in section 267(b) or section 707(b)(1), including distributions under section 301 (relating to distributions by a corporation), section 731 (relating to distributions by a partnership), or section 1368 (relating to distributions by an S corporation); and

(B) All cash and cash equivalents available for distribution at, or before, the time of sale, including, for example, reserve funds whether operating or replacement reserves, unless the reserve funds are legally required by mortgage restrictions, regulatory agreements, or third party contractual agreements to remain with the building following the sale.

(ii) *Excess proceeds.* For purposes of paragraph (c)(6)(i) of this section, pro-

ceeds from the refinancing of indebtedness or additional mortgages that are in excess of qualifying building costs are not considered cash available for distribution.

(iii) *Anti-abuse rule.* The Commissioner will interpret and apply the rules in this paragraph (c)(6) as necessary and appropriate to prevent manipulation of the qualified contract amount. For example, cash distributions include payments to owners or persons whose relation to owners is described in section 267(b) or section 707(b) for any operating expenses in excess of amounts reasonable under the circumstances.

(d) *Administrative discretion and responsibilities of the Agency—(1) In general.* An Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. An Agency may establish reasonable requirements for written requests and may determine whether failure to follow one or more applicable requirements automatically prevents a purported written request from beginning the one-year period described in section 42(h)(6)(I). If the one-year-period has already begun, the Agency may determine whether failure to follow one or more requirements suspends the running of that period. Examples of Agency administrative discretion include, but are not limited to, the following:

(i) Concluding that the owner's request lacks essential information and denying

the request until such information is provided.

(ii) Refusing to consider an owner's representations without substantiating documentation verified with the Agency's records.

(iii) Determining how many, if any, subsequent requests to find a buyer may be submitted if the owner has previously submitted a request for a qualified contract and then rejected or failed to act upon a qualified contract presented by the Agency.

(iv) Assessing and charging the owner certain administrative fees for the performance of services in obtaining a qualified contract (for example, real estate appraiser costs).

(v) Requiring all appraisers involved in the qualified contract process to be State certified general appraisers that are acceptable to the Agency.

(vi) Specifying other conditions applicable to the qualified contract consistent with section 42 and this section.

(2) *Actual offer.* Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale to the general public, based on reasonable efforts, at the determined qualified contract amount in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a qualified contract to purchase the project.

(3) *Debarment of certain appraisers.* Agencies shall not utilize any individual or organization as an appraiser if that individual or organization is currently on any list for active suspension or revocation for performing appraisals in any State or is listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government found at [www.epls.gov](http://www.epls.gov).

(e) *Effective date/applicability date.* These regulations are applicable to owner requests to housing credit agencies on or after May 3, 2012 to obtain a qualified contract for the acquisition of a low-income housing credit building.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read, in part, as follows:

*§602.101 OMB Control numbers.*

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

CFR part or section where identified and described	Current OMB control No.
* * * * * 1.42-18 * * * * *	1545-2088

Steven T. Miller,  
*Deputy Commissioner for Services and Enforcement.*

Emily S. McMahon,  
*Acting Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on May 2, 2012, 8:45 a.m., and published in the issue of the Federal Register for May 3, 2012, 77 F.R. 26175)

Approved April 24, 2012.

## Section 3402.—Income Tax Collected at Source

26 CFR 31.6011(a)–4: Returns of income tax withheld.

### T.D. 9586

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 31

### Removal of Regulations Requiring 3% Withholding by Government Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document provides a Treasury decision that removes the final regulations contained in T.D. 9524 relating to withholding by government entities on payments to persons providing property or services, and makes conforming amendments to regulations to reflect the removal of these regulations. The final regulations are removed because the 3% Withholding Repeal and Job Creation Act repealed the provision of the Internal Revenue Code underlying the final regulations before the provision became effective. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property or services and also affects the persons receiving payments for property or services from these government entities.

**DATES:** *Effective Date:* These regulations are effective on April 25, 2012.

*Applicability Date:* For dates of applicability, see §§31.6011(a)–4(d) and 31.6302–1(n).

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR Part 31 under section 3402(t) of

the Internal Revenue Code (Code), relating to three percent withholding by government entities on payments for property or services. Section 3402(t) of the Code was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006. The Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (T.D. 9524, 2011–23 I.R.B. 843 [76 FR 26583]) (the May 2011 final regulations). Those regulations were issued to implement the requirements of section 3402(t) and conform existing regulations to section 3402(t).

Section 102 of the 3% Withholding Repeal and Job Creation Act (Public Law 112–56, 125 Stat. 711), which was enacted on November 21, 2011, repealed section 3402(t) of the Code. Section 3402(t) was repealed before it became effective.

This document, therefore, removes the regulatory provisions issued under section 3402(t) and related sections, and makes conforming amendments to certain regulations to reflect the removal of the section 3402(t) regulations.

At the same time as the issuance of the May 2011 final regulations, the Treasury Department and the IRS also issued proposed regulations under section 3402(t), published in the **Federal Register** on May 9, 2011 (REG–151687–10, 2011–23 I.R.B. 867 [76 FR 26678]). A related document withdraws those proposed regulations in light of the repeal of section 3402(t). See Announcement 2012–23, 2012–22 I.R.B. 967 (REG–151687–10 [77 FR 24660]).

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 this regulation, and because no notice of proposed rulemaking is required for this rule, the Regulatory Flexi-

bility Act (5 U.S.C. chapter 6) does not apply.

#### Drafting Information

The principal author of these final regulations is A. G. Kelley, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. The following sections and paragraphs are removed:

1. Remove section 31.3402(t)–0.
2. Remove section 31.3402(t)–1.
3. Remove section 31.3402(t)–2.
4. Remove section 31.3402(t)–3.
5. Remove section 31.3402(t)–4.
6. Remove section 31.3402(t)–5.
7. Remove section 31.3402(t)–6.
8. Remove section 31.3402(t)–7.

9. Remove paragraphs (h) and (i) of section 31.3406(g)–2.

Par. 3. Section 31.6011(a)–4 is amended by:

1. Revising paragraphs (b)(4), (b)(5), and (d).

2. Removing paragraph (b)(6).

The revisions read as follows:

§31.6011(a)–4 Returns of income tax withheld.

\* \* \* \* \*

(b) \* \* \*

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

\* \* \* \* \*

(d) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(4)(i) of this section

apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)-4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in §31.6011(a)-4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)-4T as in effect prior to December 30, 2008.

Par. 4. Section 31.6051-5 is removed.

Par. 5. Section 31.6071(a)-1 is amended by:

1. Revising paragraph (a)(3)(i).
2. Removing paragraph (g).

The revision reads as follows:

*§31.6071(a)-1 Time for filing returns and other documents.*

(a) \* \* \*

(3) *Information returns—(i) General rule.* Each information return in respect of wages as defined in Federal Insurance Contributions Act or of income tax withheld from wages as required under §31.6051-2 must be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which it is made, except that, if a tax return under §31.6011(a)-5(a) is filed as a final return for a period ending prior to December 31, the information return must be filed on or before the last day of the second calendar month following the period for which the tax return is filed.

\* \* \* \* \*

Par. 6. Section 31.6302-1 is amended by:

1. Revising paragraph (e)(1)(iii)(C).
2. Removing paragraph (e)(1)(iii)(E).
3. Revising paragraph (n).

The revisions read as follows:

*§31.6302-1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.*

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) Certain annuities described in section 3402(o)(1)(B); and

\* \* \* \* \*

(n) *Effective/applicability dates.* Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§31.6302-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6302-1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302-1T as in effect prior to December 30, 2008. The rules of

paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302-1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

Par. 7. Section 31.6302-4 is amended by:

1. Revising paragraphs (b)(4) and (b)(5).

2. Removing paragraph (b)(6).

3. Revising paragraph (e).

The revisions read as follows:

*§31.6302-4 Deposit rules for withheld income taxes attributable to nonpayroll payments.*

\* \* \* \* \*

(b) \* \* \*

(4) Annuities withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

\* \* \* \* \*

(e) *Effective/applicability date.* Section 31.6302-4(d) applies to deposits and payments made after December 31, 2010.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved April 17, 2012.

Emily S. McMahon,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on April 24, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2012, 77 F.R. 24611)

# Part III. Administrative, Procedural, and Miscellaneous

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

### Notice 2012-36

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the min-

imum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

#### CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the cor-

porate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-2 C.B. 366.

The composite corporate bond rate for April 2012 is 4.54 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	100%
May	2012	5.50	4.95	5.50

#### YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. Section 430(h)(2)(G) set forth a transitional rule applicable to plan years beginning in 2008 and 2009 under which the segment rates were blended with the corporate bond weighted average described above, including an election under § 430(h)(2)(G)(iv) for an employer to use the segment rates without the transitional rule.

Notice 2007-81, 2007-2 C.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from April 2012 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of April 2012 are, respectively, 1.54, 4.30, and 5.14. The three 24-month average corporate bond segment rates applicable for May 2012 are as follows:

First Segment	Second Segment	Third Segment
1.87	4.84	5.96

The transitional rule of § 430(h)(2)(G) does not apply to plan years beginning after December 31, 2009. Therefore, for a

plan year beginning after 2009 with a look-back month to May 2012, the funding segment rates are the three 24-month average

corporate bond segment rates applicable for May 2012, listed above without blending for any transitional period.

**30-YEAR TREASURY SECURITIES INTEREST RATES**

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual

rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for April 2012 is 3.18 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in February 2042.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum

amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
<i>Month</i>	<i>Year</i>		90%	to 105%
May	2012	3.93	3.54	4.13

**MINIMUM PRESENT VALUE SEGMENT RATES**

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for de-

termining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for April 2012, taking into account the April 2012 30-year Treasury rate of 3.18 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2011	1.87	4.08	4.75
2012	1.54	4.30	5.14

**DRAFTING INFORMATION**

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

**Table I**  
 Monthly Yield Curve for April 2012  
 Derived from April 2012 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	0.48	20.5	5.00	40.5	5.16	60.5	5.23	80.5	5.26
1.0	0.78	21.0	5.01	41.0	5.16	61.0	5.23	81.0	5.26
1.5	1.07	21.5	5.02	41.5	5.17	61.5	5.23	81.5	5.26
2.0	1.31	22.0	5.02	42.0	5.17	62.0	5.23	82.0	5.26
2.5	1.52	22.5	5.03	42.5	5.17	62.5	5.23	82.5	5.26
3.0	1.71	23.0	5.03	43.0	5.17	63.0	5.23	83.0	5.26
3.5	1.88	23.5	5.04	43.5	5.18	63.5	5.23	83.5	5.26
4.0	2.05	24.0	5.04	44.0	5.18	64.0	5.23	84.0	5.26
4.5	2.22	24.5	5.04	44.5	5.18	64.5	5.24	84.5	5.26
5.0	2.40	25.0	5.05	45.0	5.18	65.0	5.24	85.0	5.27
5.5	2.59	25.5	5.05	45.5	5.18	65.5	5.24	85.5	5.27
6.0	2.77	26.0	5.06	46.0	5.19	66.0	5.24	86.0	5.27
6.5	2.96	26.5	5.06	46.5	5.19	66.5	5.24	86.5	5.27
7.0	3.15	27.0	5.07	47.0	5.19	67.0	5.24	87.0	5.27
7.5	3.33	27.5	5.07	47.5	5.19	67.5	5.24	87.5	5.27
8.0	3.50	28.0	5.08	48.0	5.19	68.0	5.24	88.0	5.27
8.5	3.66	28.5	5.08	48.5	5.19	68.5	5.24	88.5	5.27
9.0	3.82	29.0	5.08	49.0	5.20	69.0	5.24	89.0	5.27
9.5	3.96	29.5	5.09	49.5	5.20	69.5	5.24	89.5	5.27
10.0	4.09	30.0	5.09	50.0	5.20	70.0	5.25	90.0	5.27
10.5	4.21	30.5	5.10	50.5	5.20	70.5	5.25	90.5	5.27
11.0	4.31	31.0	5.10	51.0	5.20	71.0	5.25	91.0	5.27
11.5	4.41	31.5	5.11	51.5	5.20	71.5	5.25	91.5	5.27
12.0	4.50	32.0	5.11	52.0	5.21	72.0	5.25	92.0	5.27
12.5	4.57	32.5	5.11	52.5	5.21	72.5	5.25	92.5	5.27
13.0	4.64	33.0	5.12	53.0	5.21	73.0	5.25	93.0	5.27
13.5	4.70	33.5	5.12	53.5	5.21	73.5	5.25	93.5	5.27
14.0	4.75	34.0	5.13	54.0	5.21	74.0	5.25	94.0	5.27
14.5	4.79	34.5	5.13	54.5	5.21	74.5	5.25	94.5	5.27
15.0	4.83	35.0	5.13	55.0	5.21	75.0	5.25	95.0	5.28
15.5	4.86	35.5	5.13	55.5	5.22	75.5	5.25	95.5	5.28
16.0	4.89	36.0	5.14	56.0	5.22	76.0	5.25	96.0	5.28
16.5	4.91	36.5	5.14	56.5	5.22	76.5	5.25	96.5	5.28
17.0	4.93	37.0	5.14	57.0	5.22	77.0	5.26	97.0	5.28
17.5	4.95	37.5	5.15	57.5	5.22	77.5	5.26	97.5	5.28
18.0	4.96	38.0	5.15	58.0	5.22	78.0	5.26	98.0	5.28
18.5	4.97	38.5	5.15	58.5	5.22	78.5	5.26	98.5	5.28
19.0	4.98	39.0	5.16	59.0	5.22	79.0	5.26	99.0	5.28
19.5	4.99	39.5	5.16	59.5	5.23	79.5	5.26	99.5	5.28
20.0	5.00	40.0	5.16	60.0	5.23	80.0	5.26	100.0	5.28

# Part IV. Items of General Interest

## Request for Information

### Request for Information Regarding Stop Loss Insurance

#### REG-117645-12

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Request for Information.

SUMMARY: This document is a request for information regarding the use of stop loss insurance by group health plans and their plan sponsors, with a focus on the prevalence and consequences of stop loss insurance at low attachment points. Given the limited nature of data available, the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) invite public comments via this request for information.

DATES: Comments must be submitted on or before July 3, 2012.

ADDRESSES: Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the other Departments. Please do not submit duplicates. All comments will be made available to the public. **WARNING:** Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments may be submitted by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* [E-OHPSCA-STOPLOSS.EBSA@dol.gov](mailto:E-OHPSCA-STOPLOSS.EBSA@dol.gov).

*Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: Stop Loss Comments.

Comments received will be posted without change to <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and available for public inspection in the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Beth Baum or Amy Turner, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335; Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622-6080; Steve Kornblit, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at (410) 786-1565.

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor's website (<http://www.dol.gov/ebsa>). In addition, information from HHS on private health insurance for consumers can be found on the CMS website ([www.cciio.cms.gov](http://www.cciio.cms.gov)), and information on health reform can be found at <http://www.HealthCare.gov>.

## SUPPLEMENTARY INFORMATION:

### I. Background

Stop loss insurance protects against health insurance claims that are catastrophic or unpredictable in nature<sup>1</sup> and provides coverage to self-insured group health plans once a certain level of risk has been absorbed by the plan.<sup>2</sup> Stop loss protection allows an employer to self-insure for a set amount of claims costs, with the stop loss insurance covering most or all of the remainder of the claims costs that exceed the set amount, generally referred to as the "attachment point." Attachment points can be either "specific" or "aggregate." Specific attachment points protect the plan against a high claim for any one individual (e.g., an employer self-insures up to \$500,000 in claims per year for any one enrollee and stop loss insurance covers claims amounts above the \$500,000 attachment point).<sup>3</sup> Aggregate attachment points define the maximum dollar amount of claims that an employer will pay, in total, during a specific period (e.g., an employer self-insures up to 125 percent of expected claims per year across all employees and stop loss insurance covers claims amounts above the 125 percent attachment point).<sup>4</sup> Stop loss insurance policies may be purchased by an employer or by the employer's group health plan.

The Departments have little data on the incidence or terms of stop loss insurance among self-insured employers' group health plans. Private-sector employer sponsored health benefit plans that have 100 or more participants and smaller plans that hold assets in trust generally are required to file annual reports with the Department of Labor. These reports, filed on Form 5500, include some information on the plans' finances, including some information on any stop loss insurance policies held by the plans. However, the reports do not include information on the attachment points associated with stop loss insurance policies or any information on stop loss insurance policies held

<sup>1</sup> See the Self-Insurance Institute of America Inc.'s definition of stop-loss insurance at: <http://www.siaa.org/fi4a/pages/Index.cfm?pageID=4549>.

<sup>2</sup> *American Medical Security Inc. v. Bartlett*, 111 F.3d 358, 360, 361 (4th Cir.1997)

<sup>3</sup> See the Self-Insurance Institute of America Inc.'s definition of stop-loss insurance at: <http://www.siaa.org/fi4a/pages/Index.cfm?pageID=4549>.

<sup>4</sup> Id.

by plan sponsors rather than by plans. Additionally, plans with fewer than 100 participants that employers self-insure using their general assets (and that do not hold assets in trust) are not required to file Form 5500 annual reports and as a result, the Departments have even less information about stop loss coverage for these plans. The limited information on stop loss insurance policies contained in Form 5500 is summarized in the Department of Labor's Group Health Plans Reports Abstract of Form 5500 Annual Reports, available at: <http://www.dol.gov/ebsa/publications/form5500datasearch.html#health-plan>. The limited available information suggests that stop loss insurance is perhaps becoming more common among smaller self-insured plans but information is not available on the type of stop loss coverage purchased by plans of various sizes. More specifically, according to Form 5500 data, between 2000 and 2008, the percentage of group health plans filing a Form 5500 that reported having stop loss insurance was in the range of approximately 23 percent to 27 percent for self-insured plans and approximately 28 percent to 29 percent for partially-insured, partially self-insured plans.<sup>5</sup>

Unless prohibited by State insurance law, an insurer may offer stop loss insurance policies with attachment points set low enough such that the stop loss insurer assumes nearly all the insurance risk. For example, the attachment point could be set at \$5,000 per employee, or \$100,000 for a small group.

Under §514(a) of the Employee Retirement Income Security Act (ERISA), State laws that relate to "employee benefit plans," as defined by ERISA §3(3), are

generally preempted. (Although ERISA §514(b)(2)(A) saves State insurance laws from preemption, ERISA §514(b)(2)(B) prohibits States from deeming employee benefit plans to be insurance companies in order to regulate them under insurance laws.)<sup>6</sup> As a result, self-insured plans are not subject to State insurance laws, but insurance policies issued to those plans or plan sponsors, including stop loss insurance policies, can be regulated by States if the regulation is directed toward and affects the business of insurance rather than the relationship between an employee benefit plan and its participants.

Employers and plans that purchase stop loss insurance generally are not subject to State health insurance laws including coverage laws, rating policies, and other State and Federal consumer protections applicable to health insurance, including certain patient protections under the Patient Protection and Affordable Care Act (Affordable Care Act). It has been suggested that some small employers with healthier employees may self-insure and purchase stop loss insurance policies with relatively low attachment points to avoid being subject to these requirements while exposing themselves to little risk.<sup>7</sup> This practice, if widespread, could worsen the risk pool and increase premiums in the fully insured small group market, including in the Small Business Health Options Program (SHOP) Exchanges that begin in 2014.<sup>8</sup>

In the mid-1990s, the National Association of Insurance Commissioners (NAIC) and several States expressed concern that the purchase of stop loss insurance policies with low attachment points made the self-insured classification a method to circumvent State insurance regulation. As

a result, the NAIC adopted a model law (Model Act 92-1), which established standards for determining whether an insurance policy should be treated as a health insurance policy or a stop loss insurance policy under State law. The model law created minimum attachment points for stop loss insurance policies.<sup>9</sup> If the attachment points exceeded the minimum amount, the policies would be treated essentially as reinsurance of a self-insured plan. If the attachment points were below the minimum, the policies would be classified as health insurance subject to State insurance regulation. In addition, the model law established distinctly different requirements for health insurance policies as opposed to stop loss insurance policies, including different licensing, reporting, policy form and solvency requirements for insurers issuing the health insurance policies.

Other interested stakeholders are also monitoring the market for stop loss coverage with low attachment points.<sup>10</sup>

## II. Solicitation of Comments

The Departments are requesting comments to contribute to the Departments' understanding of the current and emerging market for stop loss products, both generally and with respect to the following specific areas:

1. How common is the use of stop loss insurance in connection with self-insured arrangements? Does the usage vary (and, if so, how) based on the size of the underlying arrangement or based on other factors? How many individuals, if known, are covered under stop loss insurance (either nationally or on a state-specific basis)? What are

<sup>5</sup> See Department of Labor's Report to Congress: Annual Report on Self-Insured Group Health Plans, issued on 04/24/2012, available at <http://www.dol.gov/ebsa/pdf/ACAREportToCongress041612.pdf>.

<sup>6</sup> *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 373 n.6 (2002) (a State law that regulates insurance — and which is otherwise saved from preemption — may not be applied to a self-insured ERISA plan).

<sup>7</sup> Kathryn Linehan, *Self-Insurance and the Potential Effects of Health Reform on the Small-Group Market*, Issue Brief 840, National Health Policy Forum (December 21, 2010) available at [http://www.nhpf.org/library/issue-briefs/IB840\\_PPACASmallGroup\\_12-21-10.pdf](http://www.nhpf.org/library/issue-briefs/IB840_PPACASmallGroup_12-21-10.pdf), Russell B. Korobkin, *The Battle Over Self-Insured Health Plans, or 'One Good Loophole Deserves Another'*, Yale Journal of Health Policy, Law, and Ethics, Vol. 1, 89-136 (2005).

<sup>8</sup> A recent RAND report predicts that this effect, if any, is likely to be small. See <http://content.healthaffairs.org/content/31/2/324.abstract?sid=412e7755-0eb9-4b79-ac32-d39e6c739d0f>. See also Mark A. Hall, Regulating Stop-Loss Coverage May Be Needed to Deter Self-Insuring Small Employers From Undermining Market Reforms, *Health Affairs*, 31, no. 2 (2012): 316-323.

<sup>9</sup> Specifically, the 1995 model law prohibited an insurer from issuing a stop loss insurance policy that had: (a) an annual attachment point for claims incurred per individual lower than \$20,000; and (b) an annual aggregate attachment point, for groups of fifty (50) or fewer, that was lower than the greater of: (i) \$ 4,000 times the number of group members; (ii) 120 percent of expected claims; or (iii) \$ 20,000. For groups of fifty-one or more, it prohibited an annual aggregate attachment point that was lower than 110 percent of expected claims.

<sup>10</sup> For example, Hall has cautioned that aspects of the Affordable Care Act could motivate some small businesses with younger, healthier employees to self-insure and buy relatively comprehensive stop loss coverage, and that this might increase premiums for small businesses that purchase insurance. See Mark A. Hall, Regulating Stop-Loss Coverage May Be Needed to Deter Self-Insuring Small Employers From Undermining Market Reforms, *Health Affairs*, 31, no. 2 (2012): 316-323. Eibner *et al.* generally conclude that self-insurance will have little effect on premiums for small group coverage, but suggest that this conclusion might change if affordable, attractive stop-loss policies become more available. See Christine Eibner, Carter C. Price, Raffaele Vardavas, Amando Cordova and Federico Girosi, Small Firms' Actions in Two Areas, And Exchange Premium and Enrollment Impact, *Health Affairs*, 31, no. 2, (2012): 324-331.

- the trends? Are past trends expected to be predictive of future trends? Is the Affordable Care Act expected to affect these trends (and, if so, how)?
2. What are common attachment points for stop loss insurance policies, and what factors are used to determine these attachment points? What are common attachment points by employer size (e.g., for plans with fewer than 50, between 50 and 100, or between 100 and 250 employees, and how do these compare to attachment points used by larger plans)? What are the lowest attachment points that are available? What are the trends?
  3. Are employee-level (“specific”) attachment points more common, or are group-level (“aggregate”) attachment points more common? What are the trends? What are the common attachment points for employee-level and group-level policies?
  4. How do insurers work with small employers to integrate stop loss insurance protection with self-insured group health plans? What kinds of options are generally made available? Are policies customized to meet the needs of different employers? How are the attachment points for a stop loss policy determined for an employer? Do self-insured group health plans purchase stop loss insurance anticipating that they will purchase it every year?
  5. For a given attachment point, what percentage of total medical costs incurred by the employees is typically paid for by the employer and what percentage is typically paid for by the stop loss insurance policy? How much do the relative percentages vary for different attachment points? What are the loss ratios associated with stop loss insurance policies?
  6. What are the administrative costs to employers related to stop loss insurance purchased for the employers’ self-insured group health plans? How do these costs compare to the administrative costs related to purchasing a health insurance policy from an insurer?

7. Is stop loss insurance more prevalent in certain industries or sectors? Are there any minimum employee participation requirements for a small employer to be offered stop loss insurance?
8. What types of entities issue stop loss insurance? How many small entities<sup>11</sup> issue stop loss insurance policies?
9. Do stop loss issuers increase fees for groups below a certain size or exclude those groups? If so, how?
10. How do stop loss insurers evaluate the plans seeking coverage and how is this evaluation reflected in the coverage or premiums offered? Does the profile of the plan have an effect on the attachment points available?
11. How do States regulate stop loss insurance? In States that are regulating this insurance, what are the licensing processes and standards? Have States proposed laws, regulations, or best practices with regard to stop loss insurance? Do such proposals focus on attachment points, size of the group, percent of total claims paid by the stop loss insurer, or other criteria? What are the issues States face in regulating stop loss insurance?
12. What effect does the availability of stop loss insurance with various attachment points and other particular provisions have on small employers’ decisions to offer insurance to employees?
13. What impact does the use of stop loss insurance by self-insured small employers have on the small group fully insured market?

Signed at Washington, DC this 25<sup>th</sup> day of April, 2012.

Victoria A. Judson,  
*Division Counsel/  
 Associate Chief Counsel,  
 Tax Exempt and Government Entities,  
 Internal Revenue Service,  
 Department of the Treasury.*

Signed at Washington, DC this 25<sup>th</sup> day of April, 2012.

George H. Bostick,  
*Benefits Tax Counsel,  
 Department of the Treasury.*

Signed this 23<sup>rd</sup> day of April, 2012.

Phyllis C. Borzi,  
*Assistant Secretary,  
 Employee Benefits  
 Security Administration,  
 Department of Labor.*

Dated April 25, 2012.

Marilyn Tavenner,  
*Acting Administrator,  
 Centers for Medicare &  
 Medicaid Services.*

Approved April 25, 2012.

Kathleen Sebelius,  
*Secretary,  
 Department of Health  
 and Human Services.*

(Filed by the Office of the Federal Register on April 27, 2012, 11:15 a.m., and published in the issue of the Federal Register for May 1, 2012, 77 F.R. 25788)

## **Withholding on Payments by Government Entities to Persons Providing Property or Services; Withdrawal**

### **Announcement 2012-23**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking relating to withholding by government entities on payments to persons providing property or services. The proposed regulations are withdrawn because Public Law 112-56, “The 3% Withholding Repeal and Job Creation Act,” repealed the provision of the Internal Revenue Code underlying the proposed rules. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property

<sup>11</sup> For this purpose, a small entity is defined as (1) a proprietary firm meeting the size standards of the Small Business Administration or (2) a nonprofit organization that is not dominant in its field.

or services and also affects the persons receiving payments for property or services from these government entities.

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622-6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### Background

Section 3402(t) of the Internal Revenue Code (Code) was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006.

Section 102 of the 3% Withholding Repeal and Job Creation Act (Public Law 112-56, 125 Stat. 711), which was enacted

on November 21, 2011, repealed section 3402(t) of the Code.

The Treasury Department and the IRS issued proposed regulations under section 3402(t), published in the **Federal Register** on May 9, 2011 (REG-151687-10, 2011-23 I.R.B. 867 [76 FR 26678]). This document withdraws those proposed regulations in light of the repeal of section 3402(t).

At the same time as the issuance of the proposed regulations, the Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (T.D. 9524, 2011-23 I.R.B. 843 [76 FR 26583]). A related document (T.D. 9586, 2012-22 I.R.B. 960 [77 FR 24611]) removes the final regulations un-

der section 3402(t) and makes conforming amendments to the regulations under other sections reflecting that removal.

\* \* \* \* \*

### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-151687-10) that was published in the **Federal Register** on May 9, 2011 (76 FR 26678) is withdrawn.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on April 24, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2012, 77 F.R. 24660)

# 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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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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