

## **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**

#### **Rev. Rul. 2013-18, page 186.**

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2013.

#### **REG-132251-11, page 191.**

This notice of proposed rulemaking proposes to revise the time and manner for taxpayers to request equitable relief from joint and several liability for income tax and for income tax liability resulting from the operation of state community property laws under sections 66(c) and 6015(f). Comments requested by November 12, 2013.

### **EXEMPT ORGANIZATIONS**

#### **T.D. 9629, page 188.**

These regulations provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment requirements for any taxable year.

#### **REG-115300-13, page 197.**

These proposed regulations provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment requirements for any taxable year. Comments requested by November 13, 2013.

### **ADMINISTRATIVE**

#### **REG-132251-11, page 191.**

This notice of proposed rulemaking proposes to revise the time and manner for taxpayers to request equitable relief from joint and several liability for income tax and for income tax liability resulting from the operation of state community property laws under sections 66(c) and 6015(f). Comments requested by November 12, 2013.

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.

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2013.

## Rev. Rul. 2013-18

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2013 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2013-18 TABLE 1

Applicable Federal Rates (AFR) for September 2013

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.25%	.25%	.25%	.25%
110% AFR	.28%	.28%	.28%	.28%
120% AFR	.30%	.30%	.30%	.30%
130% AFR	.33%	.33%	.33%	.33%
<i>Mid-term</i>				
AFR	1.66%	1.65%	1.65%	1.64%
110% AFR	1.83%	1.82%	1.82%	1.81%
120% AFR	1.99%	1.98%	1.98%	1.97%
130% AFR	2.16%	2.15%	2.14%	2.14%
150% AFR	2.50%	2.48%	2.47%	2.47%
175% AFR	2.91%	2.89%	2.88%	2.87%
<i>Long-term</i>				
AFR	3.28%	3.25%	3.24%	3.23%
110% AFR	3.61%	3.58%	3.56%	3.55%
120% AFR	3.94%	3.90%	3.88%	3.87%
130% AFR	4.27%	4.23%	4.21%	4.19%

REV. RUL. 2013-18 TABLE 2

Adjusted AFR for September 2013

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.25%	.25%	.25%	.25%
Mid-term adjusted AFR	1.66%	1.65%	1.65%	1.64%
Long-term adjusted AFR	3.28%	3.25%	3.24%	3.23%

REV. RUL. 2013-18 TABLE 3

Rates Under Section 382 for September 2013

Adjusted federal long-term rate for the current month	3.28%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.28%

REV. RUL. 2013-18 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for September 2013

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.57%
Appropriate percentage for the 30% present value low-income housing credit	3.24%

REV. RUL. 2013-18 TABLE 5

Rate Under Section 7520 for September 2013

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

2.0%

## Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

## Section 6011.—General Requirement of Return, Statement, or List, and Section 6071.—Time for Filing Returns and Other Documents

TD 9629

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 53

### Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment (CHNA) requirements for any taxable year. The regulations affect charitable hospital organizations. This action is necessary to implement section 9007(b) of the Patient Protection and Affordable Care Act of 2010. The text of the temporary regulations also serves as the text of the pro-

posed regulations set forth in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on August 15, 2013.

*Applicability Date:* For dates of applicability, see §§53.6011-1T(g) and 53.6071-1T(i) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Amy F. Giuliano at (202) 622-6070 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

The Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added sections 501(r) and 4959 to the Internal Revenue Code (Code). A hospital organization seeking to obtain or maintain tax-exempt status as a charitable organization described in section 501(c)(3) must comply with the requirements of section 501(r), including the requirement to conduct a CHNA under section 501(r)(3).

Section 501(r)(2)(A)(i) defines a hospital organization to which section 501(r) applies as including any organization that operates a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. Section 501(r)(2)(B)(i) requires a hospital organization that operates more than one hospital facility to meet the requirements of section 501(r) separately with respect to each hospital facility.

Section 501(r)(3) requires hospital organizations to conduct a CHNA at least once every three years and adopt an implementation strategy to meet the community health needs identified through the CHNA. The requirements of section 501(r)(3) are effective for taxable years beginning after March 23, 2012.

Section 4959 imposes a tax equal to \$50,000 if a hospital organization to which section 501(r) applies fails to meet the requirements of section 501(r)(3) for any taxable year. A hospital organization fails to meet the requirements of section

501(r)(3) for any taxable year if the hospital organization fails to conduct a CHNA and adopt an implementation strategy during the three-year period ending on the last day of any taxable year of the hospital organization. For example, a hospital organization reporting on a calendar year basis that operates only one hospital facility and that fails to conduct a CHNA by the last day of 2013, and that also did not conduct a CHNA in 2011 or 2012, will be subject to the tax under section 4959 with respect to that facility for its 2013 taxable year. The same hospital organization that fails to conduct a CHNA in 2014 also will be subject to a tax under section 4959 with respect to that facility for its 2014 taxable year (for failure to meet the CHNA requirements during the three-year period ending on the last day of 2014). See Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010” As Amended, in Combination With the “Patient Protection and Affordable Care Act” (JCX-18-10) (March 21, 2010), at 83 fn. 192 (and accompanying text).

Section 6011 generally requires any person liable for tax imposed by the Code to make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury. Section 6071 generally provides that return filing dates are prescribed by regulation. Section 6151 generally provides that a tax must be paid when the return reporting the tax is due, without regard to extensions of time to file the return. Treas. Reg. §§53.6011-1 and 53.6071-1 require persons subject to certain excise taxes under Chapters 41 and 42 of the Code to file a Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, to accompany payment of those excise taxes and provide the time for filing the return. Section 4959 was added to Chapter 42 of the Code.

On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the **Federal Register** (REG-106499-12; 78 FR 20523)

containing proposed regulations providing guidance to hospital organizations on the CHNA requirements of section 501(r)(3) and the related excise tax of section 4959. That notice of proposed rulemaking did not include amendments to the regulations under section 6011 and section 6071 regarding the return to accompany the payment of the excise tax under section 4959 and the time for filing such a return.

### Explanation of Provisions

Under §53.6011-1(c) of these temporary regulations, a charitable hospital organization that is liable for the section 4959 excise tax must file a return on Form 4720. Under §53.6071-1(h) of these temporary regulations, a hospital organization liable for the section 4959 excise tax must file a Form 4720 by the 15<sup>th</sup> day of the fifth month after the end of the organization's taxable year during which the liability under section 4959 was incurred. Thus, for example, a hospital organization reporting on a calendar year basis that failed to meet the requirements of section 501(r)(3) by December 31, 2013, would have to file a Form 4720 and pay the section 4959 tax due by May 15, 2014.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

### Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Asso-

ciate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.6011-1 is amended by:

1. Redesignating paragraphs (c) through (e) as (d) through (f).

2. Adding new paragraphs (c) and (g).

The addition reads as follows:

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

\* \* \* \* \*

(c) [Reserved]. For further guidance, see §53.6011-1T(c).

\* \* \* \* \*

(g) [Reserved]. For further guidance, see §53.6011-1T(g).

Par. 3. Section 53.6011-1T is added to read as follows:

*§53.6011-1T General requirement of return, statement, or list (temporary).*

(a) and (b) [Reserved]. For further guidance, see §53.6011-1(a) and (b).

(c) A hospital organization described in section 501(r)(2)(A) that is liable for tax imposed by section 4959 must file an annual return on Form 4720 and include the information required by the form and instructions. The annual return filed by a hospital organization must include the required information for each of the organization's hospital facilities that failed to meet the requirements of section 501(r)(3) for the taxable year.

(d) through (f) [Reserved]. For further guidance, see §53.6011-1(d) through (f).

(g) Paragraph (c) of this section applies on and after August 15, 2013. The applicability of paragraph (c) of this section expires on or before August 12, 2016.

Par. 4. Section 53.6071-1 is amended by:

1. Revising paragraph (h).
2. Adding paragraph (i).

The revision and addition read as follows:

*§53.6071-1 Time for filing returns.*

\* \* \* \* \*

(h) [Reserved]. For further guidance, see §53.6071-1T(h).

(i) *Effective/applicability date*—(1) Paragraph (g) of this section applies on and after July 6, 2007.

(2) [Reserved]. For further guidance, see §53.6071-1T(i)(2).

Par. 5. Section 53.6071-1T is revised to read as follows:

*§53.6071-1T Time for filing returns (temporary).*

(a) through (g) [Reserved]. For further guidance, see §53.6071-1(a) through (g).

(h) *Taxes on failures by charitable hospital organizations to satisfy the community health needs assessment requirements of section 501(r)(3).* A hospital organization liable for tax imposed by section 4959 must file a Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, as required by §53.6011-1(c), on or before the 15th day of the fifth month after the end of the hospital organization's taxable year.

(i) *Effective/applicability date*—(1) [Reserved]. For further guidance, see §53.6071-1(i)(1).

(2) Paragraph (h) of this section applies on and after August 15, 2013.

(3) The applicability of paragraph (h) of this section expires on or before August 12, 2016.

Heather C. Maloy,  
*Acting Deputy Commissioner  
for Services and Enforcement.*

Approved August 9, 2013

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

(Filed by the Office of the Federal Register on August 14, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 15, 2013, 78 F.R. 49681)

## **Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

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## **Section 7872.—Treatment of Loans With Below-Market Interest Rates**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2013. See Rev. Rul. 2013-18, page 186.

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Relief from Joint and Several Liability

#### REG-132251-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to relief from joint and several tax liability under section 6015 of the Internal Revenue Code (Code) and relief from the Federal income tax liability resulting from the operation of state community property laws under section 66. The proposed regulations provide guidance to taxpayers on when and how to request relief under sections 66 and 6015. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 12, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-132251-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132251-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC; or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-132251-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mark Shurtliff at (202) 622-4910; concerning submissions of comments and requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 6013(a) of the Code permits taxpayers who are husband and wife to file a joint Federal income tax return. Married individuals who choose to file a joint income tax return are each jointly and severally liable under section 6013(d)(3) for the tax arising from that return, which, pursuant to sections 6601(e)(1) and 6665(a)(2), includes any additions to tax, additional amounts, penalties, and interest. Because the liability is joint and several, the IRS is authorized to collect the entire amount from either spouse, without regard to which spouse the items of income, deduction, credit, or basis that gave rise to the liability are attributable.

Section 6015 was enacted in 1998 to provide relief from joint and several liability in certain circumstances. Section 6015 sets forth three bases for relief from joint and several liability. First, section 6015(b) allows a taxpayer to elect relief from understatements of tax attributable to erroneous items of the other spouse if the taxpayer had no reason to know of the understatement and, taking into account all the facts and circumstances, it is inequitable to hold the taxpayer liable. Second, section 6015(c) allows a taxpayer who is divorced or legally separated from, or no longer living with, the spouse or former spouse with whom the joint return was filed to elect to allocate a deficiency (or a portion of a deficiency) to the other spouse, as if the spouses had filed separate tax returns. Third, section 6015(f) provides that a taxpayer may request, under "procedures prescribed by the Secretary," relief from a tax understatement or underpayment when the taxpayer does not qualify for relief under the other two subsections and it would be inequitable to hold the taxpayer liable considering all the facts and circumstances.

Section 6015(h) directs the Treasury Department and the IRS to prescribe such regulations as are necessary to carry out the provisions of section 6015. The Treasury Department and the IRS exercised that authority by promulgating regulations under section 6015 on July 18, 2002 (TD 9003, 67 FR 47278). Sections 1.6015-2, 1.6015-3, and 1.6015-4 of the final reg-

ulations provide guidance on the bases for relief in section 6015(b), (c), and (f), respectively. Section 1.6015-5 provides rules on the time and manner to request section 6015 relief.

By their terms, paragraphs (b) and (c) of section 6015 impose a two-year deadline for a taxpayer to elect the application of either subsection. Under the deadline, a taxpayer must make the election no later than two years after the date of the IRS's first collection activity with respect to the taxpayer. See section 6015(b)(1)(E) and (c)(3)(B). In contrast, paragraph (f) of section 6015 does not contain an explicit deadline to request relief. In accordance with the authority in section 6015(f) to prescribe procedures for the administration of equitable relief, the Treasury Department and the IRS, beginning in 1998, prescribed in published guidance a two-year deadline to request equitable relief under section 6015(f) to be consistent with the statutory time limit to claim relief under section 6015(b) and (c). The two-year deadline to request equitable relief was first prescribed in Notice 98-61 (1998-2 C.B. 758 (December 21, 1998)) (see §601.601(d)(2)(ii)(b) of this chapter). The two-year deadline was reiterated in Rev. Proc. 2000-15 (2000-1 C.B. 447), which was superseded by Rev. Proc. 2003-61 (2003-2 C.B. 296), and ultimately adopted in the regulations under section 6015, which were issued on July 18, 2002, as §1.6015-5(b)(1).

Besides establishing when and how to request relief from joint and several liability, §1.6015-5 also defines key terms, such as "collection activity," sets forth examples illustrating the time and manner provisions, and explains the effect of a final administrative determination.

In *Lantz v. Commissioner*, 132 T.C. 131 (2009), the Tax Court considered for the first time whether the two-year deadline to request equitable relief was valid. After analyzing the issue under the standard for judicial review of an agency regulation, the Tax Court held the two-year deadline for equitable relief in §1.6015-5(b)(1) invalid. The *Lantz* decision was reversed on appeal by the United States Court of Appeals for the Seventh Circuit in an opinion upholding the validity of the deadline

to request equitable relief. *Lantz v. Commissioner*, 607 F.3d 479 (7th Cir. 2010). After *Lantz*, the Tax Court continued to find the two-year deadline invalid in cases not appealable to the Seventh Circuit but the deadline was upheld again in *Mannella v. Commissioner*, 631 F.3d 115 (3d Cir. 2011), and *Jones v. Commissioner*, 642 F.3d 459 (4th Cir. 2011).

Notwithstanding the validity of the regulation setting the two-year deadline, the Treasury Department and the IRS considered whether to retain the deadline and determined, in the interest of tax administration, that the time period to request equitable relief under section 6015(f) should be extended. As announced in Notice 2011-70 (2011-32 I.R.B. 135 (Aug. 8, 2011)), the two-year deadline no longer applies to requests for equitable relief under section 6015(f). In place of the prior two-year deadline, Notice 2011-70 provides that, to be considered for equitable relief, a request must be filed with the IRS within the period of limitation for collection of tax in section 6502 or, for any credit or refund of tax, within the period of limitation in section 6511. Notice 2011-70 explains that the regulations under section 6015 will be revised to reflect the change. These proposed regulations reflect the changes made by Notice 2011-70. Notice 2011-70 has no effect on the two-year deadline to elect relief under section 6015(b) (and §1.6015-2) or section 6015(c) (and §1.6015-3).

Notice 2011-70 specifies transitional rules that apply until the Treasury Department and the IRS amend the regulations under section 6015. Under the transitional rules, the two-year deadline does not apply to any request for equitable relief filed on or after July 25, 2011 (the date Notice 2011-70 was issued) or any request already filed and pending with the IRS as of that date. The transitional rules provide that the IRS will consider these current and future requests for equitable relief if they were filed within the applicable limitation period under section 6502 or 6511. As for past requests for equitable relief—requests that the IRS denied as untimely under the two-year deadline—the notice allows the individuals who filed those requests to reapply for equitable relief, unless the individual litigated the denial or the denial included a determination that the individual was not entitled to equitable relief on

the merits. In addition, Notice 2011-70 provides separate rules for claiming equitable relief with respect to litigated cases.

A similar rule is added to §1.66-4 for claims for equitable relief under section 66(c). Section 66(c) provides two avenues for married taxpayers who do not file a joint Federal income tax return in a community property state to request relief from the operation of the state community property laws. Under state law, each spouse generally is responsible for the tax on one-half of all the community income for the year. Traditional relief under section 66(c) allows the requesting spouse to avoid liability for tax on community income of which the requesting spouse did not know and had no reason to know. If a requesting spouse does not satisfy the requirements for traditional relief, the Secretary may grant equitable relief. The IRS uses the same procedures for determining eligibility for equitable relief under section 66(c) as it does for equitable relief under section 6015(f). As a result, it is appropriate for the IRS to use the same timing rules for consideration of requests for equitable relief, whether under section 66(c) or section 6015(f).

### Explanation of Provisions

The Treasury Department and the IRS propose to amend the provisions of §1.6015-5 on the time and manner for requesting relief from joint and several liability under section 6015. A similar rule is added to §1.66-4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

#### 1. Requesting Relief as Part of Collection Due Process

The proposed regulations revise §1.6015-5(a) to reflect that a requesting spouse (defined in §1.6015-1(h)(1)) may elect the application of section 6015(b) [§1.6015-2] or section 6015(c) [§1.6015-3] or request equitable relief under section 6015(f) [§1.6015-4] as part of the collection due process (CDP) hearing procedures under sections 6320 and 6330. A corresponding change is made to §1.6015-5(c)(1) to clarify that, although section 6015 relief may be raised in a CDP proceeding, a requesting spouse may not request section 6015 relief in the course

of a CDP hearing if the requesting spouse previously requested section 6015 relief and the IRS ruled on that request by issuing a final administrative determination. These proposed regulations do not change existing CDP hearing procedures. See §301.6330-1(e)(2). Rather, these changes make the regulations under section 6015 consistent with the regulations under section 6330.

#### 2. Time to Request Relief

Section 1.6015-5(b) of the proposed regulations retains the two-year deadline, measured from the date of the first collection activity, to elect the application of §1.6015-2 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(b)) or 1.6015-3 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(c)). In accordance with Notice 2011-70, the deadline is removed for a request for equitable relief under §1.6015-4 (describing the circumstances in which a taxpayer may be eligible for relief under section 6015(f)) and replaced with a requirement that a request for equitable relief must be filed with the IRS within the period of limitation in section 6502 for collection of tax or the period of limitation in section 6511 for credit or refund of tax, as applicable to the specific request. A similar rule is added to §1.66-4(j)(2)(ii) for claims for equitable relief from the Federal income tax liability resulting from the operation of state community property law.

Under section 6502(a)(1), the period of limitation on collection of tax is normally ten years after the date of assessment of the tax, although it may be extended by other provisions of the Code. Under section 6511(a), the period of limitation to claim a credit or refund of tax is generally the later of three years after the date a tax return for the taxable period was filed or two years after the date the tax was paid. If no return was filed, the two-year period applies.

Section 1.6015-5(b)(2) of the proposed regulations explains that if a requesting spouse files a request for equitable relief under §1.6015-4 within the limitation period on collection of tax, the IRS will consider the request, but any relief in the form of a tax credit or refund depends on

whether the limitation period for credit or refund was also open as of the date the claim for relief was filed and the other requirements relating to credits or refunds are satisfied. In cases in which the limitation period for credit or refund happens to be the longer of the two periods and is open when a request for equitable relief is filed, the request can be considered for a potential refund or credit of any amounts collected or otherwise paid by the requesting spouse during the applicable look-back period of section 6511(b)(2), even if the collection period is closed.

If a request for equitable relief is filed after the expiration of the limitation period for collection of a joint tax liability, the IRS is barred from collecting any remaining unpaid tax from the requesting spouse. Similarly, if a request for equitable relief under §1.6015-4 is filed after the expiration of the limitation period for a credit or refund of tax, section 6511(b)(1) bars the IRS from allowing, and a taxpayer from receiving, a credit or refund. The proposed regulations provide, therefore, that the IRS will not consider an individual's request to be equitably relieved from a tax that is no longer legally collectible.

### 3. Collection Activity

The proposed regulations clarify what constitutes collection activity for purposes of starting the two-year deadline that continues to apply to §§1.6015-2 and 1.6015-3.

A notice of intent to levy and right to request a CDP hearing (section 6330 notice) is a type of collection activity that starts the two-year period applicable to applications to elect relief under §§1.6015-2 and 1.6015-3. The proposed regulations at §1.6015-5(b)(3)(ii) clarify that the two-year period will start irrespective of a requesting spouse's actual receipt of the section 6330 notice, if the notice was sent by certified or registered mail to the requesting spouse's last known address. This clarification is consistent with the holding in *Mannella v. Commissioner*, 132 T.C. 196 (2009), *rev'd on other grounds*, 631 F.3d 115 (3d Cir. 2011).

### 4. Examples

Section 1.6015-5 in its current form contains several examples intended to

illustrate how the timing rules for requesting relief under section 6015 operate. The proposed regulations update these examples to reflect the proposed changes to the timing rules. Thus, *Example 1* is revised to explicitly limit it to elections under §1.6015-2 or 1.6015-3. *Example 2* illustrates the operation of both the two-year deadline for purposes of §§1.6015-2 and 1.6015-3 and the periods of limitation that apply to equitable relief requests under §1.6015-4, including a situation in which the requesting spouse will still be considered for relief for unpaid amounts even though the limitation period for credit or refund had expired when the request was filed as discussed in §1.6015-5(b)(2). *Example 3* is principally intended to illustrate that collection activity against a nonrequesting spouse (defined in §1.6015-1(h)(2)) does not begin the time in which a requesting spouse must elect the application of §1.6015-2 or 1.6015-3. *Example 4* illustrates the rule of §1.6015-5(c)(3)(i) that a section 6330 notice sent to a requesting spouse's last known address, even if not actually received by the requesting spouse, is a collection activity for purposes of the timing rules, but the issuance of the notice, or the time between the mailing of the notice and the filing of a request for relief, does not affect the IRS's consideration of equitable relief under §1.6015-4 as no two-year deadline applies. *Example 5* illustrates the timing rules in §1.6015-5(b)(2) under which if a requesting spouse has paid some or all of a joint tax liability, or if the IRS has collected all or a part of the liability from a requesting spouse, the requesting spouse will be considered for equitable relief under §1.6015-4 if the requesting spouse filed for relief within the limitation period for a credit or refund of tax, even though the limitation period for collection of tax was expired when the request was filed. The example further illustrates that in a case of payments or collection activity over time, a requesting spouse is eligible for a credit or refund only for amounts of tax for which the period of limitation allows a credit or refund as of when the request for relief was filed. The last example, *Example 6*, builds off of *Example 5* and illustrates a situation in which the IRS will not consider a request for equitable relief under §1.6015-4 because both the limitation period for a credit or refund of

tax and the limitation period for collection of tax had expired as of the date the claim for relief was filed.

### 5. Reconsideration and Effect of a Final Administrative Determination

The proposed regulations also revise §1.6015-5(c), which prescribes the effect of a final administrative determination. Under §1.6015-5(c)(1), a requesting spouse generally is entitled to submit only one request for relief under section 6015 from a joint tax liability (except as provided in §1.6015-1(h)(5)), and the IRS will issue only one final administrative determination. The proposed regulations clarify in §1.6015-5(c)(1) that after a final administrative determination, a requesting spouse may not, even under the procedures for a CDP hearing, again request relief under section 6015 with respect to the same joint tax liability.

Consistent with the general restriction, but to provide flexibility within that framework, the IRS has developed procedures in the Internal Revenue Manual (Chapter 25.15.17 (Rev. 03/08/2013)) to reconsider a final administrative determination if a requesting spouse submits additional information not previously submitted and considered and the requesting spouse did not petition the Tax Court from the prior final administrative determination. If the requesting spouse did petition the Tax Court, then the requesting spouse is not eligible for reconsideration unless the Tax Court case was dismissed for lack of jurisdiction. A reconsideration process allows for relief in situations where a requesting spouse was unable to initially provide the information, such as the requesting spouse not fully understanding how to file a complete request for relief under section 6015. The reconsideration process, however, does not replace the IRS's final administrative determination for purposes of determining whether Tax Court review is available or whether a Tax Court petition was timely filed. A request for reconsideration is not a qualifying election ("the first timely claim for relief from joint and several liability for the tax year for which relief is sought") under §1.6015-2 or 1.6015-3, or request under §1.6015-4, for purposes of §1.6015-1(h)(5), and does not trigger the restrictions on collection pursuant to section 6015(e)(1)(B) or the

suspension of the collection period of limitation under section 6015(e)(2). A reconsideration letter (formerly Letter 4277C and currently either Letter 5186C, Letter 5187C, or Letter 5188C) is not a final determination letter for purposes of section 6015(e) and §1.6015-7. Accordingly, a requesting spouse who receives a reconsideration letter may not petition the Tax Court to challenge a denial of relief following the IRS's reconsideration even if the requesting spouse provided new information not previously considered. The proposed regulations add a new provision to §1.6015-5(c) acknowledging the reconsideration process but also providing that the reconsideration letter is not the IRS's final determination and is not subject to review by the Tax Court.

The general restriction in the regulations to one request for relief under section 6015 per tax liability and one final administrative determination of that request does not prohibit a requesting spouse from reapplying for equitable relief under §1.6015-4 pursuant to the terms of Notice 2011-70 if the requesting spouse's request for relief under §1.6015-4 was denied solely for being untimely and that denial was not litigated. The notice allows individuals who filed requests for equitable relief that were denied by the IRS solely on the basis of the two-year deadline and were not litigated to reapply to the IRS for equitable relief. A Form 8857, *Request for Innocent Spouse Relief*, or substitute written statement, signed under the penalties of perjury, filed as a reapplication for equitable relief under Notice 2011-70 is not considered a second request, and the resulting determination will be the final administrative determination for purposes of the regulations. A reapplication under Notice 2011-70 is not a reconsideration under the IRS's reconsideration process, and a denial of equitable relief on reapplication may be timely petitioned to the Tax Court for review.

#### **Proposed Effective/Applicability Date**

Except as provided below, these proposed regulations are effective as of the date that final regulations are published in the **Federal Register**. For proposed dates of applicability, see §1.6015-9.

Notice 2011-70 announced that the Treasury Department and the IRS in-

tended to amend the regulations under section 6015 to remove the requirement that taxpayers request equitable relief under section 6015(f) and §1.6015-4 within two years of the first collection activity. Under section 7805(b)(1)(C), the proposed regulations provide that §1.6015-5(b)(1) and (b)(2) will be effective as of July 25, 2011, the date that Notice 2011-70 was issued to the public.

#### **Statement of Availability for IRS Documents**

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS website at <http://www.irs.gov>.

#### **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. In addition, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). 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 written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments submitted by the public will be made available for public inspection and

copying at <http://www.regulations.gov> or upon request. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### **Drafting Information**

The principal authors of these proposed regulations are Stuart Murray and Mark Shurtliff of the Office of the Associate Chief Counsel, Procedure and Administration.

\* \* \* \* \*

#### **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 \* \* \*

Section 1.66-4 also issued under 26 U.S.C. 66(c). \* \* \*

Section 1.6015-5 also issued under 26 U.S.C. 6015(h). \* \* \*

Section 1.6015-9 also issued under 26 U.S.C. 6015(h). \* \* \*

Par. 2 In §1.66-4, paragraph (j)(2)(ii) is revised to read as follows:

*§1.66-4 Request for relief from the Federal income tax liability resulting from the operation of community property law.*

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) *Equitable relief*. The earliest time for submitting a request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph (b) of this section is the date the requesting spouse receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability with regard to that year (as described in paragraph (j)(2)(iii) of this section). A request for equitable relief from the Federal income tax liability resulting from the operation of community property law under paragraph

(b) of this section for a liability that is properly reported but unpaid is properly submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed. To request equitable relief under §1.66-4, a requesting spouse must file Form 8857, *Request for Innocent Spouse Relief*, or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the tax liability. If a requesting spouse files a request for equitable relief under §1.66-4 within the period of limitation on collection of tax, the IRS will consider the request for equitable relief, but the requesting spouse will be eligible for a credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502 nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief.

\* \* \* \* \*

Par. 3. Section 1.66-5 is revised to read as follows:

*§1.66-5 Effective /applicability date.*

Except for §1.66-4(j)(2)(ii), sections 1.66-1 through 1.66-4 are applicable on July 10, 2003. Section 1.66-4(j)(2)(ii) applies to any request for relief filed on or after July 25, 2011 (the date that Notice 2011-70, 2011-32 I.R.B., was issued to the public).

Par. 4. Section 1.6015-0 is amended as follows:

1. In §1.6015-5, revising the entry for paragraph (a) as new entry for paragraph (a)(1) and adding a new entry for paragraph (a)(2); entries for paragraphs (b)(1)

through (b)(5) are revised; entries for paragraphs (b)(2)(i) and (b)(2)(ii) are removed; and new entries are added for paragraphs (b)(3)(i), (b)(3)(ii), (b)(6), (c)(1), (c)(2), and (c)(3).

2. Section 1.6015-9 heading is revised.

The additions and revisions read as follows:

*§1.6015-0 Table of contents.*

\* \* \* \* \*

*§1.6015-5 Time and manner for requesting relief.*

- (a) Requesting relief.
  - (1) In general.
  - (2) Requesting relief as part of a collection due process hearing.
- (b) \* \* \*
- (1) Relief other than equitable relief.
- (2) Equitable relief.
- (3) Definitions.
  - (i) Collection activity.
  - (ii) Section 6330 notice.
- (4) Requests for relief made before commencement of collection activity.
- (5) Examples.
- (6) Premature requests for relief.
- (c) \* \* \*
- (1) In general.
- (2) Reconsideration process.
- (3) Examples.

\* \* \* \* \*

*§1.6015-9 Effective/applicability date.*

Par. 5. Section 1.6015-5 is amended to read as follows:

1. Paragraph (a) is amended by designating the introductory text as (a)(1), adding a new heading for paragraph (a)(1) introductory text, and adding new paragraph (a)(2).

2. Paragraph (b)(1) is revised.

3. Paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) are redesignated as paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).

4. New paragraph (b)(2) is added.

5. Newly-designated paragraphs (b)(3)(ii), (b)(4), (b)(5), and (b)(6) are revised.

6. Paragraph (c)(1) is amended by adding a new sentence at the end of the paragraph.

7. Paragraph (c)(2) is redesignated as paragraph (c)(3) and revised and new paragraph (c)(2) is added.

The revisions and additions read as follows:

*§1.6015-5 Time and manner for requesting relief.*

(a) *Requesting relief*—(1) *In general.* \* \* \*

(2) *Requesting relief as part of a collection due process hearing.* A requesting spouse may also elect the application of §1.6015-2 or 1.6015-3, or request equitable relief under §1.6015-4, pursuant to the collection due process (CDP) hearing procedures under sections 6320 and 6330, by attaching Form 8857, *Request for Innocent Spouse Relief*, or an equivalent written statement to Form 12153, *Request for a Collection Due Process or Equivalent Hearing* (or other specified form).

(b) \* \* \* (1) *Relief other than equitable relief.* To elect the application of §1.6015-2 or 1.6015-3, a requesting spouse must file Form 8857 or other similar statement with the IRS no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Equitable relief.* To request equitable relief under §1.6015-4, a requesting spouse must file Form 8857 or other similar statement with the IRS within the period of limitation on collection of tax in section 6502 or within the period of limitation on credit or refund of tax in section 6511, as applicable to the joint tax liability. If a requesting spouse files a request for equitable relief under §1.6015-4 within the period of limitation on collection of tax, the IRS will consider the request for equitable relief, but the requesting spouse will be eligible for a credit or refund of tax only if the limitation period for credit or refund of tax is open when the request is filed (assuming all other requirements are met, including the limit on amount of credit or refund prescribed in section 6511(b)(2)). Alternatively, if a requesting spouse files a request for equitable relief after the period of limitation on collection of tax has expired but while the limitation period on credit or refund of tax remains open, the IRS will consider the request for equitable relief insofar as tax was paid by or collected from the requesting spouse, and the requesting spouse will be eligible for a potential credit or refund of tax. If neither the section 6502

nor section 6511 limitation period is open when a requesting spouse files a request for equitable relief, the IRS will not consider the request for equitable relief. See §1.6015-1(g).

(3) \* \* \*

(ii) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the IRS's intent to levy and of their right to a CDP hearing. The mailing of a section 6330 notice by certified mail to the requesting spouse's last known address is sufficient to start the two-year period, described in paragraph (b)(1), regardless of whether the requesting spouse actually receives the notice.

(4) *Requests for relief made before commencement of collection activity.* Except as provided in paragraph (b)(6) of this section, an election under §1.6015-2 or 1.6015-3 or a request for equitable relief under §1.6015-4 may be made before any collection activity has commenced. For example, an election or request for equitable relief may be made in connection with an examination of a joint Federal income tax return or a demand for payment, or pursuant to the CDP hearing procedures of section 6320 with respect to the filing of a Notice of Federal Tax Lien. A request for equitable relief under §1.6015-4 for a liability that is properly reported on a joint Federal income tax return but not paid with the return or by the due date for payment is properly submitted at any time after the return is filed.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

*Example 1.* On January 12, 2009, the IRS mailed a section 6330 notice to H and W, by certified mail to their last known address, regarding their 2007 joint Federal income tax liability, which was the result of an understatement. The section 6330 notice was the first collection activity the IRS initiated against H and W to collect the 2007 joint liability. H and W did not request a CDP hearing in response to the section 6330 notice. On June 5, 2009, the IRS issued a levy on W's wages to W's employer. On July 10, 2009, the IRS issued a levy on H's wages to H's employer. To be considered for relief under §1.6015-2 or 1.6015-3, a Form 8857 or other request for relief must be filed on or before January 12, 2011, which is two years after the IRS sent the section 6330 notice. The two-year period for purposes of §§1.6015-2 and 1.6015-3 (not applicable to §1.6015-4) runs from the date the section 6330 notice was mailed and not from the date of the actual levy.

*Example 2.* On May 5, 2011, the IRS offset W's overpayment from W's 2010 separate Federal income tax return in the amount of \$2,000 to H and W's joint

tax liability for 2009 of \$5,000, for which H and W filed a joint return on April 15, 2010. The offset is the first collection activity the IRS initiated against W to collect the 2009 joint liability. On October 3, 2013, W requests relief under section 6015. W's request is not timely under §§1.6015-2 and 1.6015-3 because the request was made more than two years after the IRS's first collection activity against W — the offset of W's overpayment from 2010. As to equitable relief under §1.6015-4, the period of limitation on collection is open when W files her request, and the request can be considered for equitable relief of the unpaid tax of \$3,000. W is not, however, eligible for any credit or refund of the \$2,000 amount that the IRS applied against H and W's 2009 joint liability, because the period of limitation on credit or refund of tax for 2009 is no longer open when W files her request for relief. Under section 6511(a), a credit or refund of tax must generally be claimed within three years after the filing date of a tax return for the tax year or two years after payment of the tax, whichever is later. Thus, the last day for W to claim a credit or refund of the \$2,000 amount was May 5, 2013, but her request for relief was not filed until October 3, 2013.

*Example 3.* On June 14, 2011, the IRS offset W's overpayment from her separate Federal income tax return for 2010 against H and W's joint liability for 2009, which was the result of an understatement. On July 5, 2012, the IRS offset H's overpayment from his separate Federal income tax return for 2011 against H and W's joint liability for 2009. The offset is the first collection activity the IRS initiated against H to collect the 2009 joint liability. On November 25, 2013, H requests relief under section 6015 by filing Form 8857. H's request is timely. For purposes of §§1.6015-2 and 1.6015-3, the request was filed within two years of the IRS's first collection activity against H. The IRS's collection activity against W does not start the two-year period for H to request relief. Additionally, for purposes of §1.6015-4, the period of limitation on collection was open when H filed Form 8857, making him eligible for equitable relief from any unpaid liability for 2009, and the period of limitation on a credit or refund of tax for 2009 that was paid through the offset of H's overpayment for 2011 was likewise open when H filed his Form 8857.

*Example 4.* On April 15, 2008, H and W filed a joint Federal income tax return for tax year 2007. On October 1, 2009, additional liability was assessed against H and W as a result of income attributable to H being omitted from the return. H and W divorced soon after and, in late December 2009, W moved out of the family home without notifying the United States Postal Service or the IRS of her change of address until the end of January 2010. On January 15, 2010, the IRS mailed a section 6330 notice regarding H and W's 2007 joint Federal income tax liability to H and W's last known address (the address on H and W's joint Federal income tax return for tax year 2008, filed on April 15, 2009). H and W did not request a CDP hearing in response to the section 6330 notice. The IRS issued a levy on W's wages to W's employer on June 2, 2010. W filed Form 8857 requesting relief under section 6015 on May 15, 2012. Actual receipt of a section 6330 notice is not required to start the two-year period for purposes of §1.6015-2 or 1.6015-3, as long as the notice is sent to the taxpayer at the taxpayer's last known address by certified or registered mail. The two-year period, therefore,

expired on January 15, 2012. Accordingly, W's request for relief is too late to be considered for any relief under §1.6015-2 or 1.6015-3, as the request was filed more than two years after the IRS sent the section 6330 notice. But because the period of limitation on collection was open (generally until October 1, 2019) when W filed the Form 8857, the IRS will consider whether W is entitled to equitable relief under §1.6015-4. Further, to the extent W's request for equitable relief under §1.6015-4 seeks a refund of tax W paid through the levy, W's Form 8857 is a timely claim for refund because it was filed within the applicable period of limitation for credit or refund of tax (in this case, two years from payment of the tax).

*Example 5.* H and W timely filed a joint Federal income tax return for tax year 1999. The IRS selected the 1999 return for examination and determined a deficiency in tax of \$10,000. The IRS assessed the tax on December 1, 2001. The taxpayers were divorced in 2005. On her separate Federal income tax return for tax year 2005, W reported an overpayment of \$2,500, which the IRS applied on May 3, 2006, to the joint liability for 1999. On her separate Federal income tax return for tax year 2009, W reported an overpayment of \$1,750, which the IRS applied on May 15, 2010, to the joint liability for 1999. On May 1, 2012, W filed with the IRS a Form 8857 requesting relief under section 6015. The IRS will not consider whether W is entitled to any relief under §1.6015-2 or 1.6015-3 because W's election is untimely as W's Form 8857 was filed after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Although the collection period expired on December 1, 2011, the IRS will consider whether W is entitled to equitable relief under §1.6015-4 for tax year 1999 because W filed Form 8857 within the two-year period for claiming a credit or refund of tax under section 6511(a). Under section 6511(b)(2), the amount of any refund to which W might be entitled is limited to \$1,750 (the amount paid within the two years preceding the filing of W's Form 8857), and the \$2,500 collected in May 2006 is not available for refund.

*Example 6.* Assume the same facts as in Example 5, except that W's separate Federal income tax return for tax year 2009 did not report an overpayment, and there was no offset against the joint liability for 1999. The IRS will not consider whether W is entitled to any relief under §1.6015-2 or 1.6015-3 because W's election is untimely as W's Form 8857 was filed after the end of the two-year period running from the offset of W's overpayment from her tax year 2005 return. Further, as the collection period expired on December 1, 2011, and the period for claiming a credit or refund of tax under section 6511(a) expired on May 3, 2008, IRS will not consider whether W is entitled to equitable relief under §1.6015-4 for tax year 1999.

(6) *Premature requests for relief.* The IRS will not consider for relief under §§1.6015-2, 1.6015-3, or 1.6015-4 any election or request for relief from joint and several liability that is premature. A premature election or request for relief is an election or request, other than a request for relief for a liability that is properly reported on a joint Federal income tax return but not paid, that is filed for a tax

year prior to the receipt of a notification of an examination or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. These notices or letters do not include notices issued pursuant to section 6223 relating to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership proceedings. A premature request for relief is not considered an election or request under §1.6015-1(h)(5).

(c) \* \* \* (1) \* \* \* A requesting spouse who receives a final administrative determination of relief under §1.6015-1 may not later elect the application of §1.6015-2 or 1.6015-3, or request equitable relief under §1.6015-4, including through the CDP hearing procedures under sections 6320 and 6330.

(2) *Reconsideration process.* Pursuant to §§1.6015-1(h)(5) and 1.6015-5(c)(1), a requesting spouse is generally entitled to submit only one request for relief and receive only one final administrative determination. Nevertheless, if a requesting spouse submits new information (including new facts, evidence, and arguments not previously considered) to the IRS after the IRS issues a final administrative determination to the requesting spouse, the IRS may reconsider the requesting spouse's request for relief under its established reconsideration process. A request for a reconsideration is not a qualifying election under §1.6015-2 or 1.6015-3, or a request under §1.6015-4, for purposes of §1.6015-1(h)(5). Any reconsideration of a final administrative determination by the IRS, and any notice or letter issued to the requesting spouse as a result of the reconsideration (such as Letter 4277C, Letter 5186C, Letter 5187C, or Letter 5188C), is not the IRS's final determination for purposes of section 6015(e) and is not subject to review by the Tax Court under section 6015(e) or §1.6015-7.

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

*Example 1.* In January 2008, W became a limited partner in partnership P, and in February 2009, she started her own business from which she earned \$100,000 of gross income for the taxable year 2009. H and W filed a joint Federal income tax return for 2009, on which they claimed \$20,000 in losses from the investment in P, and they omitted W's self-employment tax. In March 2011, the IRS commenced an examination under the provisions of the Code for TEFRA partnership proceedings and sent H and W a notice of the proceeding under section 6223(a)(1). In September 2011, the IRS opened an examination

of H and W's 2009 joint return regarding the omitted self-employment tax. In 2012, H decides to pursue relief under section 6015. H may file a request for relief as to liability for self-employment tax because he has received a notification of an examination informing him of potential liability. A request for relief regarding the TEFRA partnership proceeding, however, is premature under paragraph (b)(6) of this section. H must wait until the IRS sends him a notice of computational adjustment or assesses any liability resulting from the TEFRA partnership proceeding before he may file a request for relief from that liability. An assessment of tax in the TEFRA partnership proceeding would be separate from an assessment for the self-employment tax. Therefore, a subsequent request from H for relief from any liability resulting from the TEFRA partnership proceeding will not be precluded under this paragraph (c) by a previous request that H filed for relief from self-employment tax liability.

*Example 2.* On October 21, 2009, H filed a Form 8857 requesting relief under §§1.6015-2, 1.6015-3, and 1.6015-4 for an assessed deficiency relating to his joint income tax return for tax year 2004. On August 11, 2010, the IRS issued a final administrative determination denying H relief from the liability for tax year 2004. Under section 6015(e), H had until November 9, 2010, to file a petition to the Tax Court to challenge the denial of relief. H did not timely file a petition. On October 3, 2011, H submitted information with respect to his claim for relief for tax year 2004 that he did not previously provide. The IRS considered the new information pursuant to its established reconsideration process in IRM 25.15.17 (Rev. 03/08/2013) and informed H on January 25, 2012, via Letter 4277C that he was still not entitled to relief under any subsection of section 6015. Letter 4277C is not a final administrative determination and did not confer any new rights for H to file a petition to the Tax Court to challenge the final administrative determination issued on August 11, 2010, or the denial of relief from the IRS's reconsideration.

Par 6. Section 1.6015-9 is revised to read as follows:

*§1.6015-9 Effective/applicability date.*

(a) *In general.* Except as provided in paragraph (b) of this section, §§1.6015-0 through 1.6015-9 are applicable for all elections under §1.6015-2 or 1.6015-3 or any requests for relief under §1.6015-4 filed on or after July 18, 2002.

(b) Except for the rules for determining the timeliness of an election under §1.6015-2 or 1.6015-3, or a request for equitable relief under §1.6015-4 in paragraphs (b)(1) and (b)(2) of §1.6015-5, §1.6015-5 is applicable to any election under §1.6015-2 or 1.6015-3, or to any request for equitable relief under §1.6015-4, filed on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules for determining the

timeliness of an election under §1.6015-2 or 1.6015-3, or a request for equitable relief under §1.6015-4 in paragraphs (b)(1) and (b)(2) of §1.6015-5 are applicable to any election under §1.6015-2 or 1.6015-3, or to any request for equitable relief under §1.6015-4, filed on or after July 25, 2011 (the date that Notice 2011-70, 2011-32 I.R.B. 135, was issued to the public).

Beth Tucker,  
*Deputy Commissioner for  
Operations Support.*

(Filed by the Office of the Federal Register on August 12, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 13, 2013, 78 F.R. 49242)

## Notice of Proposed Rulemaking

### Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return

#### REG-115300-13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing regulations requiring charitable hospital organizations liable for the excise tax for failure to meet the community health needs assessment requirements for any taxable year to file Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*. The regulations also specify the due date for such returns. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 13, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-115300-13), 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-115300-13),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-115300-13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amy F. Giuliano at (202) 622-6070; concerning submission of comments and request for hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the existing regulations under sections 6011 and 6071 to (1) specify the form that must be used to accompany payment of the excise tax imposed by section 4959 for failure to meet the community health needs assessment requirements of section 501(r)(3), and (2) provide the due date for filing the form. Section 501(r) and section 4959 were enacted by section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the

timing and filing of Form 4720 for charitable hospital organizations liable for the section 4959 excise tax, and completing the applicable portion (Schedule M) of the Form 4720 for this purpose imposes little incremental burden in time or expense. The liability for the section 4959 excise tax is imposed by statute, and not these regulations. In addition, a charitable hospital organization may already be required to file the Form 4720 under the existing final regulations in sections 53.6011-1 and 53.6071-1 if it is liable for another Chapter 41 or 42 excise tax. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

#### 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. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

#### PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.6011-1 is amended by:

1. Redesignating paragraphs (c) through (e) as (d) through (f).
2. Adding new paragraphs (c) and (g).  
The addition reads as follows:

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

\* \* \* \* \*

(c) [The text of paragraph (c) of this section is the same as the text of §53.6011-1T(c) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(g) [The text of paragraph (g) of this section is the same as the text of §53.6011-1T(g) published elsewhere in this issue of the Bulletin].

Par. 3. Section 53.6071-1 is amended by:

1. Revising paragraph (h).
2. Adding paragraph (i).

The revision and addition read as follows:

*§53.6071-1 Time for filing returns.*

\* \* \* \* \*

[The text of paragraphs (h) and (i) of this section is the same as the text of §§53.6071-1T(h) and (i)(1) and (2) published elsewhere in this issue of the Bulletin].

Heather C. Maloy,  
*Acting Deputy Commissioner  
for Services and Enforcement.*

(Filed by the Office of the Federal Register on August 14, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 15, 2013, 78 F.R. 49700)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

# Internal Revenue Service

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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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## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the IRS Bulletin Unit, SE:W:CAR:MP:P:SPA, Washington, DC 20224.

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