

**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. 9618, page 1194.**

This final regulation extends the period for submission to the IRS of taxpayer authorizations permitting disclosure of returns and return information to third-party designees. Notice 2010-8 is obsolete as of May 7, 2013.

**REG-125398-12, page 1199.**

Proposed regulations provide rules under section 36B of the Code relating to the health insurance premium tax credit, enacted by section 1401 of the Affordable Care Act, including rules for determining whether an eligible employer-sponsored plan provides minimum value.

**Notice 2013-34, page 1198.**

Credit for Carbon Dioxide Sequestration; 2013 Section 45Q Inflation Adjustment Factor. This notice publishes the inflation adjustment factor for the carbon dioxide (CO<sub>2</sub>) sequestration credit under § 45Q for calendar year 2013.

**ADMINISTRATIVE**

**T.D. 9617, page 1195.**

These final regulations provide rules requiring any person assigned an employer identification number (EIN) to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance.

Announcements of Disbarments and Suspensions begin on page 1207.  
Finding Lists begin on page ii.



# The IRS Mission

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

force the law with integrity and fairness to all.

## Introduction

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

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

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

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

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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

## Section 6011.—General Requirement of Return, Statement, or List

Proposed regulations provide that a taxpayer who receives advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing). See REG-125398-12, page 1199.

## Section 6103(c).—Confidentiality and Disclosure of Returns and Return Information

T.D. 9618

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

#### Disclosure of Returns and Return Information to Designee of Taxpayer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations extending the period for submission to the IRS of taxpayer authorizations permitting disclosure of returns and return information to third-party designees. Specifically, the final regulations extend from 60 days to 120 days the period within which a signed and dated authorization must be received by the IRS (or an agent or contractor of the IRS) for it to be effective. The final regulations will affect taxpayers who submit authorizations permitting disclosure of returns and return information to third-party designees.

DATES: *Effective Date:* The final regulations are effective on May 7, 2013.

*Applicability Date:* For date of applicability, see §301.6103(c)–1(f).

FOR FURTHER INFORMATION CONTACT: Amy Mielke, (202) 622–4570 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in the 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 1545–1816.

The collection of information in these final regulations is in §301.6103(c)–1(b)(2). This information is required by the IRS to identify the return or return information described in the request or consent; to search for and, where found, compile such return or return information; and to identify the person to whom any such return or return information is to be provided.

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

##### Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301), and amends §301.6103(c)–1 by extending the period for submission to the IRS of taxpayer authorizations permitting disclosure of returns and return information to designees of a taxpayer.

On December 18, 2009, the IRS published Notice 2010–8, 2010–3 I.R.B. 297 (available at IRS.gov), which announced the Treasury Department and the IRS's intent to amend the regulations under §301.6103(c)–1 to expand the time frame for submission of section 6103(c) authorizations. The notice also announced interim rules extending from 60 days to 120 days the period within which section 6103(c) authorizations must be received

to be effective. The time period was extended because some institutions charged with assisting taxpayers in their financial dealings encountered difficulty in obtaining written authorizations and submitting the authorizations within the 60-day period allowed by the existing regulations. The interim rules apply to authorizations signed and dated on or after October 19, 2009.

The Treasury Department and the IRS published a notice of proposed rulemaking (REG–153338–09) in the **Federal Register**, 76 FR 14827, on March 18, 2011, which adopted the interim rule in Notice 2010–8. A public hearing was scheduled for June 9, 2011. The IRS did not receive any requests to testify at the public hearing, and the public hearing was cancelled. One written comment responding to the NPRM was received and is available for public inspection at <http://www.regulations.gov> or upon request. After consideration of the comment, the proposed regulations are adopted by this Treasury decision without change.

##### Explanation and Summary of Comments

The IRS received one comment in response to the NPRM. The commentator agreed that the period for submission of authorizations to allow for the disclosure of taxpayer information to third-party designees should be expanded. The commentator specifically suggested that any reasonable time period beyond 120 days also be considered. The Treasury Department and the IRS have concluded that the 120-day period is a sufficient extension of time to assist taxpayers whose designees have encountered difficulty in obtaining and submitting the written authorizations. The 120-day period is a reasonable limitation on the effective period of written authorizations that helps ensure the currency of the authorization while protecting taxpayer privacy. After carefully considering the comment, the proposed regulations are adopted without modification.

## Effect on Other Documents

The following publication is obsolete as of May 7, 2013: Notice 2010–8, 2010–3 I.R.B. 297.

## Special Analyses

It has been determined that this final rule 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. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comments were received from that office.

When an agency issues a final rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), requires the agency to “prepare a final regulatory flexibility analysis.” (5 U.S.C. 604(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal, since the regulation applies only to taxpayers who request or consent to the disclosure of their own returns or return information, and since the information collected is only that necessary to carry out the disclosure of returns or return information requested or consented to by the taxpayer (such as the name and taxpayer identification number of the taxpayer, the return or return information to be disclosed, and the identity of the designee). Moreover, the certification is based upon the fact that the regulation reduces the burden imposed upon taxpayers by the prior regulation by extending the period in which consents may be received by the IRS. Accordingly, a Regulatory Flexibility Analysis is not required.

## Drafting Information

The principal author of the final regulations is Amy Mielke, Office of the Associate Chief Counsel (Procedure and Administration).

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## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(c)–1 is amended by revising paragraphs (b)(2) and (f), and adding paragraph (g) to read as follows:

*§301.6103(c)–1 Disclosure of returns and return information to designee of taxpayer.*

\* \* \* \* \*

(b) \* \* \*

(2) *Requirement that request or consent be received within one hundred twenty days of when signed and dated.* The disclosure of a return or return information authorized by a written request for or written consent to the disclosure shall not be made unless the request or consent is received by the Internal Revenue Service (or an agent or contractor of the Internal Revenue Service) within 120 days following the date upon which the request or consent was signed and dated by the taxpayer.

\* \* \* \* \*

(f) *Applicability date.* This section is applicable on April 29, 2003, except that paragraph (b)(2) is applicable to section 6103(c) authorizations signed on or after October 19, 2009.

(g) *Effective date.* This section is effective on April 29, 2003, except that paragraphs (b)(2) and (f) are effective May 7, 2013.

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

Approved April 25, 2013.

Mark J. Mazur,  
*Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on May 6, 2013, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2013, 78 F.R. 26506)

## Section 6109.—Identifying Numbers

T.D. 9617

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 301 and 602

### Updating of Employer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations that require any person assigned an employer identification number (EIN) to provide updated information to the IRS in the manner and frequency prescribed by forms, instructions, or other appropriate guidance. These regulations affect persons with EINs and will enhance the IRS’s ability to maintain accurate information as to persons assigned EINs.

DATES: *Effective Date:* These regulations are effective on May 6, 2013.

*Applicability Date:* For date of applicability, see §301.6109–1(d)(2)(ii)(B).

FOR FURTHER INFORMATION CONTACT: David Skinner, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

The collection of information contained in the 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 1545–2242.

The collection of information in the final regulations is in §301.6109-1(d)(2)(ii)(A). The collection of this information is necessary to allow the IRS to gather correct application information with respect to persons that have EINs. The respondents are persons that have EINs.

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

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

## Background

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6109 of the Internal Revenue Code relating to identifying numbers. The Department of Treasury and the IRS published a notice of proposed rulemaking (REG-135491-10) in the **Federal Register**, 77 FR 15004, on March 14, 2012, requiring persons issued EINs to provide updated application information to the IRS. The IRS did not receive any requests for a public hearing. Written comments responding to the proposed regulations were received and are available for public inspection at <http://www.regulations.gov> or upon request. After consideration of all the comments, the proposed regulations are adopted without amendment by this Treasury decision.

## Summary of Comments

The IRS received four written comments in response to the proposed regulations. One comment supported the rule in the proposed regulations requiring any person issued an EIN to provide updated information to the IRS in the manner and frequency required by forms, instructions, or other appropriate guidance (including updated application information regarding the name and taxpayer identifying number of the responsible party). This commentator also recommended changes to either

the Form SS-4, *Application for Employer Identification Number*, or the Form 5500, *Annual Returns/Reports of Employee Benefit Plan*, to require additional information confirming the active status of a trust's EIN. Alternatively, the commentator suggested that the IRS could use a postcard to confirm the active status of trusts for EIN purposes. Although these suggestions are outside the scope of the regulations, the IRS will take them into consideration during future updates of those items.

Three of the comments did not support the rule in the proposed regulations. Two commentators objected to the increased burden on entities resulting from the updating requirement and questioned the necessity of this requirement. Additionally, two commentators suggested that the estimated annual average burden of 15 minutes provided in the Paperwork Reduction Act section of the proposed regulations underestimated the actual burden to entities and their agents. One commentator also argued that this rule is "material" because the related costs could reach over \$100,000,000. Treasury and the IRS have considered these comments and, for the following reasons, these final regulations adopt the proposed regulations without change.

Treasury and the IRS continue to conclude that updating this application information is necessary for effective tax administration. Some EIN applicants continue to list individuals temporarily authorized to act on behalf of EIN applicants (sometimes referred to as "nominees") as principal officers, general partners, grantors, owners, and trustors on EIN applications. The listing of nominees or other individuals who are no longer associated with the entity prevents the IRS from gathering and maintaining correct and current information with respect to the responsible party for the EIN applicant. The requirement in the final regulations to provide updated application information will allow the IRS to ascertain the true responsible party for persons who have an EIN. This knowledge will prevent unnecessary delays by allowing the IRS to contact the correct persons when resolving a tax matter related to a business with an EIN. In addition, this information will help the IRS combat schemes that abuse the tax system through the use of nominees, which results in the concealing of

the true responsible party for entities that hide assets and income.

Treasury and the IRS also conclude that the costs related to this rule are not "material," any associated burden on entities resulting from this requirement is minimal, and the costs and burden are outweighed by the benefits to tax administration described in the previous paragraph. An entity with an EIN will always know the identity of its appropriate responsible party, which is generally defined as the individual with the authority to control, manage, or direct the entity and the disposition of its funds and assets. The updating requirement in these final regulations requires entities to keep the IRS informed of the identity of the responsible party.

The 15 minute burden estimate provided in the Paperwork Reduction Act section of the proposed regulations is an estimate of the burden in reporting and disclosing the correct application information to the IRS, not the burden an entity or its agent may incur in determining this information (which, as noted, is minimal because an entity will always know the identity of its responsible party). Following the publication of these final regulations, the IRS will publish the relevant form for persons issued an EIN to use to disclose the correct application information to the IRS. The relevant form will require these persons to update application information regarding the name and taxpayer identifying number of the responsible party within the applicable timeframe. Treasury and the IRS have determined that the amount of time necessary to fill out the relevant form and submit it to the IRS is minimal.

These final regulations are applicable as of January 1, 2014, so that the IRS can publish the relevant form and instructions in advance of the applicability date.

## Special Analyses

It has been determined that these final rules are 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 final regulations.

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA) (5

U.S.C. chapter 6) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The rules affect entities that have an EIN and the IRS has determined that these rules will have an impact on a substantial number of small entities. The IRS has determined, however, that the impact on entities affected by the rules will not be significant. The current Form SS-4, *Application for Employer Identification Number*, requires entities to disclose the name of the EIN applicant’s “responsible party” and the responsible party’s Social Security Number, Individual Taxpayer Identification Number, or EIN. Employers are required to know the identity of their responsible party. The amount of time necessary to submit the updated information required in these regulations, therefore, should be minimal for these entities.

Based on these facts, the IRS hereby certifies that the collection of information contained in the final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

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

**Drafting Information**

The principal author of these regulations is Elizabeth Cowan of the Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read as follows:

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

Par. 2. Section 301.6109-1 is amended by adding paragraph (d)(2)(ii) to read as follows:

*§301.6109-1 Identifying numbers.*

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Updating of application information—(A) Requirements.* Persons issued employer identification numbers in accordance with the application process set forth in paragraph (d)(2)(i) of this section must provide to the Internal Revenue Service any updated application information in the manner and frequency required by forms, instructions, or other appropriate guidance.

(B) *Effective/applicability date.* Paragraph (d)(2)(ii)(A) of this section applies to all persons possessing an employer identification number on or after January 1, 2014.

\* \* \* \* \*

**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 the following entry in numerical order to the table:

§602.101 OMB Control Numbers.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where Identified and described	Current OMB Control No.
* * * * *	
301.6109-1 .....	1545-2242
* * * * *	

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

Mark J. Mazur,  
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on May 3, 2013, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2013, 78 F.R. 26244)

Approved April 25, 2013.

# Part III. Administrative, Procedural, and Miscellaneous

## Credit for Carbon Dioxide Sequestration 2013 Section 45Q Inflation Adjustment Factor

### Notice 2013-34

#### SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO<sub>2</sub>) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2013. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of § 45Q.

#### SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term “qualified carbon dioxide” as CO<sub>2</sub> captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO<sub>2</sub> includes the initial deposit of captured CO<sub>2</sub> used as a tertiary injectant but does not include CO<sub>2</sub> that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term “qualified facility” as an industrial facility that is owned by the taxpayer, where carbon capture equipment is placed in service, and where at least 500,000 metric tons of CO<sub>2</sub> is captured during the taxable year.

Section 45Q(d)(2) provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO<sub>2</sub> under § 45Q(a)(1)(B) or (a)(2)(C) such that the CO<sub>2</sub> does not escape into the atmosphere. See section 5 of Notice 2009-83, 2009-44 I.R.B. 588, for procedures regarding secure geological storage.

Section 45Q(d)(5) allows the § 45Q credit to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified CO<sub>2</sub>.

Under § 45Q(d)(7), for taxable years beginning in a calendar year after 2009, the dollar amount contained in § 45Q(a) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(d)(7), with respect to 2013 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2012 (115.387) and the denominator of which is the GNP implicit price deflator for 2008 (108.589).

Section 45Q(e) provides that the § 45Q credit will apply with respect to qualified

CO<sub>2</sub> before the end of the calendar year in which the Secretary, in consultation with the EPA, certifies that 75,000,000 metric tons of qualified CO<sub>2</sub> have been taken into account in accordance with § 45Q(a).

#### SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2013 is 1.0626. The § 45Q credit for calendar year 2013 is \$21.25 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(1) and \$10.63 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(2).

#### SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83 requires taxpayers to file annual reports that provide (among other information) the amounts (in metric tons) of qualified CO<sub>2</sub> for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the annual reports filed with the Service as of May 14, 2013, the aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of § 45Q is 20,858,926 metric tons.

#### SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 622-3110 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit

#### REG-125398-12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act, 2011. These proposed regulations affect individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals and employers. These proposed regulations also provide guidance on determining whether health coverage under an eligible employer-sponsored plan provides minimum value and affect employers that offer health coverage and their employees.

DATES: Written (including electronic) comments and requests for a public hearing must be received by July 2, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-125398-12), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-125398-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW.,

Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-125398-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrew S. Braden, (202) 622-4960; concerning the submission of comments and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free calls).

#### SUPPLEMENTARY INFORMATION:

##### Background

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange may receive a premium tax credit under section 36B of the Internal Revenue Code (Code). Section 36B was subsequently amended by the Medicare and Medicaid Extenders Act of 2010, Public Law 111-309 (124 Stat. 3285 (2010)); the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112-9 (125 Stat. 36 (2011)); and the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112-10 (125 Stat. 38 (2011)).

Notice 2012-31, 2012-20 I.R.B. 906, requested comments on methods for determining whether health coverage under an eligible employer-sponsored plan provides minimum value (MV). Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30377). The final regulations requested comments on issues to be addressed in further guidance. The comments have been considered in developing these proposed regulations.

##### Minimum Value

Individuals generally may not receive a premium tax credit if they are eligible for

affordable coverage under an eligible employer-sponsored plan that provides MV. An applicable large employer (as defined in section 4980H(c)(2)) may be liable for an assessable payment under section 4980H if a full-time employee receives a premium tax credit.

Under section 36B(c)(2)(C)(ii), a plan fails to provide MV if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of the costs. Section 1302(d)(2)(C) of the Affordable Care Act provides that, in determining the percentage of the total allowed costs of benefits provided under a group health plan, the regulations promulgated by the Secretary of Health and Human Services (HHS) under section 1302(d)(2) apply.

HHS published final regulations under section 1302(d)(2) on February 25, 2013 (78 FR 12834). The HHS regulations at 45 CFR 156.20 define the percentage of the total allowed costs of benefits provided under a group health plan as (1) the anticipated covered medical spending for essential health benefits (EHB) coverage (as defined in 45 CFR 156.110(a)) paid by a health plan for a standard population, (2) computed in accordance with the plan's cost-sharing, and (3) divided by the total anticipated allowed charges for EHB coverage provided to a standard population. In addition, 45 CFR 156.145(c) provides that the standard population used to compute this percentage for MV (as developed by HHS for this purpose) reflects the population covered by typical self-insured group health plans.

The HHS regulations describe several options for determining MV. Under 45 CFR 156.145(a)(1), plans may use the MV Calculator (available at <http://cciio.cms.gov/resources/regulations/index.html>). Alternatively, 45 CFR 156.145(a)(2) provides that a plan may determine MV through a safe harbor established by HHS and IRS. For plans with nonstandard features that are incompatible with the MV Calculator or a safe harbor, 45 CFR 156.145(a)(3) provides that the plan may determine MV through an actuarial certification from a member of the American Academy of Actuaries after performing an analysis



in accordance with generally accepted actuarial principles and methodologies. Finally, 45 CFR 156.145(a)(4) provides that a plan in the small group market satisfies MV if it meets the requirements for any of the levels of metal coverage defined at 45 CFR 156.140(b) (bronze, silver, gold, or platinum).

### *Miscellaneous Provisions Under Section 36B*

To be eligible for a premium tax credit, an individual must be an applicable taxpayer. Under section 36B(c)(1), an applicable taxpayer is a taxpayer whose household income for the taxable year is between 100 percent and 400 percent of the federal poverty line (FPL) for the taxpayer's family size.

Section 36B(b)(1) provides that the premium assistance credit amount is the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. The premium assistance amount for a coverage month is the lesser of (1) the premiums for the month for one or more qualified health plans that cover a taxpayer or family member, or (2) the excess of the adjusted monthly premium for the second lowest cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B)) (the benchmark plan) that applies to the taxpayer over 1/12 of the product of the taxpayer's household income and the applicable percentage for the taxable year. The adjusted monthly premium, in general, is the premium an insurer would charge for the plan adjusted only for the ages of the covered individuals.

Under section 36B(c)(2)(A), a coverage month is any month for which the taxpayer or a family member is covered by a qualified health plan enrolled in through an Exchange and the premium is paid by the taxpayer or through an advance credit payment. Section 36B(c)(2) provides that a month is not a coverage month for an individual who is eligible for other minimum essential coverage. If the other coverage is eligible employer-sponsored coverage, however, it is treated as minimum essential coverage only if it is affordable and provides MV. Eligible employer-sponsored coverage is affordable for an employee and related individuals if the por-

tion of the annual premium the employee must pay for self-only coverage does not exceed the required contribution percentage (9.5 percent for taxable years beginning before January 1, 2015) of the taxpayer's household income. The MV requirement is discussed in the Explanation of Provisions.

Any arrangement under which employees are required, as a condition of employment or otherwise, to be enrolled in an employer-sponsored plan that does not provide minimum value or is unaffordable, and that does not give the employees an effective opportunity to terminate or decline the coverage, raises a variety of issues. Proposed regulations under section 4980H indicate that if an employer maintains such an arrangement it would not be treated as having made an offer of coverage. As a result, an applicable large employer could be subject to an assessable payment under that section. See Proposed §54.4980H-4(b), 78 FR 250 (January 2, 2013). Such an arrangement would also raise additional concerns. For example, it is questionable whether the law permits interference with an individual's ability to apply for a section 36B premium tax credit by seeking to involuntarily impose coverage that does not provide minimum value. (See, for example, the Fair Labor Standards Act, as amended by section 1558 of the Affordable Care Act, 29 U.S.C. 218c(a).) If an employer sought to involuntarily impose on its employees coverage that did not provide minimum value or was unaffordable, the IRS and Treasury, as well as other relevant departments, may treat such arrangements as impermissible interference with an employee's ability to access premium tax credits, as contemplated by the Affordable Care Act.

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

#### *1. Minimum Value*

##### *a. In general*

The proposed regulations refer to the proportion of the total allowed costs of benefits provided to an employee that are paid by the plan as the plan's MV percentage. The MV percentage is determined by dividing the cost of certain benefits (described in paragraph b.) the plan would pay for a standard population by the total

cost of certain benefits for the standard population, including amounts the plan pays and amounts the employee pays through cost-sharing, and then converting the result to a percentage.

##### *b. Health benefits measured in determining MV*

Commentators sought clarification of the health benefits considered in determining the share of benefit costs paid by a plan. Some commentators maintained that MV should be based on the plan's share of the cost of coverage for all EHBs, including those a plan does not offer. Other commentators suggested that the MV percentage should be based on the plan's share of the costs of only those categories of EHBs the plan covers.

The proposed regulations do not require employer-sponsored self-insured and insured large group plans to cover every EHB category or conform their plans to an EHB benchmark that applies to qualified health plans. The preamble to the HHS regulations (see 78 FR 12833) notes that employer-sponsored group health plans are not required to offer EHBs unless they are health plans offered in the small group market subject to section 2707(a) of the Public Health Service Act. The preamble also states that, under section 1302(d)(2) of the Affordable Care Act, MV is measured based on the provision of EHBs to a standard population and plans may account for any benefits covered by the employer that also are covered in any one of the EHB-benchmark plans. See 45 CFR 156.145(b)(2).

Consistent with 45 CFR 156.145(a)-(c) and the assumptions described in Notice 2012-31, these proposed regulations provide that MV is based on the anticipated spending for a standard population. The plan's anticipated spending for benefits provided under any particular EHB-benchmark plan for any State counts towards MV.

##### *c. Health reimbursement arrangements, health savings accounts, and wellness program incentives*

##### *i. Arrangements that Reduce Cost-Sharing*

Some commentators suggested that current year health savings account (HSA) contributions and amounts newly made

available under a health reimbursement arrangement (HRA) should be fully counted toward the plan's share of costs included in calculating MV. Some commentators suggested that only HRA contributions that may be used to pay for cost sharing and not HRAs restricted to other uses should be counted in the MV calculation.

Consistent with 45 CFR 156.135(c), the proposed regulations provide that all amounts contributed by an employer for the current plan year to an HSA are taken into account in determining the plan's share of costs for purposes of MV and are treated as amounts available for first dollar coverage. Amounts newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year count for purposes of MV in the same manner if the amounts may be used only for cost-sharing and may not be used to pay insurance premiums. It is anticipated that regulations will provide that whether an HRA is integrated with an eligible employer-sponsored plan is determined under rules that apply for purposes of section 2711 of the Public Health Service Act (42 U.S.C. 300gg-11). Commentators offered differing opinions about how nondiscriminatory wellness program incentives that may affect an employee's cost sharing should be taken into account for purposes of the MV calculation. Some commentators noted that the rules governing wellness incentives require that they be available to all similarly situated individuals. These commentators suggested that because eligible individuals have the opportunity to reduce their cost-sharing if they choose, a plan's share of costs should be based on the costs paid by individuals who satisfy the terms of the wellness program. Other commentators expressed concern that, despite the safeguards of the regulations governing wellness incentives, certain individuals inevitably will face barriers to participation and fail to qualify for rewards. These commentators suggested that a plan's share of costs should be determined without assuming that individuals would qualify for the reduced cost-sharing available under a wellness program.

The proposed regulations provide that a plan's share of costs for MV purposes is determined without regard to reduced cost-sharing available under a nondiscriminatory wellness program. However, for

nondiscriminatory wellness programs designed to prevent or reduce tobacco use, MV may be calculated assuming that every eligible individual satisfies the terms of the program relating to prevention or reduction of tobacco use. This exception is consistent with other Affordable Care Act provisions (such as the ability to charge higher premiums based on tobacco use) reflecting a policy about individual responsibility regarding tobacco use.

#### ii. Arrangements that Reduce Premiums

Section 36B(c)(2)(C)(i)(II) and the final regulations provide that eligible employer-sponsored coverage is affordable only if an employee's required contribution for self-only coverage does not exceed 9.5 percent of household income. The preamble to the final regulations indicated that rules for determining how HRAs and wellness program incentives are counted in determining the affordability of eligible employer-sponsored coverage would be provided in later guidance.

Some commentators asserted that an employer's entire annual contribution to an HRA plus prior year contributions should be taken into account in determining affordability. The proposed regulations provide that amounts newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are taken into account only in determining affordability if the employee may use the amounts only for premiums or may choose to use the amounts for either premiums or cost-sharing. Treating amounts that may be used either for premiums or cost-sharing only towards affordability prevents double counting the HRA amounts when assessing MV and affordability of eligible employer-sponsored coverage.

It is anticipated that regulations under section 5000A will provide that amounts newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are also taken into account for purposes of the affordability exemption under section 5000A(e)(1) if the employee may use the amounts only for premiums or for either premiums or cost-sharing.

The final regulations requested specific comments on the nature of wellness incentives and how they should be treated for

determining affordability. Commentators expressed similar views about the treatment of wellness incentives that affect the cost of premiums as about the treatment of wellness incentives that affect cost-sharing.

Like the rule for determining MV, the proposed regulations provide that the affordability of an employer-sponsored plan is determined by assuming that each employee fails to satisfy the requirements of a wellness program, except the requirements of a nondiscriminatory wellness program related to tobacco use. Thus, the affordability of a plan that charges a higher initial premium for tobacco users will be determined based on the premium that is charged to non-tobacco users, or tobacco users who complete the related wellness program, such as attending smoking cessation classes.

In many circumstances these rules relating to the effect of premium-related wellness program rewards on affordability will have no practical consequences. They matter only when the employer sets the level of the employee's required contribution to self-only premium, and establishes a wellness program that provides for a level of premium discount, in such a manner that the employee's required contribution to premium would exceed 9.5 percent of household income (or wages, under an affordability safe harbor under the section 4980H proposed regulations) but for the potential premium discount under the wellness program. If, for example, the employee's household income was at least \$25,000, and the employee's required contribution for self-only coverage did not exceed \$2,375 (9.5 percent of \$25,000), the coverage would be affordable whether or not a wellness premium discount was taken into account to reduce the \$2,375 required contribution.

It is anticipated that regulations under section 5000A will provide that nondiscriminatory wellness programs that affect premiums will be treated for purposes of the affordability exemption under section 5000A(e)(1) in the same manner as they are treated for purposes of determining affordability under section 36B.

Solely for purposes of applying section 4980H and solely for plan years of an employer's group health plan beginning before January 1, 2015, with respect to an employee described in the next sentence,

an employer will not be subject to an assessable payment under section 4980H(b) with respect to an employee who received a premium tax credit because the offer of coverage was not affordable or did not satisfy MV, if the offer of coverage to the employee under the employer's group health plan would have been affordable or would have satisfied MV based on the total required employee premium and cost-sharing for that group health plan that would have applied to the employee if the employee satisfied the requirements of any wellness program described in the next sentence, including a wellness program with requirements unrelated to tobacco use. The rule in the preceding sentence applies only (1) to the extent of the reward as of May 3, 2013, expressed as either a dollar amount or a fraction of the total required employee contribution to the premium (or the employee cost-sharing, as applicable), (2) under the terms of a wellness program as in effect on May 3, 2013, and (3) with respect to an employee who is in a category of employees eligible under the terms of the wellness program as in effect on May 3, 2013 (regardless of whether the employee was hired before or after that date). Any required employee contribution to premium determined based upon assumed satisfaction of the requirements of a wellness program available under this transition relief may be applied to the use of an affordability safe harbor provided in the proposed regulations under section 4980H.

#### d. Standard population and utilization

Consistent with 45 CFR 156.145(c), the proposed regulations provide that the standard population used to determine MV reflects the population covered by self-insured group health plans. HHS has developed the MV standard population and described it through summary statistics (for example, continuance tables). MV continuance tables and an explanation of the MV Calculator methodology and the health claims data HHS has used to develop the continuance tables are available at <http://cciio.cms.gov/resources/regulations/index.html>.

#### e. Methods for determining minimum value

Notice 2012-31 and 45 CFR 156.145(a) describe several methods for determining MV: the MV Calculator, a safe harbor, actuarial certification, and, for small group market plans, a metal level. Some commentators requested that plans be allowed to choose one of the four methods in determining MV. Other commentators favored requiring employers to use the most precise method for plans that may be close to the 60 percent threshold.

The proposed regulations provide that taxpayers may determine whether a plan provides MV by using the MV Calculator made available by HHS and the IRS. Taxpayers must use the MV Calculator to measure standard plan features (unless a safe harbor applies), but the percentage may be adjusted based on an actuarial analysis of plan features that are outside the parameters of the calculator.

Certain safe harbor plan designs that satisfy MV will be specified in additional guidance under section 36B or 4980H, see §601.601(d). It is anticipated that the guidance will provide that the safe harbors are examples of plan designs that clearly would satisfy the 60 percent threshold if measured using the MV Calculator. The safe harbors are intended to provide an easy way for sponsors of typical employer-sponsored group health plans to determine whether a plan meets the MV threshold without having to use the MV Calculator.

Plan designs meeting the following specifications are proposed as safe harbors for determining MV if the plans cover all of the benefits included in the MV Calculator: (1) a plan with a \$3,500 integrated medical and drug deductible, 80 percent plan cost-sharing, and a \$6,000 maximum out-of-pocket limit for employee cost-sharing; (2) a plan with a \$4,500 integrated medical and drug deductible, 70 percent plan cost-sharing, a \$6,400 maximum out-of-pocket limit, and a \$500 employer contribution to an HSA; and (3) a plan with a \$3,500 medical deductible, \$0 drug deductible, 60 percent plan medical expense cost-sharing, 75 percent plan drug cost-sharing, a \$6,400 maximum out-of-pocket limit, and drug co-pays of \$10/\$20/\$50 for the first, second and third prescription drug tiers, with 75 percent

coinsurance for specialty drugs. Comments are requested on these and other common plan designs that would satisfy MV and should be designated as safe harbors.

Consistent with 45 CFR 156.145(a), the proposed regulations require plans with nonstandard features that cannot determine MV using the MV Calculator or a safe harbor to use the actuarial certification method. The actuary must be a member of the American Academy of Actuaries and must perform the analysis in accordance with generally accepted actuarial principles and methodologies and any additional standards that subsequent guidance requires.

#### f. Other issues

Commentators suggested a *de minimis* exception to the MV 60 percent level of coverage, noting that similar *de minimis* variations are permitted in determining actuarial value for qualified health plans. However, as other commentators noted, permitting a *de minimis* exception would have the effect of lowering the minimum level of coverage to a percentage below 60 percent. Under section 36B(c)(2)(C)(ii), coverage below 60 percent does not provide MV. Accordingly, the proposed regulations do not provide for a *de minimis* exception.

## 2. Miscellaneous Issues Under Section 36B

### a. Definition of modified adjusted gross income

Section 36B(d)(2) provides that the term *household income* means the modified adjusted gross income of the taxpayer plus the modified adjusted gross income of all members of the taxpayer's family required to file a tax return under section 1 for the taxable year. The final regulations provide that the determination of whether a family member is required to file a return is made without regard to section 1(g)(7). Under section 1(g)(7), a parent may, if certain requirements are met, elect to include in the parent's gross income, the gross income of his or her child. If the parent makes the election, the child is treated as having no gross income for the taxable year.

The proposed regulations remove “without regard to section 1(g)(7)” from the final regulations because that language implies that the child’s gross income is included in both the parent’s adjusted gross income and the child’s adjusted gross income in determining household income. Thus, the proposed regulations clarify that if a parent makes an election under section 1(g)(7), household income includes the child’s gross income included on the parent’s return and the child is treated as having no gross income.

*b. Rating area*

Section 36B(b)(3)(B) determines the applicable benchmark plan by reference to the rating area where a taxpayer resides. The final regulations reserved the definition of *rating area*. The proposed regulations provide that the term *rating area* has the same meaning as used in section 2701(a)(2) of the Public Health Service Act (42 U.S.C. 300gg) and 45 CFR 156.255.

*c. Retiree coverage*

The section 36B final regulations provide that an individual who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage only for months that the individual is enrolled in the coverage. These proposed regulations apply this rule to former employees only. Active employees eligible for continuation coverage as a result of reduced hours should be subject to the same rules for eligibility of affordable employer-sponsored coverage offering MV as other active employees. The proposed regulations add a comparable rule for health coverage offered to retired employees (retiree coverage). Accordingly, an individual who may enroll in retiree coverage is eligible for minimum essential coverage under the coverage only for the months the individual is enrolled in the coverage.

*d. Coverage month for newborns and new adoptees*

Under section 36B(c)(2)(A)(i) and the final regulations, a month is a coverage month for an individual only if, as of the

first day of the month, the individual is enrolled in a qualified health plan through an Exchange. A child born or adopted during the month is not enrolled in coverage on the first day and therefore would not be eligible for the premium tax credit or cost-sharing reductions for that month. Accordingly, the proposed regulations provide that a child enrolled in a qualified health plan in the month of the child’s birth, adoption, or placement with the taxpayer for adoption or in foster care, is treated as enrolled as of the first day of the month.

*e. Adjusted monthly premium for family members enrolled for less than a full month*

Under section 36B(c), the premium assistance amount for a coverage month is computed by reference to the adjusted monthly premium for an applicable benchmark plan. The final regulations provide that the applicable benchmark plan is the plan that applies to a taxpayer’s coverage family. The final regulations do not address whether changes to a coverage family, for example as the result of the birth and enrollment of a child or the disenrollment of another family member, that occur during the month affect the premium assistance amount. The proposed regulations provide that the adjusted monthly premium is determined as if all members of the coverage family for that month were enrolled in a qualified health plan for the entire month.

*f. Premium assistance amount for partial months of coverage*

The final regulations do not address the computation of the premium assistance amount if coverage under a qualified health plan is terminated during the month. The proposed regulations provide that when coverage under a qualified health plan is terminated before the last day of a month and, as a result, the issuer reduces or refunds a portion of the monthly premium the premium assistance amount for the month is prorated based on the number of days of coverage in the month.

*g. Family members residing at different locations.*

The final regulations reserved rules on determining the premium for the applicable benchmark plan if family members are geographically separated and enroll in separate qualified health plans. The proposed regulations provide that the premium for the applicable benchmark plan in this situation is the sum of the premiums for the applicable benchmark plans for each group of family members residing in a different State.

*h. Correction to applicable percentage table*

The applicable percentage table in the final regulations erroneously states that the 9.5 percentage applies only to taxpayers whose household income is less than 400 percent of the FPL. The proposed regulations clarify that the 9.5 percentage applies to taxpayers whose household income is not more than 400 percent of the FPL.

*i. Additional benefits and applicable benchmark plan*

Under section 36B(b)(3)(D) and the final regulations, only the portion of the premium for a qualified health plan properly allocable to EHBs determines a taxpayer’s premium assistance amount. Premiums allocable to benefits other than EHBs (additional benefits) are disregarded. The final regulations do not address, however, whether a taxpayer’s benchmark plan is determined before or after premiums have been allocated to additional benefits. The proposed regulations provide that premiums are allocated to additional benefits before determining the applicable benchmark plan. Thus, only essential health benefits are considered in determining the applicable benchmark plan, consistent with the requirement in section 36B(b)(3)(D) that only essential health benefits are considered in determining the premium assistance amount. In addition, allocating premium to benefits that exceed EHBs before determining the applicable benchmark plan results in a more accurate determination of the premium assistance amount.

j. *Requirement to file a return to reconcile advance credit payments*

The final regulations provided that a taxpayer who receives advance credit payments must file an income tax return for that taxable year on or before the fifteenth day of the fourth month following the close of the taxable year. Under the proposed regulations, a taxpayer who receives advance credit payments must file an income tax return on or before the due date for the return (including extensions).

**Effective/Applicability Date**

These regulations are proposed to apply for taxable years ending after December 31, 2013. Taxpayers may apply the proposed regulations for taxable years ending before January 1, 2015.

**Special Analyses**

It has been determined that this notice of proposed rulemaking 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the

date, time and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are Andrew S. Braden, Frank W. Dunham III, and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

\* \* \* \* \*

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

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

Par. 2. Section 1.36B-0 is amended by:

- 1. Revising the introductory text.
- 2. Adding new entries for §§1.36B-2(c)(3)(iv) and (c)(3)(v)(A)(5) and 1.36B-3(c)(2) and (3), and (d)(1), (2), and (3).

3. Revising the entries for §§1.36B-2(c)(3)(v)(A)(4) and 1.36B-3(c)(4).

4. Adding new entries for §1.36B-6. The revisions and additions read as follows.

*§1.36B-0 Table of contents.*

This section lists the captions contained in §§1.36B-1 through 1.36B-6.

\* \* \* \* \*

*§1.36B-2 Eligibility for premium tax credit.*

\* \* \* \* \*

- (c) \* \* \*
- (3) \* \* \*
- (iv) Post-employment coverage.
- (v) \* \* \*
- (A) \* \* \*
- (4) Wellness incentives.
- (5) Employer contributions to health reimbursement arrangements.

\* \* \* \* \*

*§1.36B-3 Computing the premium assistance credit amount.*

\* \* \* \* \*

- (c) \* \* \*
- (2) Child born or adopted during a month.
- (3) Premiums paid for a taxpayer.
- (4) Examples.
- (d) \* \* \*
- (1) In general.
- (2) Mid-month termination of coverage.
- (3) Example.

\* \* \* \* \*

*§1.36B-6 Minimum value.*

- (a) In general.
- (b) MV standard population.
- (c) MV percentage.
- (1) In general.
- (2) Wellness incentives.
- (i) In general.
- (ii) Example.
- (3) Health savings accounts.
- (4) Health reimbursement arrangements.
- (5) Expected spending adjustments for health savings accounts and health reimbursement arrangements.
- (d) Methods for determining MV.
- (e) Scope of essential health benefits and adjustment for benefits not included in MV Calculator.
- (f) Actuarial certification.
- (1) In general.
- (2) Membership in American Academy of Actuaries.
- (3) Actuarial analysis.
- (4) Use of MV Calculator.
- (g) Effective/applicability date.

Par. 3. Section 1.36B-1 is amended by revising paragraph (e)(1)(ii)(B) and adding paragraph (n) to read as follows:

*§1.36B-1 Premium tax credit definitions.*

\* \* \* \* \*

- (e) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (B) Are required to file a return of tax imposed by section 1 for the taxable year.
- \* \* \* \* \*
- (n) *Rating area.* The term *rating area* has the same meaning as used in section 2701(a)(2) of the Public Health Service

Act (42 U.S.C. 300gg(a)(2)) and 45 CFR 156.255.

\* \* \* \* \*

Par. 4. Section 1.36B-2 is amended by:

1. Revising paragraphs (c)(3)(iv), (c)(3)(v)(A)(4), and (c)(3)(vi).

2. Adding paragraphs (c)(3)(v)(A)(5) and (c)(3)(v)(D), Example 9.

The revisions and additions read as follows:

*§1.36B-2 Eligibility for premium tax credit.*

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iv) *Post-employment coverage.* A former employee who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage, and an individual who may enroll in retiree coverage under an eligible employer-sponsored plan, are eligible for minimum essential coverage under this coverage only for months that the individual is enrolled in the coverage.

\* \* \* \* \*

(v) \* \* \*

(A) \* \* \*

(4) *Wellness incentives.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining an employee's required contribution for purposes of affordability of an eligible employer-sponsored plan to the extent the incentives relate to tobacco use. Wellness program incentives that do not relate to tobacco use are treated as not earned for this purpose.

(5) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that is integrated with an eligible employer-sponsored plan and that an employee may use to pay premiums are counted toward the employee's required contribution.

\* \* \* \* \*

(D) \* \* \*

*Example 9. Wellness incentives.* (i) Employer X offers an eligible employer-sponsored plan with a nondiscriminatory wellness program that reduces premiums by \$300 for employees who do not use

tobacco products or who complete a smoking cessation course. Premiums are reduced by \$200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and the cost of his premiums is \$3,700. Employee C uses tobacco and the cost of her premiums is \$4,000.

(ii) Under paragraph (c)(3)(v)(A)(4) of this section, only the incentives related to tobacco use are counted toward the premium amount used to determine the affordability of X's plan. C is treated as having earned the \$300 incentive for attending a smoking cessation course. Thus, the employee's required contribution to premium for determining affordability for both Employees B and C is \$3,700. The \$200 incentive for completing cholesterol screening is disregarded.

(vi) *Minimum value.* See §1.36B-6 for rules for determining whether an eligible employer-sponsored plan provides minimum value.

\* \* \* \* \*

Par. 5. Section 1.36B-3 is amended by:

1. Redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4) and adding a new paragraph (c)(2).

2. Revising paragraphs (d), (g)(2), (j)(1), and (j)(3).

3. Adding a sentence to the end of paragraph (e).

4. Adding paragraph (f)(4).

The revisions and additions read as follows:

*§1.36B-3 Computing the premium assistance credit amount.*

\* \* \* \* \*

(c) \* \* \*

(2) *Child born or adopted during a month.* A child enrolled in a qualified health plan in the month of the child's birth, adoption, or placement with the taxpayer for adoption or in foster care, is treated as enrolled as of the first day of the month for purposes of this paragraph (c).

\* \* \* \* \*

(d) *Premium assistance amount—(1) In general.* Except as provided in paragraph (d)(2) of this section, the premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls; or

(ii) The excess of the adjusted monthly premium for the applicable benchmark

plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year.

(2) *Mid-month termination of coverage.*

If a qualified health plan is terminated before the last day of a month and, as a result, the issuer reduces or refunds a portion of the monthly premium, the premium assistance amount for the coverage month is the amount that would apply under paragraph (d)(1) of this section for the entire month multiplied by a fraction, the numerator of which is the number of days of enrollment in the month and the denominator of which is the number of days in the month.

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

*Example.* (i) Taxpayer R is single and has no dependents. R enrolls in a qualified health plan for 2014 with a monthly premium of \$450. The adjusted monthly premium for R's applicable benchmark plan is \$490 and 1/12 of the product of R's household income and applicable percentage for 2014 (R's contribution amount) is \$190. R takes a new job in September of 2014, enrolls in the employer-sponsored plan, and terminates his enrollment in the qualified health plan, effective on September 10, 2014. The issuer of R's qualified health plan refunds 2/3 of the September premium for R's coverage.

(ii) Under paragraph (d)(1) of this section, R's premium assistance amount for the months January – August of 2014 is \$300, the lesser of \$450 (the monthly premium for the plan in which R enrolls) and \$300 (the excess of the adjusted monthly premium for R's applicable benchmark plan (\$490) over R's contribution amount (\$190)). Under paragraph (d)(2) of this section, R's premium assistance amount for September is \$100, the premium assistance amount for September had R been enrolled for the full month (\$300), times 10/30 (the number of days R is enrolled in September, over the number of days in September).

(e) \* \* \* The adjusted monthly premium is determined as if all members of the coverage family for that month were enrolled in the qualified health plan for the entire month.

(f) \* \* \*

(4) *Family members residing at different locations.* The premium for the applicable benchmark plan determined under paragraphs (f)(1) and (f)(2) of this section for family members who live in different States and enroll in separate qualified health plans is the sum of the premiums for the applicable benchmark plans for each group of family members living in the same State.

\* \* \* \* \*

(g) \* \* \*

(2) *Applicable percentage table.*

Household income percentage of Federal poverty line	Initial percentage	Final percentage
Less than 133%	2.0%	2.0%
At least 133% but less than 150%	3.0%	4.0%
At least 150% but less than 200%	4.0%	6.3%
At least 200% but less than 250%	6.3%	8.05%
At least 250% but less than 300%	8.05%	9.5%
At least 300% but not more than 400%	9.5%	9.5%

\* \* \* \* \*

(j) *Additional benefits*—(1) *In general.* If a qualified health plan offers benefits in addition to the essential health benefits a qualified health plan must provide under section 1302 of the Affordable Care Act (42 U.S.C. 18022), or a State requires a qualified health plan to cover benefits in addition to these essential health benefits, the portion of the premium for the plan properly allocable to the additional benefits is excluded from the monthly premiums under paragraph (d)(1) or (d)(2) of this section. Premiums are allocated to additional benefits before determining the applicable benchmark plan under paragraph (f) of this section.

\* \* \* \* \*

(3) *Examples.* The following examples illustrate the rules of this paragraph (j):

*Example 1.* (i) Taxpayer B enrolls in a qualified health plan that provides benefits in addition to essential health benefits (additional benefits). The monthly premium for the plan in which B enrolls is \$370, of which \$35 is allocable to additional benefits. The premium for B's applicable benchmark plan (determined after allocating premiums to additional benefits for all silver level plans) is \$440, of which \$40 is allocable to additional benefits. B's contribution amount, which is the product of B's household income and the applicable percentage, is \$60.

(ii) Under this paragraph (j), the premium for the qualified health plan in which B enrolls and the applicable benchmark premium are reduced by the portion of the premium that is allocable to the additional benefits provided under that plan. Therefore, the premium for the qualified health plan in which B enrolls is reduced to \$335 (\$370 - \$35) and the premium for B's applicable benchmark plan is reduced to \$400 (\$440 - \$40). B's premium assistance amount for a coverage month is \$335, the lesser of \$335 (the premium for the qualified health plan in which B enrolls, reduced by the portion of the premium allocable to additional benefits) and \$340 (the premium for B's applicable benchmark plan, reduced by the portion of the premium allocable to additional benefits (\$400), minus B's \$60 contribution amount).

*Example 2.* The facts are the same as in *Example 1*, except that the plan in which B enrolls provides no benefits in addition to the essential health benefits re-

quired to be provided by the plan. Thus, under paragraph (j) of this section, the premium for B's applicable benchmark plan (\$440) is reduced by the portion of the premium allocable to additional benefits provided under that plan (\$40). The premium for the plan in which B's enrolls (\$370) is not reduced under this paragraph (j). B's premium assistance amount for a coverage month is \$340, the lesser of \$370 (the premium for the qualified health plan in which B enrolls) and \$340 (the premium for B's applicable benchmark plan, reduced by the portion of the premium allocable to additional benefits (\$400), minus B's \$60 contribution amount).

\* \* \* \* \*

Par. 6. Section 1.36B-6 is added to read as follows:

*§1.36B-6 Minimum value.*

(a) *In general.* An eligible employer-sponsored plan provides minimum value (MV) only if the plan's share of the total allowed costs of benefits provided to an employee (the MV percentage) is at least 60 percent.

(b) *MV standard population.* The MV standard population is a standard population developed and described through summary statistics by the Department of Health and Human Services (HHS). The MV standard population is based on the population covered by typical self-insured group health plans.

(c) *MV percentage*—(1) *In general.* An eligible employer-sponsored plan's MV percentage is—

(i) The plan's anticipated covered medical spending for benefits provided under a particular essential health benefits (EHB) benchmark plan described in 45 CFR 156.110 (EHB coverage) for the MV standard population based on the plan's cost-sharing provisions;

(ii) Divided by the total anticipated allowed charges for EHB coverage provided to the MV standard population; and

(iii) Expressed as a percentage.

(2) *Wellness incentives*—(i) *In general.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect deductibles, co-payments, or other cost-sharing are treated as earned in determining the plan's MV percentage to the extent the incentives relate to tobacco use. These wellness program incentives that do not relate to tobacco use are treated as not earned.

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

*Example.* (i) Employer X offers an eligible employer-sponsored plan that reduces the deductible by \$300 for employees who do not use tobacco products or who complete a smoking cessation course. The deductible is reduced by \$200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and his deductible is \$3,700. Employee C uses tobacco and her deductible is \$4,000.

(ii) Under paragraph (c)(2)(i) of this section, only the incentives related to tobacco use are considered in determining the plan's MV percentage. C is treated as having earned the \$300 incentive for attending a smoking cessation course. Thus, the deductible for determining the MV percentage for both Employees B and C is \$3,700. The \$200 incentive for completing cholesterol screening is disregarded.

(3) *Health savings accounts.* Employer contributions for the current plan year to health savings accounts that are offered with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage.

(4) *Health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that is integrated with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage if the amounts may be used only to reduce cost-sharing for covered medical expenses.

(5) *Expected spending adjustments for health savings accounts and health reimbursement arrangements.* The amount

taken into account under paragraph (c)(3) or (c)(4) of this section is the amount of expected spending for health care costs in a benefit year.

(d) *Methods for determining MV.* An eligible employer-sponsored plan may use one of the following methods to determine whether the plan provides MV—

(1) The MV Calculator made available by HHS and IRS, with adjustments permitted by paragraph (e) of this section;

(2) One of the safe harbors established by HHS and IRS and described in published guidance, see §601.601(d) of this chapter;

(3) Actuarial certification, as described in paragraph (f) of this section, if an eligible employer-sponsored plan has nonstandard features that are not compatible with the MV Calculator and may materially affect the MV percentage; or

(4) For plans in the small group market, conformance with the requirements for a level of metal coverage defined at 45 CFR 156.140(b) (bronze, silver, gold, or platinum).

(e) *Scope of essential health benefits and adjustment for benefits not included in MV Calculator.* An eligible employer-sponsored plan may include in calculating its MV percentage all benefits included

in any EHB benchmark (as defined in 45 CFR part 156). An MV percentage that is calculated using the MV Calculator may be adjusted based on an actuarial analysis that complies with the requirements of paragraph (f) of this section to the extent of the value of these benefits that are outside the parameters of the MV Calculator.

(f) *Actuarial certification*—(1) *In general.* An actuarial certification under paragraph (d)(3) of this section must satisfy the requirements of this paragraph (f).

(2) *Membership in American Academy of Actuaries.* The actuary must be a member of the American Academy of Actuaries.

(3) *Actuarial analysis.* The actuary's analysis must be performed in accordance with generally accepted actuarial principles and methodologies and specific standards that may be provided in published guidance, see §601.601(d) of this chapter.

(4) *Use of MV Calculator.* The actuary must use the MV Calculator to determine the plan's MV percentage for coverage the plan provides that is measurable by the MV Calculator. The actuary may perform an actuarial analysis of the plan's EHB coverage for the MV standard population for benefits not measured by the MV Calculator to determine the effect of non-

standard features that are not compatible with the MV Calculator. The actuary may certify the plan's MV percentage based on the MV percentage that results from use of the MV Calculator and the actuarial analysis of the plan's coverage that is not measured by the MV calculator.

(g) *Effective/applicability date.* This section applies for taxable years ending after December 31, 2013.

Par. 7. Section 1.6011-8 is amended by revising paragraph (a) to read as follows:

*§1.6011-8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.*

(a) *Requirement of return.* A taxpayer who receives advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing).

\* \* \* \* \*

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

(Filed by the Office of the Federal Register on April 30, 2013, 4:15 p.m., and published in the issue of the Federal Register for May 3, 2013, 78 F.R. 25909)

# Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

## Announcement 2013-34

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

**Censured in practice before the IRS**—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanc-

tion or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

**Disqualification of appraiser**—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.



Disciplinary sanctions are described in these terms:

**Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing**—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR’s complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ’s decision became the final agency decision.

**Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision**—An ALJ, after finding that no answer to OPR’s complaint had been filed, granted OPR’s motion for a default judgment and issued a decision imposing one of these sanctions.

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority,

acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual’s opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status).

**Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding**—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR’s “consent to sanction” form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual’s own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for indefinite suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, § 10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>Arkansas</b>				
Camden	Lindsey, Jr., Lloyd E.	CPA		Reinstated to practice before the IRS, effective April 3, 2013
Winslow	O’Dell, Kimberly	CPA	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 1343, wire fraud, 18 U.S.C. §§ 1957 and 2, money laundering, and 31 U.S.C. § 333, misuse of Department of Treasury names or symbols)	Indefinite from January 9, 2013

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>California</b>				
Bakersfield	Tedder, Garold J.	CPA	Disbarred by ALJ default decision for violation of § 10.51 (failure to file timely Federal tax returns for 2006–2010)	Indefinite from October 25, 2012
Cerritos	Tiongson, Anthony A.	CPA	Disbarred by ALJ default decision for violation of § 10.51 (conviction under 26 U.S.C. § 7207, filing a false tax return)	Indefinite from March 31, 2013
Vista	Aguilera, Roberto R.	Enrolled Agent	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 1349, conspiracy to commit mail and wire fraud)	Indefinite from April 24, 2013
<b>Florida</b>				
Miami	Rodriguez, Juan C.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 1343, wire fraud)	Indefinite from January 15, 2013

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Florida (Continued)</b>				
Key West	Waage, Scott A.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (permanently enjoined by U.S. District Court from preparing or filing, or assisting in the preparation or filing of tax returns or other related tax forms or documents for any individual or entity other than preparing and filing his own personal tax returns; organizing, promoting, selling, marketing or advising with respect to (or helping others to organize, promote, sell, market or advise with respect to) plans, arrangements or services that attempt to reduce a client's taxable income by certain specified methods; engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701)	Indefinite from April 16, 2013
<b>Kentucky</b>				
Hebron	Land, Suzanne P.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7212, corruptly endeavoring to obstruct and impede the due administration of the IRS; and suspension of attorney license in Ohio)	Indefinite from February 7, 2013

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Nevada</b>				
Las Vegas	Kidane, Yordanos	Registered Tax Return Preparer (RTRP)	Censured by consent for admitted violation of § 10.51(a); permanently enjoined by U.S. District Court from preparing or assisting in the preparation or filing of tax returns for others that preparer knows (or have reason to know) will result in the understatement of any tax liability under 26 U.S.C. § 6662, or is subject to penalty under 26 U.S.C. § 6694	Indefinite from December 18, 2012
<b>Texas</b>				
Houston	Nguyen, Viet B.	CPA	Suspended by decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from April 24, 2013
<b>Washington</b>				
Ridgefield	Firebaugh, Robert T.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (suspension of CPA license)	Indefinite from March 1, 2013
Bellevue	Walker, Lorna M.	Enrolled Agent	Disbarred by ALJ default decision for violation of § 10.51 (failure to remit funds to the IRS, altering money order, and failure to respond to IRS/OPR correspondence)	Indefinite from February 17, 2013

# 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.

## Numerical Finding List<sup>1</sup>

Bulletins 2013–1 through 2013–23

### Announcements:

2013-1, 2013-1 I.R.B. 251  
2013-2, 2013-2 I.R.B. 271  
2013-3, 2013-2 I.R.B. 271  
2013-4, 2013-4 I.R.B. 440  
2013-5, 2013-3 I.R.B. 306  
2013-6, 2013-3 I.R.B. 307  
2013-7, 2013-3 I.R.B. 308  
2013-8, 2013-4 I.R.B. 440  
2013-9, 2013-4 I.R.B. 441  
2013-10, 2013-3 I.R.B. 311  
2013-11, 2013-6 I.R.B. 483  
2013-12, 2013-11 I.R.B. 651  
2013-13, 2013-9 I.R.B. 532  
2013-14, 2013-11 I.R.B. 651  
2013-15, 2013-11 I.R.B. 652  
2013-16, 2013-14 I.R.B. 738  
2013-17, 2013-16 I.R.B. 911  
2013-19, 2013-14 I.R.B. 760  
2013-20, 2013-14 I.R.B. 761  
2013-21, 2013-17 I.R.B. 980  
2013-22, 2013-17 I.R.B. 981  
2013-23, 2013-16 I.R.B. 940  
2013-26, 2013-16 I.R.B. 940  
2013-27, 2013-17 I.R.B. 981  
2013-28, 2013-17 I.R.B. 982  
2013-29, 2013-18 I.R.B. 1024  
2013-30, 2013-21 I.R.B. 1134  
2013-31, 2013-21 I.R.B. 1135  
2013-32, 2013-22 I.R.B. 1192  
2013-33, 2013-20 I.R.B. 1098  
2013-34, 2013-23 I.R.B. 1207

### Notices:

2013-1, 2013-3 I.R.B. 281  
2013-2, 2013-6 I.R.B. 473  
2013-3, 2013-7 I.R.B. 484  
2013-4, 2013-9 I.R.B. 527  
2013-5, 2013-9 I.R.B. 529  
2013-6, 2013-10 I.R.B. 540  
2013-7, 2013-6 I.R.B. 477  
2013-8, 2013-7 I.R.B. 486  
2013-9, 2013-9 I.R.B. 529  
2013-10, 2013-8 I.R.B. 503  
2013-11, 2013-11 I.R.B. 610  
2013-12, 2013-10 I.R.B. 543  
2013-13, 2013-12 I.R.B. 659  
2013-14, 2013-13 I.R.B. 712  
2013-15, 2013-14 I.R.B. 739  
2013-16, 2013-14 I.R.B. 740  
2013-17, 2013-20 I.R.B. 1082  
2013-18, 2013-14 I.R.B. 742

### Notices— Continued:

2013-19, 2013-14 I.R.B. 743  
2013-20, 2013-15 I.R.B. 902  
2013-21, 2013-15 I.R.B. 903  
2013-22, 2013-15 I.R.B. 904  
2013-23, 2013-16 I.R.B. 906  
2013-24, 2013-16 I.R.B. 909  
2013-25, 2013-17 I.R.B. 978  
2013-26, 2013-18 I.R.B. 984  
2013-27, 2013-18 I.R.B. 985  
2013-28, 2013-19 I.R.B. 1039  
2013-29, 2013-20 I.R.B. 1085  
2013-30, 2013-21 I.R.B. 1099  
2013-31, 2013-21 I.R.B. 1099  
2013-32, 2013-22 I.R.B. 1137  
2013-33, 2013-22 I.R.B. 1140  
2013-34, 2013-23 I.R.B. 1198

### Proposed Regulations:

REG-160873-04, 2013-20 I.R.B. 1089  
REG-155929-06, 2013-11 I.R.B. 650  
REG-106918-08, 2013-13 I.R.B. 714  
REG-141066-09, 2013-3 I.R.B. 289  
REG-148873-09, 2013-7 I.R.B. 494  
REG-102966-10, 2013-10 I.R.B. 579  
REG-120391-10, 2013-18 I.R.B. 1005  
REG-132702-10, 2013-19 I.R.B. 1042  
REG-140649-11, 2013-12 I.R.B. 666  
REG-106499-12, 2013-21 I.R.B. 1111  
REG-106796-12, 2013-22 I.R.B. 1164  
REG-118315-12, 2013-14 I.R.B. 746  
REG-122706-12, 2013-19 I.R.B. 1043  
REG-122707-12, 2013-5 I.R.B. 450  
REG-148500-12, 2013-13 I.R.B. 716  
REG-154563-12, 2013-20 I.R.B. 1097  
REG-125398-12, 2013-23 I.R.B. 1199

### Revenue Procedures:

2013-1, 2013-1 I.R.B. 1  
2013-2, 2013-1 I.R.B. 92  
2013-3, 2013-1 I.R.B. 113  
2013-4, 2013-1 I.R.B. 126  
2013-5, 2013-1 I.R.B. 170  
2013-6, 2013-1 I.R.B. 198  
2013-7, 2013-1 I.R.B. 233  
2013-8, 2013-1 I.R.B. 237  
2013-9, 2013-2 I.R.B. 255  
2013-10, 2013-2 I.R.B. 267  
2013-11, 2013-2 I.R.B. 269  
2013-12, 2013-4 I.R.B. 313  
2013-13, 2013-6 I.R.B. 478  
2013-14, 2013-3 I.R.B. 283  
2013-15, 2013-5 I.R.B. 444  
2013-16, 2013-7 I.R.B. 488  
2013-17, 2013-11 I.R.B. 612  
2013-18, 2013-8 I.R.B. 503

### Revenue Procedures— Continued:

2013-19, 2013-11 I.R.B. 648  
2013-20, 2013-14 I.R.B. 744  
2013-21, 2013-12 I.R.B. 660  
2013-22, 2013-18 I.R.B. 985  
2013-23, 2013-17 I.R.B. 978  
2013-24, 2013-22 I.R.B. 1142  
2013-25, 2013-21 I.R.B. 1110  
2013-26, 2013-22 I.R.B. 1160

### Revenue Rulings:

2013-1, 2013-2 I.R.B. 252  
2013-2, 2013-10 I.R.B. 533  
2013-3, 2013-8 I.R.B. 500  
2013-4, 2013-9 I.R.B. 520  
2013-5, 2013-9 I.R.B. 525  
2013-6, 2013-13 I.R.B. 701  
2013-7, 2013-11 I.R.B. 608  
2013-8, 2013-15 I.R.B. 763  
2013-9, 2013-15 I.R.B. 764  
2013-11, 2013-20 I.R.B. 1059

### Tax Conventions:

2013-16, 2013-14 I.R.B. 738

### Treasury Decisions:

9601, 2013-10 I.R.B. 535  
9603, 2013-3 I.R.B. 273  
9605, 2013-11 I.R.B. 587  
9606, 2013-11 I.R.B. 586  
9607, 2013-6 I.R.B. 469  
9608, 2013-3 I.R.B. 274  
9609, 2013-12 I.R.B. 655  
9610, 2013-15 I.R.B. 765  
9611, 2013-13 I.R.B. 699  
9612, 2013-13 I.R.B. 678  
9613, 2013-15 I.R.B. 900  
9614, 2013-17 I.R.B. 947  
9615, 2013-19 I.R.B. 1026  
9616, 2013-20 I.R.B. 1061  
9617, 2013-23 I.R.B. 1195  
9618, 2013-23 I.R.B. 1194

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

## Finding List of Current Actions on Previously Published Items<sup>1</sup>

Bulletins 2013–1 through 2013–23

### Announcements:

#### 2012-42

Obsoluted by  
T.D. 9610, 2013-15 I.R.B. 765

#### 2013-12

Supplemented by  
Ann. 2013-22, 2013-17 I.R.B. 981

### Notices:

#### 87-64

Obsoluted by  
T.D. 9614, 2013-17 I.R.B. 947

#### 2000-45

Modified and superseded by  
Notice 2013-18, 2013-14 I.R.B. 742

#### 2006-87

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2007-25

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2007-77

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2008-10

Obsoluted by  
T.D. 9615, 2013-19 I.R.B. 1026

#### 2008-107

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2010-8

Obsoluted by  
T.D. 9618, 2013-23 I.R.B. 1194

#### 2010-27

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2010-60

Obsoluted by  
T.D. 9610, 2013-15 I.R.B. 765

#### 2011-8

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2011-14

Amplified and supplemented by  
Notice 2013-7, 2013-6 I.R.B. 477

### Notices— Continued:

#### 2011-34

Obsoluted by  
T.D. 9610, 2013-15 I.R.B. 765

#### 2011-38

Obsoluted by  
REG-148873-09, 2013-7 I.R.B. 494

#### 2011-53

Obsoluted by  
T.D. 9610, 2013-15 I.R.B. 765

#### 2012-19

Superseded by  
Notice 2013-31, 2013-21 I.R.B. 1099

#### 2012-60

Superseded by  
Notice 2013-1, 2013-3 I.R.B. 281

#### 2013-1

Modified and superseded by  
Notice 2013-16, 2013-14 I.R.B. 740

### Proposed Regulations:

#### REG-140668-07

Corrected by  
Ann. 2013-6, 2013-3 I.R.B. 307

### Revenue Procedures:

#### 87-57

Modified by  
Rev. Proc. 2013-13, 2013-6 I.R.B. 478

#### 2004-66

Modified and superseded by  
Rev. Proc. 2013-11, 2013-2 I.R.B. 269

#### 2008-35

Modified and superseded by  
Rev. Proc. 2013-14, 2013-3 I.R.B. 283

#### 2008-50

Modified and superseded by  
Rev. Proc. 2013-12, 2013-4 I.R.B. 313

#### 2011-14

Modified by  
Rev. Proc. 2013-26, 2013-22 I.R.B. 1160  
Rev. Proc. 2013-24, 2013-22 I.R.B. 1142  
Rev. Proc. 2013-20, 2013-14 I.R.B. 744

#### 2011-49

Modified by  
Rev. Proc. 2013-6, 2013-1 I.R.B. 198

#### 2011-52

Modified and partly superseded by  
Rev. Proc. 2013-15, 2013-5 I.R.B. 444

#### 2011-55

Amplified and supplemented by  
Notice 2013-7, 2013-6 I.R.B. 477

### Revenue Procedures— Continued:

#### 2011-61

Superseded by  
Rev. Proc. 2013-17, 2013-11 I.R.B. 612

#### 2011-62

Superseded by  
Rev. Proc. 2013-18, 2013-8 I.R.B. 503

#### 2012-1

Superseded by  
Rev. Proc. 2013-1, 2013-1 I.R.B. 1

#### 2012-2

Superseded by  
Rev. Proc. 2013-2, 2013-1 I.R.B. 92

#### 2012-3

Superseded by  
Rev. Proc. 2013-3, 2013-1 I.R.B. 113

#### 2012-4

Superseded by  
Rev. Proc. 2013-4, 2013-1 I.R.B. 126

#### 2012-5

Superseded by  
Rev. Proc. 2013-5, 2013-1 I.R.B. 170

#### 2012-6

Superseded by  
Rev. Proc. 2013-6, 2013-1 I.R.B. 198

#### 2012-7

Superseded by  
Rev. Proc. 2013-7, 2013-1 I.R.B. 233

#### 2012-8

Superseded by  
Rev. Proc. 2013-8, 2013-1 I.R.B. 237

#### 2012-9

Superseded by  
Rev. Proc. 2013-9, 2013-2 I.R.B. 255

#### 2012-10

Superseded by  
Rev. Proc. 2013-10, 2013-2 I.R.B. 267

#### 2012-30

Corrected and clarified by  
Ann. 2013-3, 2013-2 I.R.B. 271  
Updated by  
Ann. 2013-10, 2013-3 I.R.B. 311

#### 2012-46

Corrected by  
Ann. 2013-11, 2013-6 I.R.B. 483

#### 2013-1

Corrected by  
Ann. 2013-9, 2013-4 I.R.B. 441

#### 2013-4

Modified by  
Rev. Proc. 2013-22, 2013-18 I.R.B. 985

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

**Revenue Procedures— Continued:**

**2013-6**

Revised by

Ann. 2013-15, 2013-11 I.R.B. 652

Corrected by

Ann. 2013-13, 2013-9 I.R.B. 532

**2013-8**

Modified by

Rev. Proc. 2013-22, 2013-18 I.R.B. 985

**2013-14**

Modified by

Rev. Proc. 2013-19, 2013-11 I.R.B. 648

**Revenue Rulings:**

**92-19**

Supplemented in part by

Rev. Rul. 2013-4, 2013-9 I.R.B. 520

**Treasury Decisions:**

**9564**

Corrected by

Ann. 2013-4, 2013-4 I.R.B. 440

Amended by

Ann. 2013-7, 2013-3 I.R.B. 308

**9604**

Corrected by

Ann. 2013-19, 2013-14 I.R.B. 760



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## INTERNAL REVENUE BULLETIN

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

## CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008-2 edition.

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## INTERNAL REVENUE BULLETINS ON CD-ROM

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