

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. 2013–26, page 628.

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 December 2013.

EMPLOYEE PLANS

T.D. 9641, page 622.

These final regulations contain amendments relating to certain cash or deferred arrangements under section 401(k) and matching contributions and employee contributions under section 401(m). These regulations provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009. These regulations also revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015.

EMPLOYMENT TAX

T.D. 9646, page 630.

REG–146620–13, page 674.

Temporary and proposed regulations under section 3402(p)(3) relating to voluntary withholding agreements allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The proposed regulations also clarify that existing regulations under section 3402(p) apply to voluntary withholding agreements

between employers and employees. Comments on the proposed regulations are requested by February 25, 2014.

Notice 2013–77, page 632.

Under this notice, dividends and other distributions made by an Alaska Native Corporation to its shareholders are eligible for voluntary withholding under section 3402(p)(3)(B) of the Code and § 31.3402(p)–1T of the Employment Tax Regulations.

ADMINISTRATIVE

Notice 2013–78, page 633.

This notice proposes for public comment a revision to the procedures for requesting assistance from the U. S. competent authority under the provisions of an income, estate, or gift tax treaty to which the United States is a party. Comments are requested by March 10, 2014.

Notice 2013–79, page 653.

This notice requests comments from the public on a proposed revision to Rev. Proc. 2006–9, the procedural guidance to taxpayers on filing advance pricing agreement (“APA”) requests and on the administration of APAs. Comments are requested by March 10, 2014.

Finding Lists begin on page ii.



The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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 December 2013. See Rev. Rul. 2013–26, page 628.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2013. See Rev. Rul. 2013–26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

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

T.D. 9641

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

Reduction or Suspension of Safe Harbor Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains amendments to regulations relating to certain cash or deferred arrangements under section 401(k) and matching contributions and employee contributions under section 401(m). These regulations provide guidance on permitted mid-year reductions or

suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009. These regulations also revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015. The regulations affect administrators of, employers maintaining, participants in, and beneficiaries of certain defined contribution plans that satisfy the nondiscrimination tests of section 401(k) and section 401(m) using one of the design-based safe harbors.

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

Applicability Date: These regulations generally apply to amendments adopted after May 18, 2009. The amendments to the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions apply for plan years beginning on or after January 1, 2015.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2191. The collection of information in these final regulations is in §1.401(k)–3(g)(2) and §1.401(m)–3(h)(2). The collection of information relates to the new supplemental notice requirements in the case of a reduction or suspension of safe harbor nonelective or matching contributions and the requirement to include additional information in the notice required by §§1.401(k)–3(d), 1.401(k)–3(g), and 1.401(m)–3(h) for certain plans that would be permitted to reduce or suspend safe harbor nonelective or matching contributions for a plan year even if the employer had not experienced a business

hardship. The likely recordkeepers are businesses and other for-profit institutions, nonprofit institutions, and State and local governments.

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 26 U.S.C. 6103.

Background

This document contains amendments to regulations under sections 401(k) and 401(m) of the Internal Revenue Code. Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)–1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of requirements. For example, contributions under the CODA must satisfy either the nondiscrimination test set forth in section 401(k)(3), called the actual deferral percentage (ADP) test, or one of the design-based alternatives in section 401(k)(11), 401(k)(12), or 401(k)(13). Under the ADP test, the average percentage of compensation deferred for eligible highly compensated employees (HCEs) is compared to the average percentage of compensation

deferred for eligible nonhighly compensated employees (NHCEs), and, if certain deferral percentage limits are exceeded with respect to HCEs, corrective action must be taken.

Section 401(k)(12) provides a design-based safe harbor method under which a CODA is treated as satisfying the ADP test if the arrangement meets certain contribution and notice requirements. A plan satisfies this designed-based safe harbor method if the employer makes specified qualified matching contributions (QMACs) for all eligible NHCEs. The employer can make QMACs under a basic matching formula that provides for QMACs on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 3% of compensation, and 50% of the employee's elective contributions that exceed 3% but do not exceed 5% of compensation. Alternatively, the employer can make QMACs under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of QMACs that is at least as generous as under the basic matching formula, but only if the rate of QMACs under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In lieu of QMACs, the plan is permitted to provide qualified nonelective contributions (QNECs) equal to 3% of compensation for all eligible NHCEs. In addition, under the design-based safe harbor methods, notice must be provided to each eligible employee, within a reasonable period before the beginning of the plan year, of the employee's rights and obligations under the plan.

Section 401(k)(13), as added by section 902 of the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), provides an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level and meets certain requirements, including employer contribution and notice requirements. Similar to the design-based safe harbor under section 401(k)(12), section 401(k)(13) provides an employer the choice between satisfying a matching contribution requirement or a nonelective contribution requirement. Under the

matching contribution requirement, the employer can make matching contributions under a basic matching formula that provides for matching contributions on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 1% of compensation and 50% of the employee's elective contributions that exceed 1% but do not exceed 6% of compensation. Alternatively, the employer can make matching contributions under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of matching contributions that is at least as generous as under the basic matching formula, but only if the rate of matching contributions under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In addition, the plan must satisfy a notice requirement under section 401(k)(13) that is similar to the notice requirement under section 401(k)(12).

Section 401(m) sets forth a nondiscrimination requirement that applies to a plan providing for matching contributions or employee contributions. Such a plan must satisfy either the nondiscrimination test set forth in section 401(m)(2), called the actual contribution percentage (ACP) test, or one of the design-based alternatives in section 401(m)(10), 401(m)(11), or 401(m)(12). The ACP test in section 401(m)(2) is comparable to the ADP test in section 401(k)(3).

Under section 401(m)(11), a defined contribution plan is treated as satisfying the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(12) and certain other requirements are satisfied. Similarly, under section 401(m)(12), as added by section 902 of PPA '06, a defined contribution plan that provides for automatic contributions at a specified level is treated as meeting the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(13) and certain other requirements are satisfied.

Final regulations under sections 401(k) and 401(m) were published on December 29, 2004. Sections 1.401(k)-3 and

1.401(m)-3 set forth the requirements for a safe harbor plan under sections 401(k)(12) and 401(m)(11), respectively. On February 24, 2009, final regulations reflecting sections 401(k)(13) and 401(m)(12) were published in the **Federal Register** (74 FR 8200).

Sections 1.401(k)-3(e)(1) and 1.401(m)-3(f)(1) provide that, subject to certain exceptions, a safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year. Accordingly, if, at the beginning of the plan year, a plan contains an allocation formula that includes safe harbor matching or safe harbor nonelective contributions, then the plan may not be amended to revert to ADP or ACP testing for the same plan year (except to the extent permitted under §§1.401(k)-3 and 1.401(m)-3). Sections 1.401(k)-3(g) and 1.401(m)-3(h) set forth the requirements (including a notice and timing requirement) that must be satisfied in order for a plan that satisfies the ADP and ACP tests using safe harbor matching contributions to be amended during the plan year to reduce or suspend such contributions and to satisfy ADP and ACP tests using the current year testing method. Sections 1.401(k)-3(f) and 1.401(m)-3(g) set forth the requirements that must be satisfied (including a notice requirement) in order for a plan to be amended after the first day of the plan year to provide that it will satisfy the ADP and ACP tests for that year using safe harbor nonelective contributions, effective as of the first day of that plan year.

Sections 1.401(k)-3(e)(4) and 1.401(m)-3(f)(4) provide that, if a plan terminates during a plan year, the plan will not fail to satisfy the requirements of §§1.401(k)-3(e)(1) and 1.401(m)-3(f)(1) merely because the final plan year is less than 12 months, provided that the plan satisfies the requirements of §§1.401(k)-3 and 1.401(m)-3 through the date of termination and certain other conditions are satisfied (for example, the termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(d)).¹

¹The definition of substantial business hardship in section 412(d) was relocated to become part of section 412(c) by section 111 of PPA '06.

On May 18, 2009, proposed regulations under sections 401(k) and 401(m) were published in the **Federal Register** (74 FR 23134), which would permit the mid-year reduction or suspension of safe harbor nonelective contributions in certain circumstances. Written comments were received on the proposed regulations, and a public hearing was held September 23, 2009. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted in the *Summary of Comments and Explanation of Revisions*.

Summary of Comments and Explanation of Revisions

The proposed regulations would have required, as a condition of the permitted reduction or suspension of safe harbor nonelective contributions, that the employer incur a substantial business hardship (comparable to a substantial business hardship described in section 412(c)). Several commentators requested that the substantial business hardship requirement be eliminated as a condition of the reduction or suspension. The commentators argued that there were insufficient policy reasons for the rules permitting the reduction or suspension of safe harbor nonelective contributions to be stricter than the rules permitting the reduction or suspension of safe harbor matching contributions, that the determination of whether the employer satisfies each of the elements of the section 412(c) definition of substantial business hardship is unnecessarily burdensome, and that employers will not have certainty that they satisfy the substantial business hardship requirements.

The final regulations make two changes in response to these concerns about demonstrating compliance with the requirement that the employer incur a substantial business hardship (comparable to a substantial business hardship described in section 412(c)). First, the requirement has been modified by replacing the standard in the proposed regulations that the employer have a substantial business

hardship (as described in section 412(c)) with a standard that the employer be operating at an economic loss as described in section 412(c)(2)(A). This new standard eliminates the requirement to determine the health of the industry (as described in section 412(c)(2)(B) and (C)) or whether the reduction or suspension of safe harbor nonelective contributions is needed so that the plan will continue (as described in section 412(c)(2)(D)). Second, the final regulations permit an employer to reduce or suspend safe harbor nonelective contributions without regard to the financial condition of the employer if notice is provided to participants before the beginning of the plan year which discloses the possibility that the contributions might be reduced or suspended mid-year. The notice must also provide that a supplemental notice will be provided to plan participants if a reduction or suspension does occur and that the reduction or suspension will not apply until at least 30 days after the supplemental notice is provided. These regulations do not alter the existing ability of a safe harbor plan to use a contingent notice (as described in §1.401(k)-3(f)(2)) before the beginning of the plan year where the contingent notice indicates that the plan may be amended during the plan year to include safe harbor nonelective contributions and that, if the plan is amended, a follow-up notice will be provided.

In order to achieve uniformity between the rules that apply to a mid-year reduction or suspension of safe harbor matching contributions and the rules that apply to a mid-year reduction or suspension of safe harbor nonelective contributions, the final regulations modify the rules that apply to mid-year amendments reducing or suspending safe harbor matching contributions so that the requirements that apply to a mid-year reduction or suspension of safe harbor nonelective contributions are not stricter than those that apply to a mid-year reduction or suspension of safe harbor matching contributions. Thus, safe harbor matching contributions may be reduced or suspended under a mid-year amendment only if either (i) the employer is operating at an economic loss as described in section 412(c)(2)(A), or (ii) the notice pro-

vided to participants before the beginning of the plan year discloses that the contributions might be reduced or suspended mid-year, that participants will receive a supplemental notice if that occurs, and that the reduction or suspension will not apply until at least 30 days after the supplemental notice is provided. Because this requirement is a new limitation on the ability of an employer to amend its plan to reduce or suspend safe harbor matching contributions, the change is first effective for plan years beginning on or after January 1, 2015.²

The final regulations also provide that guidance of general applicability published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b)) may set forth additional situations in which a plan that includes provisions satisfying the requirements of §1.401(k)-3 will not fail to satisfy the requirements of section 401(k) for a plan year even if the plan is amended during the plan year to implement a mid-year change to those provisions. This will provide the IRS with greater flexibility to develop rules to address special circumstances under which a mid-year change to a section 401(k) safe harbor plan is appropriate, such as an amendment to the plan in connection with a mid-year corporate transaction. This flexibility also extends to mid-year changes to a safe harbor plan under section 401(m) of the Code.

Under the proposed regulations, the reduction or suspension of safe harbor nonelective or matching contributions could not be effective “earlier than the later of 30 days after eligible employees are provided the supplemental notice . . . and the date the amendment is adopted.” The final regulations clarify the intention that the reduction or suspension cannot be effective earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice. Thus, the minimum 30-day waiting period applies solely with respect to the date the supplemental notice is provided and not the date the amendment is adopted.

The preamble to the proposed regulations stated that a plan that is amended during the plan year to reduce or suspend safe

²The preamble to the proposed regulations indicated that the IRS and Treasury were considering adding a requirement that employers provide advance notice regarding the possibility of reduced or suspended safe harbor contributions.

harbor contributions (whether nonelective contributions or matching contributions) must prorate the otherwise applicable compensation limit under section 401(a)(17) in accordance with the requirements of §1.401(a)(17)–1(b)(3)(iii)(A). Some commentators asked for clarification as to how these rules apply. Such an explanation of the application of the rules of section 401(a)(17) is beyond the scope of these section 401(k) and (m) regulations.

Some commentators requested that the regulations permitting a mid-year amendment reducing or suspending safe harbor nonelective contributions apply with respect to amendments adopted before the proposed regulations were published in the Federal Register. Because the regulations in effect before the proposed regulations were published clearly prohibited such a plan amendment, any employer that adopted such a plan amendment violated the rules applicable under section 401(k) and, if applicable, section 401(m). The Employee Plans Compliance Resolution System (EPCRS) provides a method to correct such a violation. See Appendix A.05(2)(d)(iii) of Rev. Proc. 2013–12 (2013–4 I.R.B. 313, 367), see §601.601(d)(2).

Applicability Dates

These regulations generally apply to amendments adopted after May 18, 2009, the effective date previously provided in the proposed regulations. The amendments to the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions apply for plan years beginning on or after January 1, 2015.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that small employers that take advantage of the provisions in these regulations will likely see a modest reduction in

the cost of providing pensions to their employees. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are William D. Gibbs and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

* * * * *

Adoption of amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the sectional authority for § 1.401(k)–3 to read as follows:

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

Section 1.401(k)–3 is also issued under 26 U.S.C. 401(m)(9).

Par. 2. Section 1.401(k)–0 is amended by revising the entries for §1.401(k)–3(g), (g)(1) and (g)(2) to read as follows:

§1.401(k)–0. Table of contents.

* * * * *

§1.401(k)–3 Safe harbor requirements.

* * * * *

(g) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 3. Section 1.401(k)–3 is amended by:

1. Revising the second sentence in paragraph (e)(1).
2. Revising paragraphs (e)(4)(i) and (e)(4)(ii).
3. Revising paragraph (g).

The revisions read as follows:

§1.401(k)–3 Safe harbor requirements.

* * * * *

(e) * * * (1) * * * In addition, except as provided in paragraph (g) of this section or in guidance of general applicability published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), a plan which includes provisions that satisfy the rules of this section will not satisfy the requirements of §1.401(k)–1(b) if it is amended to change such provisions for that plan year. * * *

* * * * *

(4) * * *

(i) The plan would satisfy the requirements of paragraph (g) of this section, treating the termination of the plan as a reduction or suspension of safe harbor contributions, other than the requirements of paragraph (g)(1)(i)(A) or (g)(1)(ii)(A) of this section (relating to the employer's financial condition and information included in the initial notice for the plan year) and paragraph (g)(1)(i)(D) or (g)(1)(ii)(D) of this section (requiring that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections); or

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship comparable to a substantial business hardship described in section 412(c).

* * * * *

(g) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions*. A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions (and, if applicable, employee contributions) provided that—

(A) In the case of plan years beginning on or after January 1, 2015, the employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor matching contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions.* For amendments adopted after May 18, 2009, a plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section for the plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer either—

(1) Is operating at an economic loss, as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice.* The supplemental notice requirement of this paragraph (g)(2) is satisfied if each eligible employee is given a notice (in writing or such other form as prescribed by the Commissioner) that explains—

(i) The consequences of the amendment that reduces or suspends future safe harbor contributions;

(ii) The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and

(iii) The effective date of the amendment.

* * * * *

Par. 4. Section 1.401(m)-0 is amended by revising the entries for §1.401(m)-3(h), (h)(1) and (h)(2), and adding entries for §1.401(m)-3(h)(1)(i) and (h)(1)(ii), to read as follows:

§1.401(m)-0 Table of contents.

* * * * *

§1.401(m)-3 Safe harbor requirements.

* * * * *

(h) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 5. Section 1.401(m)-3 is amended by:

1. Revising the second sentence in paragraph (f)(1).
2. Revising paragraphs (f)(4)(i) and (f)(4)(ii).
3. Revising paragraph (h).

The revisions read as follows:

§1.401(m)-3 Safe harbor requirements.

* * * * *

(f) * * * (1) * * * In addition, except as provided in paragraph (h) of this section or in guidance of general applicability published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), a plan which includes provisions that satisfy the rules of this section will not satisfy the requirements of §1.401(m)-1(b) if it is amended to change such provisions for that plan year. * * *

* * * * *

(4) * * *

(i) The plan would satisfy the requirements of paragraph (h) of this section, treating the termination of the plan as a reduction or suspension of safe harbor contributions, other than the requirements of paragraph (h)(1)(i)(A) or (h)(1)(ii)(A) of this section (relating to the employer's financial condition and information included in the initial notice for the plan year) and paragraph (h)(1)(i)(D) or (h)(1)(ii)(D) of this section (requiring that employees have a reasonable opportunity

to change their cash or deferred elections and, if applicable, employee contribution elections); or

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship, comparable to a substantial business hardship described in section 412(c).

* * * * *

(h) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions*. A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(m)(2) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective deferrals (and, if applicable, employee contributions) provided that—

(A) In the case of plan years beginning on or after January 1, 2015, the employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (e) of this section, a statement that the plan may be amended during the plan year to reduce or suspend safe harbor matching contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (h)(2) of this section;

(C) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(m)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions*. For plan amendments adopted after May 18, 2009, a plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section will not fail to satisfy the requirements of section 401(m)(2) for the plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (e) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (h)(2) of this section;

(C) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(m)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice*. The supplemental notice requirement of this paragraph (h)(2) is satisfied if each eligible employee is given a notice that satisfies the requirements of §1.401(k)-3(g)(2).

* * * * *

Beth Tucker,
*Deputy Commissioner for
Operations Support.*

Approved June 17, 2013

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

(Filed by the Office of the Federal Register on November 14, 2013, 8:45 a.m., and published in the issue of the Federal Register for November 15, 2013, 78 F.R. 68735)

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2013. See Rev. Rul. 2013-26, page 628.

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 December 2013. See Rev. Rul. 2013-26, page 628.

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 December 2013. See Rev. Rul. 2013-26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2013. See Rev. Rul. 2013–26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

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.)

Rev. Rul. 2013–26

This revenue ruling provides various prescribed rates for federal income tax pur-

poses for December 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%. 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. Finally, Table 6 contains the 2014 interest rate for sections 846 and 807.

REV. RUL. 2013–26 TABLE 1
Applicable Federal Rates (AFR) for December 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	1.65%	1.64%	1.64%	1.63%
110% AFR	1.81%	1.80%	1.80%	1.79%
120% AFR	1.98%	1.97%	1.97%	1.96%
130% AFR	2.14%	2.13%	2.12%	2.12%
150% AFR	2.48%	2.46%	2.45%	2.45%
175% AFR	2.89%	2.87%	2.86%	2.85%
<i>Long-term</i>				
AFR	3.32%	3.29%	3.28%	3.27%
110% AFR	3.65%	3.62%	3.60%	3.59%
120% AFR	3.99%	3.95%	3.93%	3.92%
130% AFR	4.33%	4.28%	4.26%	4.24%

REV. RUL. 2013–26 TABLE 2

Adjusted AFR for December 2013

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.25%	.25%	.25%	.25%
Mid-term adjusted AFR	1.57%	1.56%	1.56%	1.55%
Long-term adjusted AFR	3.32%	3.29%	3.28%	3.27%

REV. RUL. 2013–26 TABLE 3

Rates Under Section 382 for December 2013

Adjusted federal long-term rate for the current month	3.32%
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.)	3.50%

REV. RUL. 2013–26 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for December 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	3.25%

REV. RUL. 2013–26 TABLE 5

Rate Under Section 7520 for December 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%
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REV. RUL. 2013–26 TABLE 6

Rates Under Sections 846 and 807

Applicable rate of interest for 2014 for purposes of sections 846 and 807	1.79%
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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 December 2013. See Rev. Rul. 2013–26, page 628.

Section 3402.—Income Tax Collected at Source

Dividends and other distributions made by an Alaska Native Corporation to its shareholders are eligible for voluntary withholding under section 3402(p)(3)(B) of the Internal Revenue Code (Code) and § 31.3402(p)-1T of the Employment Tax Regulations. See Notice 2013–77 on page 632.

Section 3402.—Income Tax Collected at Source

Temporary and proposed regulations under section 3402(p)(3) relating to voluntary withholding agreements allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The proposed regulations also clarify that existing regulations under section 3402(p) apply to voluntary withholding agreements between employers and employees. See T.D. 9646 on page 630 and REG–146620–13 on page 674.

Section 3402.—Income Tax Collected at Source

T.D. 9646

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 31

Authority for Voluntary Withholding on Other Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. The regulations allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin. These temporary regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: *Effective Date:* These regulations are effective on November 27, 2013.

Applicability date: For date of applicability, see §31.3402(p)–1T(d).

FOR FURTHER INFORMATION

CONTACT: Linda L. Conway-Hataloski at (202) 317-6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages,

and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)–1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

Explanation of Provisions

These temporary regulations under section 31.3402(p)–1T allow the Secretary to describe other payments subject to voluntary withholding agreements in guidance to be published in the Internal Revenue Bulletin (IRB). The temporary regulations also provide that the IRB guidance will set forth requirements regarding the form and duration of the voluntary withholding agreement specific to the type of payment from which withholding is authorized.

Expanding the use of voluntary withholding agreements to payments designated by the Secretary as eligible for voluntary withholding will permit taxpayers to use the withholding regime (rather than the estimated tax payment process) to meet their tax payment obligations on a timely basis, minimize the risk of underpayment of taxes, and achieve administrative simplification for taxpayers and the IRS.

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 cross-reference notice of proposed rulemaking published elsewhere in this Bulletin. Pursuant to section 7805(f)

of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. §31.3402(p)–1T is added to read as follows:

§31.3402(p)–1T Voluntary Withholding Agreements (temporary).

(a)–(b) [Reserved] For further guidance, see §31.3402(p)–1(a) and (b).

(c) *Other payments.* The Secretary may issue guidance by publication in the Internal Revenue Bulletin (IRB) (which will be available at www.IRS.gov) describing other payments for which withholding under a voluntary withholding agreement would be appropriate and authorizing payors to agree to withhold income tax on such payments if requested by the payee. Requirements regarding the form and duration of voluntary withholding agreements authorized by this paragraph (c) will be provided in the IRB guidance issued regarding specific types of payments.

(d) *Effective/applicability date.* (1) This section applies on and after November 27, 2013.

(2) The applicability of this section expires on November 25, 2016.

John Dalrymple,
*Deputy Commissioner
for Services and Enforcement.*

Approved November 21, 2013

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

(Filed by the Office of the Federal Register on November 27, 2013, 8:45 a.m., and published in the issue of the Federal Register for November 29, 2013, 78 F.R. 71476)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2013. See Rev. Rul. 2013–26, page 628.

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 December 2013. See Rev. Rul. 2013–26, page 628.

Part III. Administrative, Procedural, and Miscellaneous

Voluntary Withholding on Dividends and Other Distributions by Alaska Native Corporations

Notice 2013-77

PURPOSE

Under this Notice, dividends and other distributions made by an Alaska Native Corporation to its shareholders are eligible for voluntary withholding under section 3402(p)(3)(B) of the Internal Revenue Code (Code) and § 31.3402(p)-1T of the Employment Tax Regulations.

BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, *et seq.*, was enacted as a means to resolve the issue of aboriginal land claims in Alaska. *See* 43 U.S.C. § 1601. The ANCSA required the division of Alaska into geographic regions and the incorporation of a Regional Corporation for each region. 43 U.S.C. §§ 1606(a) and (d). The ANCSA also authorized the incorporation of other corporations, including Village Corporations, Urban Corporations, and Group Corporations. 43 U.S.C. § 1607. Alaska Native Corporation (ANC) means any Regional, Village, Urban, or Group Corporation. 43 U.S.C. § 1602(m). ANCs are incorporated under the laws of Alaska to conduct business for profit, and are expressly authorized to promote the health, education, and welfare of their shareholders. 43 U.S.C. §§ 1606(d) and (r). To achieve these goals, the ANCSA authorizes the issuance of stock in ANCs to Natives as defined in 43 U.S.C. § 1602(b). The ANCSA permits the Native shareholders to receive dividends and other distributions from the ANCs. 43 U.S.C. §§ 1606(g) and (h)(1)(A)(ii).

Section 3402(p) of the Code allows for voluntary income tax withholding agreements in certain circumstances. Under section 3402(p)(3)(B), the Secretary may prescribe regulations to allow income tax withholding from any payment which the Secretary finds that withholding would be appropriate if the person making and the person receiving the payment agree to the

withholding. The agreement must be in the form and manner that the Secretary prescribes. For purposes of the income tax withholding provisions and the related procedural provisions in subtitle F of the Code, payments made during the period for which a voluntary withholding agreement is in effect are treated as if they were wages paid by an employer to an employee.

The Internal Revenue Service (IRS) has become aware that ANCs and their shareholders may benefit from the ability to enter into voluntary withholding agreements. Specifically, expanding the use of voluntary withholding agreements to dividends and other distributions made by an ANC to its shareholders will permit the shareholders to use the withholding regime (rather than the estimated tax payment process) to meet their tax payment obligations on a timely basis, will minimize the risk of underpayment of taxes, and will achieve administrative simplification for the shareholders and the IRS.

Section 31.3402(p)-1T(c), which is effective on November 27, 2013, allows the Secretary to describe payments subject to voluntary withholding agreements in guidance to be published in the Internal Revenue Bulletin (IRB). The temporary regulations also provide that the requirements regarding the form and duration of the authorized voluntary withholding agreements will be provided in the IRB guidance issued regarding specific types of payments. This Notice is guidance meeting the requirements of § 31.3402(p)-1T(c).

ANC PAYMENTS SUBJECT TO VOLUNTARY WITHHOLDING

An ANC and any shareholder of the ANC may enter into an agreement for voluntary withholding under section 3402(p)(3)(B). Thus, dividends and other distributions paid by an ANC to a shareholder will be subject to voluntary income tax withholding under section 3402(p)(3)(B) if the shareholder requests the withholding and the ANC agrees to withhold.

The IRS designates Form W-4V, *Voluntary Withholding Request*, as the form a shareholder of an ANC should use to request income tax withholding from dividends or other distributions made to the

shareholder by an ANC. Accordingly, a shareholder of an ANC who desires to enter into a voluntary withholding agreement under section 3402(p)(3)(B) should furnish the ANC with a completed Form W-4V. The shareholder should select the applicable percentage of withholding from those specified on line 6 of the Form W-4V (currently, 7 percent, 10 percent, 15 percent, or 25 percent). The furnishing of a completed Form W-4V constitutes a request for withholding.

The IRS intends to revise Form W-4V to specifically reflect the withholding authorized by this Notice. In the interim, shareholders of an ANC may use the current Form W-4V available at www.irs.gov annotated as appropriate, or any other written instrument containing the necessary information.

No request for withholding under section 3402(p)(3)(B) is effective as an agreement between an ANC and its shareholder until the ANC indicates to the shareholder that it accepts the request, whether by providing a written notice of acceptance or by commencing withholding. Under section 3403 of the Code, the ANC will be liable for any tax it is required to deduct and withhold pursuant to a voluntary withholding agreement. An agreement under section 3402(p)(3)(B) applies for such period as the ANC and its shareholder mutually agree upon or until either the ANC or the shareholder terminate the agreement by furnishing a signed written notice to the other. For purposes of the preceding sentence, a shareholder should submit a revised Form W-4V to the ANC to effectuate a termination.

EFFECTIVE DATE

This Notice applies on and after November 27, 2013.

DRAFTING INFORMATION

The principal author of this Notice is Linda L. Conway-Hataloski of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For questions regarding this Notice, contact Linda L. Conway-Hataloski at (202) 317-6798 (not a toll-free call).

Proposed Revision of Procedures for Requesting Competent Authority Assistance Under Tax Treaties

Notice 2013-78

PURPOSE

This notice proposes a revenue procedure that would update and supersede Rev. Proc. 2006-54, 2006-2 C.B. 1035. The proposed

revenue procedure would provide guidance on requesting assistance from the U.S. competent authority, acting through the Advance Pricing and Mutual Agreement program and the Treaty Assistance and Interpretation Team, under the provisions of U.S. tax treaties. It would also provide guidance on determinations the U.S. competent authority may make on competent authority issues.

The proposed revenue procedure would substantially restate Rev. Proc. 2006-54 to improve clarity, readability, and organization. The proposed revenue

procedure also would reflect structural changes undertaken by the IRS since 2006, including the establishment of the Large Business & International Division, which currently includes the office of the U.S. competent authority, and of separate offices under the U.S. competent authority to handle taxpayer requests for different types of competent authority assistance.

Additionally, the proposed revenue procedure would effect a limited number of significant substantive changes. These changes may be summarized as follows:

Section of Proposed Update to Rev. Proc. 2006-54	Nature of Addition or Changes
2.02	Clarifies that competent authority issues may arise as a result of taxpayer-initiated positions.
2.05 and 2.06	Makes clear that the offices of the U.S. competent authority are available, whether or not in the course of the mutual agreement process, for informal consultations on competent authority-related issues, including informal consultations regarding the steps necessary to achieve greater certainty that a foreign tax paid, or to be paid, will qualify as a compulsory payment for foreign tax credit purposes.
2.07	Recognizes that a mutual agreement case may arise where the U.S. competent authority notifies a foreign competent authority on a U.S.-initiated case raising competent authority issues. Further recognizes that the U.S. competent authority can expand the scope of a mutual agreement case to include additional treaty countries, competent authority issues, or taxable years.
2.10	Elaborates on potential interactions of requests for competent authority assistance and advance pricing agreements.
3.02	Provides new pre-filing procedures applicable to mutual agreement cases, including mandatory submission of a pre-filing memorandum in cases raising certain issues.
3.04	Clarifies that a request for competent authority assistance generally will not be accepted if barred by tax treaty provisions imposing time limits for seeking assistance.
3.05(1)	Establishes an appendix listing standard specifications for the content of a request for competent authority assistance in various types of cases.
3.07	Specifies that the U.S. competent authority accepts requests for assistance with respect to certain foreign pension plan determinations.
3.08	Provides for e-mail communications between the U.S. competent authority and a taxpayer's representative pursuant to a memorandum of understanding executed by the taxpayer.
4	Provides new streamlined procedures for invoking the accelerated competent authority procedure without consent of an office conducting examinations.
5.01	Generally subjects small case requests to the same requirements as other requests, subject to case-by-case minimization of administrative burdens.
5.02	Increases dollar thresholds for small case qualification to \$5,000,000 for a corporation or partnership and \$1,000,000 for others.
6.01	Clarifies procedures for notification of receipt of a request for competent authority assistance.
6.02(2)	Specifies an example of an unreasonable taxpayer condition to acceptance of a competent authority resolution, resulting in denial of assistance.
6.02(6)(b) – (d) and 6.02(8) – (12)	States additional bases for denying U.S. competent authority assistance.
7	Describes various aspects of U.S. competent authority consultations and other actions once a request for assistance is filed, including consultation requirements in treaty limitation-on-benefits provisions, the possibility of requiring withdrawal of a U.S.-initiated adjustment, and taxpayer requests to make a joint presentation to the U.S. and foreign competent authorities.
8.01	Specifies that the Simultaneous Appeals Procedure is the primary means for obtaining IRS Appeals and U.S. competent authority review of the same issue.

8.02	Limits the time frame for invoking Simultaneous Appeals Procedure review to within 60 days after notification of acceptance of request for assistance.
9.01	Provides that the U.S. competent authority will not accept a request for assistance if the taxpayer has entered into a prior resolution with the IRS office conducting the taxpayer's examination unless the U.S. competent authority agreed in writing to the prior resolution.
9.02	Provides, subject to a limited exception, that the U.S. competent authority will not accept a request for assistance if the taxpayer seeks IRS Appeals review of a competent authority issue.
9.03(1)	Clarifies the procedures applicable to accepting, or continuing to consider, a request for U.S. competent authority assistance when a matter is pending in litigation.
10.01 and 10.04	Describes conditions for finality of resolutions reached by the U.S. competent authority and discusses notification to the taxpayer where no resolution is reached with respect to a foreign-initiated adjustment.
11	Restates and revises U.S. competent authority procedures with respect to repatriation payments made in the mutual agreement context.
12	Describes basic procedures applicable where a tax treaty contains a provision for mandatory arbitration.
14	Provides procedures applicable to required notifications under some treaties that a taxpayer has requested competent authority assistance of the other treaty partner.
16.02	Reflects that the amount of the user fee for requests for discretionary relief with respect to limitation on benefits has been increased to \$27,500. <i>See</i> Rev. Proc. 2013-1, 2013-1 I.R.B. 1.

The IRS and the Treasury Department request comments on this proposed revenue procedure. Comments may be submitted in writing on or before March 10, 2014. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2013-78), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2013-78" in

the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2013-78), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

Following the issuance of the revenue procedure proposed in this notice, the IRS

intends to update Rev. Proc. 2006-23, 2006-1 C.B. 900, which provides similar guidance in obtaining competent authority assistance with respect to the U.S. territories. The update to Rev. Proc. 2006-23 will be generally consistent with the provisions of such final revenue procedure.

The procedures for requesting competent authority assistance under tax treaties are proposed to be revised as follows:

PROPOSED REVENUE PROCEDURE

Procedures for Requesting Competent Authority Assistance Under Tax Treaties
26 CFR 601.201: Rulings and determination letters.

Rev. Proc. [2014-XX]

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION.

SECTION 2. PURPOSE, BACKGROUND, SCOPE, AND GENERAL APPLICATION.

SECTION 3. PROCEDURES FOR REQUESTING ASSISTANCE FROM THE U.S. COMPETENT AUTHORITY.

SECTION 4. ACCELERATED COMPETENT AUTHORITY PROCEDURE.

SECTION 5. SMALL CASE MAP REQUESTS

SECTION 6. NOTIFICATION OF RECEIPT AND DENIAL OF ASSISTANCE

SECTION 7. CONSULTATIONS AND OTHER ACTIONS BY THE U.S. COMPETENT AUTHORITY

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

SECTION 9. INTERACTION AND COORDINATION WITH OTHER ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

SECTION 10. RESULTS OF MAP CASE.

SECTION 11. MAP REPATRIATION

SECTION 12. ARBITRATION

SECTION 13. PROTECTIVE CLAIMS

SECTION 14. TREATY NOTIFICATIONS.

SECTION 15. REQUESTS FOR RULINGS.

SECTION 16. USER FEES

SECTION 17. EFFECT ON OTHER DOCUMENTS

SECTION 18. EFFECTIVE DATE

SECTION 19. PAPERWORK REDUCTION ACT

SECTION 20. DRAFTING INFORMATION.

APPENDIX

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

.01 *Definitions.* For purposes of this revenue procedure, the following terms have the meanings set forth in this section.

ACAP	Accelerated competent authority procedure (<i>see</i> section 4)
ACAP request	A request to include ACAP years in a MAP case
ACAP years	Taxable years covered by an ACAP request or eligible for ACAP
Ancillary issues	Subsidiary issues eligible for coverage by a MAP resolution, including MAP repatriation (<i>see</i> section 11), interest on refunds and deficiencies, penalties with respect to U.S.-initiated adjustments, and the determination of whether a payment is compulsory for foreign tax credit purposes as provided in Treas. Reg. §1.901-2(e)(5)
APA	An advance pricing agreement within the meaning of Rev. Proc. 2014-YY
APA process	The steps involved in the process of reaching an APA, as described in Rev. Proc. 2014-YY
APA request	A request for an APA filed under Rev. Proc. 2014-YY
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority and one of the divisions of TPO
Applicant	A taxpayer making a request for discretionary LOB relief
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain MAP cases (<i>see</i> section 12)
Bilateral APA	A bilateral APA as defined in Rev. Proc. 2014-YY
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Controlled group	The group of controlled taxpayers (as that term is defined in Treas. Reg. §1.482-1(i)) of which the taxpayer filing the MAP request is a member
Discretionary LOB relief	A determination issued by the U.S. competent authority extending treaty benefits to a taxpayer that fails to meet any of the objective tests of an LOB article of a U.S. tax treaty
Examination resolution	A resolution with IRS Examination on a U.S.-initiated adjustment that is memorialized in a Fast Track Settlement Session Report, a Form 870 waiver, a Form 870-AD offer, a closing agreement, or any other similar agreement
Fast Track Settlement	The program set forth in Rev. Proc. 2003-40, 2003-1 C.B. 1044, or successor guidance
Foreign competent authority	The competent authority of a treaty country
Foreign pension fund	A pension fund that is a resident of a treaty country
Foreign-initiated adjustment	A proposed or final adjustment to a filed tax return made by the tax authority of a treaty country
Global trading arrangement	Any arrangement involving multiple associated enterprises or business unit(s) of an enterprise that operate in more than one country and that trade or deal in securities and/or other financial products, either on their own behalf or on behalf of clients. Global trading arrangements may encompass functions ancillary to the foregoing activities
Intangible development arrangement	Any arrangement for sharing the costs and risks of developing intangibles, including a cost sharing arrangement as defined in Treas. Reg. §1.482-7, a qualified cost sharing arrangement as defined in Treas. Reg. §1.482-7A (collectively, a “CSA”), and an arrangement (other than a CSA) for sharing the costs and risks of developing intangibles to which the consideration of the principles, methods, comparability, and reliability considerations set forth in Treas. Reg. §1.482-7 are relevant in determining the best method, under Treas. Reg. §1.482-4(g) or Treas. Reg. §1.482-9(m)(3), as appropriately adjusted in light of the differences in facts and circumstances between such an arrangement and a CSA. <i>See also</i> Treas. Reg. §1.482-1(b)(2)(iii)
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns and ascertaining the correctness of any return for purposes of determining the tax liability of taxpayers
LB&I	Large Business & International Division of the IRS
LOB	Limitation on benefits

MAP	Actions taken by the U.S. competent authority and consultations between the U.S. and foreign competent authorities under U.S. tax treaties, principally under the mutual agreement procedure article
MAP case	A case initiated by a MAP request or by the U.S. competent authority involving one or more MAP issues in a given MAP year or set of years
MAP issue	An issue that can be resolved by the U.S. competent authority, principally under the mutual agreement procedure article of a U.S. tax treaty
MAP process	All steps in the process of reaching a MAP resolution, including steps to comply with applicable pre-filing requirements
MAP repatriation	The treatment of repatriation payments pursuant to a MAP resolution (<i>see</i> section 11)
MAP request	A request for assistance of the U.S. competent authority filed under this revenue procedure
MAP resolution	The resolution of MAP issues constituting a MAP case
MAP year	A taxable year for which a tax return has been filed that is not an ACAP year and in which a MAP issue has arisen that is the subject of a MAP case
Multilateral APA	A multilateral APA as defined in Rev. Proc. 2014–YY
Non-U.S.-initiated action	A foreign-initiated adjustment or a taxpayer-initiated position
Pre-filing conference	A conference held with the U.S. competent authority before a MAP request is filed
Pre-filing memorandum	A memorandum or similar paper submitted to the U.S. competent authority before a MAP request is filed
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences
Primary adjustment	An adjustment falling under the associated enterprises article of a U.S. tax treaty or an analogous adjustment made pursuant to a taxpayer-initiated position that is the subject of a MAP case
Protective claim	A notification to the U.S. competent authority described by section 13.02(1)
Regulations	U.S. Treasury regulations promulgated under the Code
Repatriation payment	A payment (within the meaning of section 4.01 of Rev. Proc. 99–32, 1999–2 C.B. 296) or a prepayment offset (within the meaning of section 4.02 of Rev. Proc. 99–32) made with respect to and not exceeding the amount of a primary adjustment
SAP review	The review of a MAP issue undertaken by IRS Appeals for the purpose of making a recommendation to the U.S. competent authority under the Simultaneous Appeals Procedure (<i>see</i> section 8)
Session report	The Fast Track Settlement Session Report within the meaning of the term set forth in Rev. Proc. 2003–40, 2003–1 C.B. 1044, or successor guidance
Small case MAP request	A MAP request involving a U.S.- or foreign-initiated adjustment that falls below the dollar thresholds set forth in section 5
TAIT	The Treaty Assistance and Interpretation Team, a representative office of the U.S. competent authority, which reports directly to the Assistant Deputy Commissioner (International)
Taxpayer	A U.S. person, as defined in section 7701(a)(30) of the Code, or a non-U.S. person eligible to seek competent authority assistance when permitted by the applicable U.S. tax treaty
Taxpayer-initiated position	A position taken by a taxpayer (not in response to a proposed or actual adjustment by the IRS or a similar action by a foreign tax authority) with respect to a tax liability in the United States or in a treaty country that directly or indirectly results in double taxation
TPO	Transfer Pricing Operations, which reports to the Deputy Commissioner (International), LB&I
Treaty country	A country other than the United States that has a U.S. tax treaty in force
Treaty notification	The notification by a taxpayer to a competent authority, required under certain U.S. tax treaties, that a request for competent authority assistance has been made to the other competent authority, in particular such a notification submitted to the U.S. competent authority in the manner and circumstances set forth in section 14
U.S. competent authority	The Deputy Commissioner (International), LB&I, the Assistant Deputy Commissioner (International), and each other IRS official performing competent authority functions pursuant to applicable delegation orders
U.S. tax treaty	A convention governing income, estate, or gift taxes to which the United States is a party and that has entered into force, together with its implementing protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements
U.S.-initiated adjustment	A proposed or final adjustment made by the IRS to a tax return filed by a taxpayer

.02 *Section References.* Unless indicated by context or otherwise, section references are to the sections of this revenue procedure (including the appendix).

.03 *Deadline References.* If a deadline under this revenue procedure falls on a Saturday, Sunday, or a legal holiday in the District of Columbia, the deadline is extended to the next succeeding day that is not a Saturday, Sunday, or a legal holiday in the District of Columbia.

SECTION 2. PURPOSE, BACKGROUND, SCOPE, AND GENERAL APPLICATION

.01 *Purpose.* This revenue procedure provides guidance on filing MAP requests and guidance on determinations the U.S. competent authority may make on MAP issues. This revenue procedure updates and supersedes Rev. Proc. 2006–54, 2006–2 C.B. 1035.

.02 *Background and Scope.* U.S. tax treaties, principally through the mutual agreement procedure article, permit taxpayers to request the assistance of the U.S. competent authority in alleviating double taxation or taxation otherwise not in accordance with such treaties. For example, U.S. tax treaties generally permit taxpayers to request assistance in order to relieve economic double taxation arising from an allocation under section 482 of the Code or an equivalent provision under the laws of a treaty country. U.S. tax treaties also authorize the U.S. and foreign competent authorities to consult each other to resolve other MAP issues. MAP issues typically arise as a result of U.S.- or foreign-initiated adjustments. MAP issues can also arise as a consequence of taxpayer-initiated positions. For procedures for requesting assistance of the U.S. competent authority when a taxpayer is or may be subject to inconsistent tax treatment by the IRS and a U.S. possession tax agency, see Rev. Proc. 2006–23, 2006–1 C.B. 900 (or successor guidance).

.03 *The U.S. Competent Authority.* The Deputy Commissioner (International), LB&I, is the U.S. competent authority. As such, the Deputy Commissioner (International) has the authority to apply U.S. tax treaties. The Deputy Commissioner (International) also has the authority to interpret the provisions of U.S. tax treaties, but only with the concurrence of the Associ-

ate Chief Counsel (International). The same authority has been delegated to the Assistant Deputy Commissioner (International), LB&I. See Delegation Order 4–12 (Rev. 2), IRM 1.2.43. Aspects of this authority have been delegated to the directors of the TPO and APMA.

.04 *Roles of APMA and TAIT.* In general, the U.S. competent authority endeavors to resolve MAP issues in a manner that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, and is otherwise consistent with sound tax administration. The U.S. competent authority comprises APMA and TAIT. APMA has primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. income tax treaties. TAIT has primary responsibility for cases arising under all other articles of U.S. income tax treaties, including, but not limited to, articles concerning residence, dividends, interest, royalties, income from employment, social security, annuities, pensions and pension funds, other income, and limitation on benefits. TAIT also handles cases arising under U.S. estate and gift tax treaties. APMA and TAIT each can consider cases arising under the permanent establishment articles of U.S. income tax treaties. Regardless of the specific treaty article or MAP issue that may be presented, APMA and TAIT will coordinate and collaborate as appropriate on any given case.

.05 *Informal Advice Generally.* As appropriate, APMA and TAIT will provide oral, informal advice to taxpayers, whether or not in the course of the MAP process, on general matters concerning MAP issues, including whether a MAP issue may exist. Any such informal advice is advisory and is not binding on the IRS.

.06 *Informal Consultation on Noncompulsory Payments for Foreign Tax Credit Purposes.* In the course of the MAP process or outside the MAP process, the issue of whether the taxpayer has exhausted all effective and practical remedies to reduce its liability under foreign law for tax (including, in appropriate cases, a request for competent authority assistance) within the meaning of Treas. Reg. §1.901–2(e)(5) and Rev. Rul. 92–75, 1992–2 C.B. 197, may be the subject of informal consultation with the U.S. competent authority. Taxpayers and their advisors must ultimately exercise their independent judgment in developing a posi-

tion on the extent to which effective and practical remedies have been exhausted in light of their particular facts and circumstances. To assist in consideration of this issue, the U.S. competent authority, through the offices of APMA and TAIT, is available to consult on these matters and, when appropriate, may provide oral, informal advice regarding necessary next steps. Any such informal advice is advisory and is not binding on the IRS. Further, when appropriate, APMA and TAIT will communicate with IRS Examination regarding these matters to ensure consistent and coordinated treatment. It is intended that, through such consultation processes, taxpayers and the U.S. competent authority can achieve greater insight into matters pertaining to the application and enforcement of foreign tax laws. Such consultation processes may also inform the U.S. competent authority in addressing these matters as ancillary issues in a MAP resolution.

.07 *General Requirements for MAP Requests.* The U.S. competent authority will consider the factors set forth in section 6 in determining whether to provide the assistance sought by the taxpayer in its MAP request. In no event will the U.S. competent authority provide assistance to the taxpayer unless and until: (1) the taxpayer has met the pre-filing requirements set forth in section 3.02, as applicable; (2) the MAP request as initially filed is complete, as described in section 3.05; and (3) the taxpayer has paid the correct user fee, if required. Where they exist, specific requirements regarding MAP requests set forth in U.S. tax treaties take precedence over the provisions of this revenue procedure.

.08 *Scope of MAP Cases.* Except as otherwise provided by this revenue procedure, law or treaty, the U.S. competent authority will provide assistance with respect to MAP issues and treaty countries identified in a taxpayer's MAP request. However, because the U.S. competent authority has a strong interest in resolving all potential MAP issues in a timely manner, APMA or TAIT may seek to initiate a MAP case in the absence of a MAP request or may require that the scope of a MAP case be expanded. Examples of such an expansion include adding treaty countries or MAP issues to the scope of the MAP case and extending the MAP case to include ACAP years (see section 4). Recognizing that foreign competent authori-

ties may have an interest in expediting bilateral or multilateral resolution of MAP issues, the U.S. competent authority under applicable exchange-of-information provisions of U.S. tax treaties may also notify foreign competent authorities of MAP cases that could arise out of anticipated U.S.-initiated adjustments. In such cases, the U.S. competent authority will also notify the affected taxpayers.

.09 *Closed Cases.* A case previously closed after examination will not be reopened in order to make an adjustment unfavorable to the taxpayer except in the presence of one of the circumstances described in Rev. Proc. 2005-32, 2005-1 C.B. 1206 (providing procedures for reopening cases if fraud, substantial error, or certain other circumstances are present).

.10 *Coordination of MAP and APA Processes.* APAs and MAP resolutions are two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues. In recognition of these connections, the U.S. competent authority seeks MAP resolutions and APAs that achieve substantive and procedural consistency and coordination in their coverage and application. In particular, the U.S. competent authority may seek to roll forward a MAP resolution to ACAP years where it is feasible, practicable, and in the interest of sound tax administration to do so. Further, in appropriate cases, the U.S. competent authority will encourage taxpayers to extend MAP resolutions to future years that could be covered by an APA. For further discussion of the relationship and intersections between the MAP process, the APA process, and ACAP, see Rev. Proc. 2014-YY.

SECTION 3. PROCEDURES FOR REQUESTING ASSISTANCE FROM THE U.S. COMPETENT AUTHORITY

.01 *In General.* This section sets forth procedures, rules, and guidelines relevant to filing a MAP request with the U.S. competent authority. Instructions on preparing and filing a MAP request are also set forth in the appendix to this revenue procedure (generally referred to as the “appendix”).

.02 *Pre-filing Procedures.*

(1) *In General.* In the interest of making the MAP process effective and effi-

cient, the U.S. competent authority invites, and in some cases requires, the taxpayer to meet with the U.S. competent authority in a pre-filing conference prior to filing the MAP request. For the same reason, the U.S. competent authority invites, and in some cases requires, the taxpayer to submit a pre-filing memorandum prior to filing the MAP request. Pre-filing requirements are set forth in sections 3.02(2) through 3.02(7). Questions about pre-filing requirements may be directed to the U.S. competent authority by one of the means identified in the appendix.

(2) *Requesting Pre-filing Conferences.* A taxpayer that wishes to hold a pre-filing conference with the U.S. competent authority must submit its request as a part of a pre-filing memorandum filed pursuant to section 3.02(3) or 3.02(4).

(3) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum must be submitted if the MAP issues will, or could reasonably be expected to, involve any of the following: (a) a foreign-initiated adjustment in which the total adjustments exceed \$10 million for all MAP years combined; (b) a taxpayer-initiated position; (c) the license or other transfer of intangibles in connection with, or the development of intangibles under, an intangible development arrangement; (d) any arrangement that qualifies as a global trading arrangement; (e) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes; (f) a request for discretionary LOB relief; or (g) other circumstances in which the taxpayer believes a MAP issue has arisen outside the context of an examination, such as in cases involving withholding taxes or guidance issued by a foreign tax authority. If a pre-filing memorandum is not submitted in any of the cases described in this section, the U.S. competent authority may, among other possible actions, require that the pre-filing memorandum be submitted before it will take action on the MAP request.

(4) *Optional Pre-filing Memoranda.* An optional pre-filing memorandum may be submitted in cases other than those set forth in section 3.02(3). An optional pre-filing memorandum may be advisable in cases that are expected to present novel or complex MAP issues.

(5) *Contents of Pre-filing Memorandum.* Whether submitted pursuant to section 3.02(3) or 3.02(4), a pre-filing memorandum must have a length and content appropriate to the stage, size, and complexity of the MAP issues underlying the proposed MAP request. The memorandum must also do the following:

(a) Include a “penalties of perjury” statement modeled on the statement set forth in the appendix;

(b) State whether the taxpayer requests a pre-filing conference and, if so, the particular issues the taxpayer wishes to discuss;

(c) Propose at least three possible dates for a pre-filing conference, whether or not the taxpayer seeks a pre-filing conference, in case the U.S. competent authority requires a pre-filing conference;

(d) List the name and contact information for the taxpayer’s point of contact and provide a Form 2848, *Power of Attorney and Declaration of Representative*, authorizing the point of contact to represent the taxpayer in connection with the MAP request, or a Form 8821, *Tax Information Authorization*, authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the MAP request; and

(e) In the case of a non-U.S.-initiated action, explain the factual and legal basis of the action and describe any administrative, legal, or other procedural steps undertaken in the applicable treaty country and any communications with the foreign competent authority regarding the action.

(6) *Place for Submission of Pre-filing Memorandum.* Two printed copies and one electronic copy of the pre-filing memorandum must be submitted to APMA or TAIT at the address provided in section 5 of the appendix.

(7) *Actions Taken with Respect to Pre-filing Conferences and Memoranda.* The U.S. competent authority will notify the taxpayer whether it will accept or decline the taxpayer’s request to hold a pre-filing conference. The taxpayer will also be notified if a pre-filing conference is required, even if the taxpayer did not request a conference. If a pre-filing conference is held, it will address procedural and substantive issues pertinent to the MAP request. During the conference, the taxpayer should be prepared to discuss the relevant facts and circumstances surrounding the

MAP issues. If the U.S. competent authority declines the taxpayer's request for a pre-filing conference or decides no pre-filing conference is required, it will instruct the taxpayer to proceed to file its MAP request.

(8) *Informal Advice in Pre-filing Conference.* Statements or representations made by the U.S. competent authority in a pre-filing conference constitute informal advice and are, therefore, advisory only (see section 2.05).

.03 *Persons Eligible or Required to File MAP Requests.* The U.S. competent authority will consider MAP requests from taxpayers eligible to file MAP requests under U.S. tax treaties. If a case is presented by a foreign competent authority and no corresponding MAP request has been filed, the U.S. competent authority may require the relevant U.S. taxpayer, if any (or if none, the foreign person), to file a corresponding MAP request in accordance with this section, preceded, if required, by a pre-filing memorandum and a pre-filing conference.

.04 *Time for Filing.*

(1) *In General.* Subject to the requirements regarding pre-filing memoranda and pre-filing conferences under section 3.02, a taxpayer may file a MAP request at the times specified in this section.

(2) *U.S.-initiated Adjustments.* In general, the U.S. competent authority will not accept a MAP request with regard to a U.S.-initiated adjustment before the IRS has communicated the amount of the proposed adjustment in writing to the taxpayer, e.g., a Form 5701 (*Notice of Proposed Adjustment*) or a Form 4549 (*Income Tax Examination Changes*). A MAP request will not be accepted if the resulting MAP case would be barred by the time limit set forth in the U.S. tax treaty or, if not tolled by the treaty or protective measures, limitations prescribed by domestic law in the United States or treaty country.

(3) *Non-U.S.-initiated Actions.* In the case of a non-U.S.-initiated action, the taxpayer may submit its mandatory or optional pre-filing memorandum or may file its MAP request as soon as it reasonably believes that a MAP issue exists or is likely to arise. A MAP request will not be accepted if the resulting MAP case would be barred by the time limit set forth in the

U.S. tax treaty or, if not tolled by the treaty or by a protective claim or treaty notification (as applicable), limitations prescribed by domestic law in the United States or treaty country (see sections 13 and 14).

.05 *Content and Form of MAP Request.*

(1) *In General.* The appendix sets forth the required contents of a MAP request, identifies the order in which such contents should be presented, and provides information and instructions on other administrative matters relevant to filing the request, including requirements on translations of documents not in English. The MAP request must comply with the requirements set forth in the appendix before it will be considered complete. Any questions about filing a MAP request not addressed in this section or in the appendix should be directed to APMA or TAIT by one of the means identified in the appendix.

(2) *MAP Requests Submitted to Foreign Competent Authority.* A MAP request filed with the U.S. competent authority must include a copy of any request filed by the taxpayer or a member of the controlled group with a foreign competent authority seeking assistance for the same MAP issue. The MAP request must also include a written explanation of the nature of any such related request, including any material differences between the MAP request filed under this revenue procedure and the request filed with the foreign competent authority. See generally the appendix.

(3) *Requested and Submitted Items.* The taxpayer must provide both the U.S. and the foreign competent authority any information or documents requested by or submitted to either competent authority.

(4) *Corrected and Updated Information.* After the MAP request is filed, any material errors or any material omissions in the initial submission or subsequent submissions must be promptly corrected or remedied. Unless instructed otherwise, the taxpayer must update information and documents submitted in connection with the MAP request on a schedule acceptable to the U.S. competent authority. The taxpayer must also submit any other information or documents discovered or created during the MAP process that are, or rea-

sonably may be, material to the MAP case.

.06 *Additional Requirements and Procedures Applicable to Residency and Discretionary LOB Relief Cases.*

(1) *Residency Cases.* U.S. competent authority assistance may be available to dual resident taxpayers (taxpayers resident in both the United States and the treaty country) seeking to determine their sole residence under the treaty. In such circumstances, the U.S. competent authority will only accept MAP requests concerning questions of residency under U.S. tax treaties if both: (a) the resolution of the residency issue is necessary to avoid double taxation or to determine the applicability of a benefit under the treaty; and (b) the issue requires consultation with the foreign competent authority to ensure consistent treatment under the applicable treaty. The U.S. competent authority will not unilaterally resolve a question of residency.

(2) *Discretionary LOB Relief Cases.*

(a) *No Relief Where Applicant Meets Objective Test.* Most U.S. tax treaties contain an LOB article that enumerates objective tests to determine whether a foreign resident is a qualified resident of a treaty country eligible for benefits under the applicable U.S. tax treaty. The U.S. competent authority will not issue a determination regarding whether an applicant satisfies these objective LOB tests. In addition, it will not accept a request for discretionary LOB relief if the applicant cannot represent, and explain, as a part of its MAP request, why it does not meet the relevant objective tests. See section 2.01 of the appendix for the additional information applicants are required provide for requests for discretionary LOB relief.

(b) *Factors Considered.* In general, if the applicant's case is accepted, all facts and circumstances may be considered, including whether the applicant previously qualified for treaty benefits and the reason for its current disqualification. The required pre-filing memorandum will be useful to determine what additional facts should be included with the actual MAP request. To obtain a favorable determination, the applicant must present facts that demonstrate that it has a sufficient relationship or nexus to the treaty country.

(c) *User Fee.* Applicants requesting discretionary LOB relief must remit the user fee as provided in section 16 of this revenue procedure as well as comply with the instructions set forth in the appendix.

.07 Determinations Regarding Foreign Pensions.

(1) *In General.* Several U.S. tax treaties contain provisions relating to contributions to foreign pension funds. Under these provisions, if certain requirements are satisfied, individuals who perform services in the United States as employees (and in some cases as independent contractors) are allowed to deduct or exclude contributions to a foreign pension fund in computing U.S. taxable income. Some of these tax treaties also allow U.S. citizens who live and work in the treaty country to claim deductions or exclusions for U.S. tax purposes for contributions to a foreign pension fund. Many of these treaties allow U.S. employers a deduction on their U.S. income tax returns for contributions to a foreign pension fund on behalf of employees who perform services in the United States.

(2) *“Generally Corresponds” Determinations.* The U.S. tax treaties described in section 3.07(1) provide that benefits are not available unless the U.S. competent authority has determined that the foreign pension plan “generally corresponds” to a pension plan recognized for tax purposes in the United States. In some cases, the treaty negotiators or the competent authorities have agreed on lists of types of plans in each country that are understood to generally correspond to a plan recognized for tax purposes in the other country. In other cases, however, it will be necessary for an employer, a plan trustee, or an individual plan participant to request a competent authority determination on whether a particular plan “generally corresponds.” An employer, plan trustee, or individual plan participant seeking such a determination must file a MAP request according to the instructions set forth in the appendix.

.08 E-mail Communications. A complete MAP request must include either an executed memorandum of understanding permitting the U.S. competent authority to communicate with its authorized representatives through encrypted e-mail or a statement that the taxpayer does not permit such e-mail communications and an explanation for its declining to do so. See the appendix. An electronic copy of the standard form memorandum of understanding is available on the APMA or TAIT website [link to be included when available]. This paragraph does not apply to individuals or to taxpayers eligible to file small case MAP requests under section 5.

SECTION 4. ACCELERATED COMPETENT AUTHORITY PROCEDURE

.01 In General. Under ACAP, a taxpayer may request that the terms of a MAP resolution for a given taxable period be extended to cover subsequent taxable periods for which it has filed tax returns. Alternatively, the U.S. competent authority may act of its own accord to expand the scope of a taxpayer’s MAP case to include ACAP years. See sections 2.08 and 2.10.

.02 ACAP Requests. An ACAP request may be included in the MAP request or made subsequently in writing to the U.S. competent authority. An ACAP request must include the information and documents required by section 3.05 for the ACAP years. Whether set forth in the MAP request or in a separate written request, an ACAP request must include the taxpayer’s waiver of its right to written notification from the Secretary under section 7605(b) of the Code of the need for more than one inspection of its books of account and records for taxable years covered by the ACAP request (see the appendix).

.03 Rejection of ACAP Requests. The U.S. competent authority may reject an ACAP request: (1) if it is not filed before a MAP resolution is reached between the U.S. and foreign competent authority; (2)

if the request does not comply with the requirements of this revenue procedure; or (3) if acting on the request would be inconsistent with sound tax administration, such as when the facts and circumstances of the ACAP years materially differ from those of the MAP years.

SECTION 5. SMALL CASE MAP REQUESTS

.01 In General. In general, the provisions and requirements of this revenue procedure apply no differently to small case MAP requests than to other MAP requests. Nevertheless, as appropriate, the U.S. competent authority will endeavor to minimize undue administrative burdens on taxpayers eligible to file small case MAP requests. For taxpayers filing MAP requests with TAIT, requests to be exempted from certain of the MAP request content requirements of section 3.05 should be made in advance of filing the MAP request by filing an optional pre-filing memorandum (see section 3.02) or by contacting TAIT by one of the means identified in section 5 of the appendix. For taxpayers filing MAP requests with APMA, exemptions from certain of the MAP request content requirements are explained in section 1.04 of the appendix. Even if it agrees to exempt the taxpayer from including certain content in the MAP request, the U.S. competent authority may, subsequent to the filing of the MAP request, require the taxpayer to submit any or all of the information required under section 3, as well as any other information or documentation the U.S. competent authority determines is needed for its evaluation of the request.

.02 Dollar Thresholds. A MAP request qualifies as a small case MAP request if the sum of the U.S.- and foreign-initiated adjustments does not exceed the following dollar thresholds for all of the MAP years combined:

Type of Taxpayer	Threshold of Proposed Adjustment(s)
Corporation/Partnership	\$5,000,000
Other	\$1,000,000

.03 *Ineligible Requests.* If a MAP request will involve: (1) a taxpayer-initiated position; (2) discretionary LOB relief; or (3) a foreign pension plan determination filed by a person other than an individual plan participant, then such a request will not be exempt under section 5.01 from the generally applicable filing procedures.

SECTION 6. NOTIFICATION OF RECEIPT AND DENIAL OF ASSISTANCE

.01 *Notification of Receipt.* The U.S. competent authority will notify the taxpayer in writing that it has received the MAP request and that the correct user fee has been paid (if applicable). The letter will also provide the name and contact information of the APMA team leader, TAIT analyst, or the members of the combined APMA-TAIT team to which the request has been assigned. In addition, the letter will also state either: (1) that the request is complete and that the MAP process will proceed, together with any administrative or procedural steps the taxpayer must take pertaining to the MAP request; (2) that the request is provisionally accepted but that the MAP process will not proceed until specified deficiencies in the request have been addressed; or (3) that the request is rejected and the circumstances, if any, in which the request might be accepted. The U.S. competent authority will also instruct the taxpayer as to other offices within the IRS to which full or partial copies of the MAP request must be provided.

.02 *Denial of Assistance.* The U.S. competent authority may deny assistance, in whole or in part, at any point in the MAP process, either at the outset by rejecting the MAP request or by terminating or suspending the MAP process after it has accepted the MAP request. The U.S. competent authority will generally take such action if any of the following circumstances are present:

(1) Based on all of the facts and circumstances known to the U.S. competent authority, providing assistance to the taxpayer would be inconsistent with the U.S. tax treaty under which such assistance is sought;

(2) The taxpayer has expressed that it is willing to accept a MAP resolution only under conditions that are unreasonable or

prejudicial to the interests of the U.S. government, including its refusal to accept a MAP resolution that would encompass ACAP years when the U.S. competent authority has determined that including such years is in the interest of sound tax administration;

(3) The issue on which competent authority assistance is sought is the same as or similar to an issue considered in evaluating a prior MAP or bilateral or multilateral APA request, where the taxpayer rejected the resulting resolution of the issue by the U.S. competent authority and has not changed its position;

(4) The taxpayer agreed to or acquiesced in a foreign-initiated adjustment involving significant legal or factual issues without previously having consulted the U.S. competent authority;

(5) The taxpayer's conduct before filing its MAP request or after the MAP process has been initiated has significantly impeded the ability of the IRS to adequately examine and address the MAP issues for which assistance has been requested or the ability of the U.S. competent authority to resolve the MAP case;

(6) The subject matter of the MAP request: (a) includes an issue pending in litigation where a court has declined to sever MAP issues, delay trial, or stay proceedings (*see* section 9.03(1)); (b) is pending in a foreign court and such proceeding is likely to impede the conclusion or implementation of a MAP resolution; (c) includes an issue and taxable period designated for litigation (*see* section 9.03(1)); (d) includes an issue and taxable period pending in a U.S. federal court that was previously considered by IRS Appeals (*see* section 9.03(1)); (e) is a listed transaction under Treas. Reg. §§1.6011-4(b)(2) and 301.6111-2(b)(2); (f) is a transaction of interest under Treas. Reg. §1.6011-4(b)(6); or (g) involves fraudulent activity by the taxpayer or a member of the controlled group;

(7) The taxpayer rejected a request to extend the period of limitations for assessment of tax for the taxable periods covered by the MAP request and any ACAP years;

(8) The MAP issue was included in a protest to IRS Appeals and was not properly severed from such protest and transitioned into a MAP request within 30 days after the opening conference with IRS Appeals (*see* section 9.02);

(9) The MAP issue has been settled pursuant to an examination resolution without prior concurrence of the U.S. competent authority (*see* section 9.01);

(10) The MAP issues covered by the MAP request cannot be adequately resolved without the involvement of one or more additional foreign competent authorities and either the taxpayer fails to cooperate in seeking the involvement of such additional foreign competent authorities or such competent authorities refuse to participate in multilateral consultations on the MAP case;

(11) An adequate resolution of the MAP case would require consideration of issues directly or indirectly involving the taxpayer and members of the controlled group located in non-treaty jurisdictions and the taxpayer fails to disclose such issues in the MAP process (such as in diagrams required of MAP requests filed with APMA; *see* the appendix); or

(12) In MAP cases involving taxpayer-initiated positions, the request evinces after-the-fact tax planning or fiscal evasion or is otherwise inconsistent with sound tax administration.

.03 *No Review of Denial of MAP Request for Assistance.* The U.S. competent authority's decision as to whether a MAP request is complete or to deny, suspend, or terminate assistance is not subject to administrative review.

SECTION 7. CONSULTATIONS AND OTHER ACTIONS BY THE U.S. COMPETENT AUTHORITY

.01 *Non-U.S.-initiated Actions.* The U.S. competent authority will evaluate a MAP request involving a non-U.S.-initiated action on the basis of the justification for the action prepared by the foreign competent authority and on the analyses of such justification prepared by the taxpayer and by other IRS offices. After making its evaluation, the U.S. competent authority will proceed in any of several ways. In typical cases involving foreign-initiated adjustments, it will begin consultations with the foreign competent authority on the justification for correlative relief and the extent to which such correlative relief is warranted. In other cases involving foreign-initiated adjustments, the U.S. competent authority may grant correlative relief without consultations.

.02 *U.S.-initiated Adjustments.* The U.S. competent authority will address a U.S.-initiated adjustment after evaluating the justification for the adjustment developed by IRS Examination, recommendations (if any) it has received through SAP review, the taxpayer's views on the adjustment it sets forth in the MAP request or otherwise provides in the MAP process, and the views of other IRS offices on the adjustment. Once it has made its evaluation, the U.S. competent authority will proceed in any of several ways. In most cases, it will begin consultations with the foreign competent authority on the justification for correlative relief and the extent to which such correlative relief is warranted. In other cases, the U.S. competent authority may recommend or require that IRS Examination revise or withdraw the U.S.-initiated adjustment. If an adjustment remains after taking into account the U.S. competent authority's recommendations or requirements, then the U.S. competent authority will continue to work with IRS Examination or the foreign competent authority as applicable.

.03 *Requests for Discretionary LOB Relief.* The LOB articles of some U.S. tax treaties require the U.S. or foreign competent authority to consult the other before denying a request for discretionary LOB relief. The U.S. competent authority will comply with such consultation requirements.

.04 *Taxpayer Presentations.* The U.S. competent authority will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the U.S. and foreign competent authorities during the MAP process. The U.S. competent authority will consult with the foreign competent authority as to its interest in joint presentations and notify the taxpayer accordingly.

SECTION 8. SIMULTANEOUS APPEALS PROCEDURE

.01 *In General.* SAP review provides taxpayers with a direct, efficient procedure for involving IRS Appeals in the U.S. competent authority's evaluation of a U.S.-initiated adjustment. It is the only procedure by which a taxpayer may present a U.S.-initiated adjustment to IRS Appeals for its review and retain the possibility of obtaining correlative relief for the

adjustment with assistance from the U.S. competent authority. SAP review may be requested by the taxpayer. Alternatively, the U.S. competent authority may, in its discretion, initiate SAP review to obtain the views of IRS Appeals on the MAP issues presented in the MAP request.

.02 *Requesting SAP Review.* Unless the U.S. competent authority permits otherwise in writing, the request for SAP review must be presented in the MAP request or in a separate written submission filed no later than 60 days after the date of the determination letter notifying the taxpayer that the U.S. competent authority has accepted the MAP request (*see* section 1.03 for the rule applicable to deadlines). Before filing its submission, a taxpayer may request a pre-filing conference with IRS Appeals and the U.S. competent authority to discuss SAP review. Neither arbitration nor mediation procedures that otherwise would be available as part of the IRS Appeals process are available in SAP review. *See* Rev. Proc. 2006-44, 2006-2 C.B. 800, and Rev. Proc. 2009-44, 2009-2 C.B. 462.

.03 *Actions with Respect to SAP Review.* The U.S. competent authority will decide whether to accept or deny the taxpayer's request for SAP review after consulting with IRS Appeals. If the U.S. competent authority accepts the request, it will coordinate with IRS Appeals on process and timeframe. In general, IRS Appeals will conduct its review of the MAP issues presented in the MAP request in accordance with standard IRS Appeals practice, with the exception that the U.S. competent authority will have the option of participating in meetings held between IRS Appeals and the taxpayer. Upon completing its review, IRS Appeals will recommend a U.S. position to the U.S. competent authority. If the U.S. competent authority denies the request for SAP review, the taxpayer may request a conference to hear the basis for the decision.

.04 *Termination of SAP Review.* The taxpayer, the U.S. competent authority, or the Chief of IRS Appeals may terminate SAP review at any time. Termination of SAP review by the taxpayer will not preclude the U.S. competent authority from obtaining the recommendation of IRS Appeals on the MAP issues set forth in the MAP request. If SAP review is terminated

by the U.S. competent authority or by the Chief of IRS Appeals, the taxpayer may request a conference with either or both parties to hear the basis for such determination.

SECTION 9. INTERACTION AND COORDINATION WITH OTHER ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

.01 *Cases under the Jurisdiction of IRS Examination.*

(1) *Examination Resolutions Generally.* The U.S. competent authority will accept a MAP request with respect to a U.S.-initiated adjustment memorialized in an examination resolution only if the U.S. competent authority agreed, in writing, to the terms of the examination resolution prior to its execution. A taxpayer may seek such agreement by filing an examination resolution notification with the U.S. competent authority.

(2) *Fast Track Settlement.* In the case of a Fast Track Settlement, the U.S. competent authority will accept a MAP request with respect to a U.S.-initiated adjustment memorialized in a Session report only if: (a) the Fast Track agreement named a representative of the U.S. competent authority as a "participant" in the proceeding; and (b) the U.S. competent authority was given a reasonable opportunity to participate in all Fast Track Settlement meetings with LB&I personnel.

(3) *Action by U.S. Competent Authority.* After receiving the examination resolution notification and consulting with the taxpayer and IRS Examination as appropriate, the U.S. competent authority will determine whether it accepts the proposed terms. If it disagrees with the terms, it will request that IRS Examination and the taxpayer amend them accordingly. If the terms are initially acceptable or are amended to its satisfaction, the U.S. competent authority will authorize the taxpayer and IRS Examination to execute the examination resolution and will authorize the taxpayer to file a MAP request. The U.S. competent authority will then seek a MAP resolution with the applicable foreign competent authority, starting from the position in the examination resolution. Most U.S. tax treaties will allow the U.S. competent authority to implement a MAP resolution reached with the foreign com-

petent authority in such cases, even if the terms of the MAP resolution are different from the terms of the prior examination resolution. A minority of U.S. tax treaties, however, may not allow the U.S. competent authority to implement a MAP resolution that varies from the terms of the prior examination resolution.

(4) *Exclusive Jurisdiction.* The U.S. competent authority will assume sole jurisdiction over all MAP issues set forth in a MAP request it has accepted, whether the request is filed pursuant to the procedures set forth in this section or otherwise. Any further administrative action by the IRS (e.g., assessment and collection procedures) with respect to any issues under the jurisdiction of the U.S. competent authority will be postponed unless the U.S. competent authority instructs otherwise. Normal administrative procedures will continue to apply to issues over which the U.S. competent authority has not assumed jurisdiction.

.02 Cases Under the Jurisdiction of IRS Appeals.

(1) *In General.* In light of the IRS's policy governing the availability and use of SAP review, the U.S. competent authority will not accept a MAP request regarding MAP issues that have been included in a protest filed with IRS Appeals unless the following conditions are met: (a) the taxpayer files its MAP request no later than 30 days after its opening conference with IRS Appeals (*see* section 1.03 for the rule applicable to deadlines); (b) the taxpayer properly severs the MAP issues in its MAP request from the other issues in its protest that will remain under the jurisdiction of IRS Appeals; (c) the taxpayer has not invoked the Appeals Arbitration Program or the Appeals Mediation Program with respect to the MAP issues; and (d) the taxpayer has not executed a Form 870 waiver, a Form 870-AD offer, a closing agreement, or any other similar agreement concerning such MAP issues. The U.S. competent authority will assume sole jurisdiction over the MAP issues set forth in the MAP request if these conditions are met and if it accepts the request. Standard IRS Appeals procedures will continue to apply to any other issues not set forth in the MAP request.

(2) *Right of Review by IRS Appeals if MAP Resolution Not Reached or Not Accepted by Taxpayer.* Nothing in this revenue procedure will abridge a taxpayer's rights to seek or continue review by IRS Appeals of the MAP issues set forth in its MAP request if: (a) the U.S. competent authority rejects the request or terminates assistance in the MAP case; (b) a MAP resolution is not reached; or (c) the taxpayer does not accept the terms of the MAP resolution.

.03 Cases in, or Designated for, Litigation.

(1) *In General.* The U.S. competent authority will not accept, and will terminate any ongoing consideration of, a taxpayer's MAP request regarding any MAP issue and taxable period designated for litigation (*see* section 6.02(6)(c)), or any MAP issue and taxable period pending in a U.S. federal court that was previously considered by IRS Appeals (*see* section 6.02(6)(d)). In other cases where litigation is pending with respect to a taxable period involved in a MAP request, the U.S. competent authority, after consultation with the Associate Chief Counsel (International), may accept, or continue to consider, the MAP request. During the MAP process, a taxpayer may be asked to join the IRS in a motion to sever any MAP issues, delay trial, or stay proceedings pending the outcome of the taxpayer's MAP case. The Associate Chief Counsel (International) will coordinate the filing of any such motion on behalf of the IRS with, as appropriate, Area Counsel, the Department of Justice, and the taxpayer. Final decision on severing issues, delaying trial, or staying proceedings rests with the court. Notwithstanding the foregoing, if the court denies a motion to sever MAP issues, delay trial, or stay proceedings, the U.S. competent authority will terminate any ongoing consideration of the MAP request (*see* section 6.02(6)(a)).

(2) *Effect of Judicial Determinations and Litigation Settlements.* A taxpayer may file a MAP request with respect to a U.S. federal court's final determination of its tax liability. Such final determinations include instances when taxpayers enter into litigation settlements with the Office of Chief Counsel or the Department of Justice. If it accepts such a request, the

U.S. competent authority will seek correlative relief from the foreign competent authority only for the amount of, and without departing from, such final determination. In such a case, the U.S. competent authority will not authorize MAP repatriation.

SECTION 10. RESULTS OF MAP CASE

.01 *Notification.* The outcome of most MAP cases will be a MAP resolution, which may be reached either through direct consultations with the foreign competent authority, through arbitration, or otherwise. When a tentative MAP resolution is reached during the course of the MAP process, the U.S. competent authority will notify the taxpayer and outline its general terms. Generally, a MAP resolution is not final until it has been reviewed and approved within the office of the U.S. competent authority and until the MAP case has been formally closed by both competent authorities. For cases resolved through arbitration, *see* section 12. The taxpayer will also be notified if the competent authorities have determined that a MAP resolution will not be reached. In that event, the taxpayer may withdraw its MAP request and pursue all rights otherwise available to it (*see* section 10.04).

.02 *Implementation.* If the taxpayer accepts the terms of the MAP resolution, the U.S. competent authority will direct the relevant offices within the IRS to implement it accordingly. To the extent authorized under the applicable U.S. tax treaty, the MAP resolution will be implemented notwithstanding any time limits or other procedural limitations under the Code and regulations. If the taxpayer does not accept the MAP resolution, it may withdraw its MAP request and pursue all rights otherwise available to it (*see* section 10.04).

.03 *Closing Agreement.* When appropriate, the IRS may request that the taxpayer execute a closing agreement reflecting the terms of the MAP resolution. (*See* Rev. Proc. 68-16, 1968-1 C.B. 770 (as modified by Rev. Proc. 94-67, 1994-2 C.B. 800)).

.04 *Special Issues Where No MAP Resolution with Respect to Foreign-initiated Adjustment.* In any given MAP case, it is possible that the U.S. and foreign competent authorities will not reach a MAP res-

olution despite their jointly endeavoring in good faith to do so. If such a MAP case involves a foreign-initiated adjustment and arbitration is not available, the taxpayer will be notified in accordance with section 10.01. Such notification may identify the protective measures or other steps the taxpayer must take to establish that amounts paid to the treaty country in connection with the foreign-initiated adjustment constitute compulsory payments of tax within the meaning of Treas. Reg. §1.901-2(e)(5) and to maintain its eligibility for competent authority assistance. Such steps may include the taxpayer's pursuit of administrative and judicial remedies in the treaty country and, if credits are claimed for amounts paid before the contest is resolved, the taxpayer's agreement to extend the U.S. statute of limitations on assessment while contesting the foreign-initiated adjustment.

SECTION 11. MAP REPATRIATION

.01 *In General.* Outside the MAP context, Rev. Proc. 99-32 prescribes specific procedures permitting eligible U.S. taxpayers to make repatriation payments. By following these procedures, U.S. taxpayers are able to mitigate adverse collateral tax consequences that may otherwise result from a primary adjustment. In the MAP context, the U.S. competent authority may determine whether to grant MAP repatriation under the mutual agreement procedure provision of the governing treaty. MAP repatriation will not apply to any repatriation payments other than those addressed in the MAP resolution.

.02 *Requirements for MAP Repatriation.* MAP repatriation will be available only if the following conditions are satisfied:

(1) no person (whether or not a "United States taxpayer" within the meaning of Rev. Proc. 99-32) that will make or receive repatriation payments would be barred from making or receiving repatriation payments under the principles of section 3.01 or 3.03 of Rev. Proc. 99-32;

(2) the request for MAP repatriation is explicitly set forth in the MAP request or in a supplemental written submission filed with the U.S. competent authority prior to a MAP resolution being reached;

(3) the primary adjustment giving rise to the application for MAP repatriation is

a MAP issue included in a MAP request accepted by the U.S. competent authority; and

(4) there has been no closing action (within the meaning of section 5.01(1) of Rev. Proc. 99-32) taken on the primary adjustment.

.03 *Decision on MAP Repatriation.* The U.S. competent authority has sole jurisdiction to accept or deny a request for MAP repatriation and the terms of such treatment. In no event will the U.S. competent authority grant MAP repatriation if: (1) the U.S. competent authority terminates assistance with respect to the MAP request pursuant to section 6.02; (2) the MAP request involves issues previously decided in litigation (*see* section 9.03(2)); or (3) the taxpayer rejects the MAP resolution.

.04 *Terms of MAP Repatriation.* The U.S. competent authority will determine the terms of MAP repatriation on a case-by-case basis, taking into account both the principles set forth in Rev. Proc. 99-32 and its authority under the mutual agreement procedure provision of the governing treaty. Thus, for example, in a particular MAP repatriation case, the U.S. competent authority may determine it is appropriate to eliminate or modify the requirement for interest set forth in section 4.01(2) of Rev. Proc. 99-32.

.05 *Rights Retained in Absence of Mutual Agreement.* The rights that a U.S. taxpayer may have to apply Rev. Proc. 99-32 in the absence of MAP repatriation are neither abridged nor enhanced by this section or other provisions of this revenue procedure.

SECTION 12. ARBITRATION

.01 *In General.* The mutual agreement procedure article in arbitration treaties requires that the competent authorities refer certain MAP cases to mandatory arbitration in the event direct consultation does not lead to a mutual agreement within a prescribed time period. The mutual agreement procedure article in arbitration treaties sets forth detailed rules to be followed regarding the resolution of cases that are eligible for arbitration as prescribed by the relevant treaty. This section addresses general procedural issues associated with mandatory arbitration that is undertaken as part of the MAP process. Taxpayers

should consult the mutual agreement procedure article under the applicable U.S. tax treaty and any ancillary agreements to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty.

.02 *Commencement Date and the Beginning of Arbitration Proceedings.* Determining the "commencement date" under an arbitration treaty is important because arbitration begins within a specified time period, typically two years, following the commencement date. In general, the commencement date for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities. The U.S. competent authority generally takes the position that it has received information necessary to undertake substantive consideration for a mutual agreement only when it has received a complete MAP request as described in this revenue procedure. The U.S. competent authority will notify the U.S. taxpayer when the commencement date is established.

.03 *Non-disclosure Agreement.* The arbitration proceedings do not begin before the date by which both competent authorities have received properly executed non-disclosure agreements from all concerned persons, their authorized representatives, and their agents. The U.S. competent authority will provide the taxpayer with a form for the non-disclosure agreement.

.04 *Notification of Unsuitability for Arbitration.* U.S. arbitration treaties allow both competent authorities to agree, at any time prior to the arbitration start date, that a particular case is not suitable for arbitration. The U.S. competent authority will notify the taxpayer of any such determination.

.05 *Taxpayer Participation.* The taxpayer may submit its analysis and views of the case to the U.S. competent authority to the extent permitted under the applicable U.S. tax treaty.

.06 *Notification of Arbitration Panel's Determination.* The U.S. competent authority will notify the taxpayer of the arbitration panel's determination. If the taxpayer accepts the arbitration panel's determination, its terms will constitute a MAP resolution.

.07 *Other Taxpayer Rights.* If a taxpayer rejects the determination of an arbitration panel, does not accept the determination within the deadline mandated by the applicable arbitration guidance, or has been notified that a case has been determined not to be suitable for arbitration, it may pursue any rights that remain available under domestic law.

SECTION 13. PROTECTIVE CLAIMS

.01 *In General.* Most U.S. tax treaties provide that MAP resolutions are to be implemented by the United States and the treaty country notwithstanding any time limits or other procedural limitations under domestic law. A minority of U.S. tax treaties may not allow the U.S. competent authority to waive such limitations. In particular cases, domestic barriers may be waived only if a MAP request is accepted and a MAP resolution is reached. In addition, because there are circumstances that may not be under the control of the taxpayer or of the U.S. or foreign competent authority, it is advisable as a general matter for the taxpayer or a related person to take protective measures under applicable domestic law to increase the likelihood that a MAP resolution in its MAP case can be implemented in both treaty countries and to protect any rights of access to alternative remedies outside of the MAP process from being barred by administrative, legal, or procedural barriers. This section sets forth procedures and guidelines for taking such protective measures.

.02 *Protective Claims Generally.*

(1) *In General.* A protective claim is made to ensure that time limits or administrative, legal, or procedural barriers under the Code or regulations are satisfied to protect the taxpayer's right to a potential credit or refund in the event that a MAP resolution is reached and to retain the taxpayer's rights of access to any alternative remedies available to it outside of the MAP process under the Code or regulations. A protective claim is distinct from a treaty notification (*see* section 14) and does not affect the notification deadline under a given treaty, even though a protective claim and treaty notification may initially be made in the same submission and may be updated annually in the same notification (*see* section 14.05).

(2) *Timing of Protective Claims.* Generally, a taxpayer should consider making a protective claim when it has reason to believe that any action of a tax authority has resulted or is likely to result in a MAP issue. However, it may be advisable to make a protective claim at earlier times, for example, when the claim concerns a recurring MAP issue or when the taxpayer is otherwise aware that an adjustment is likely for a given taxable year. A taxpayer may consult with the U.S. competent authority to determine when and in what manner it is advisable to make a protective claim.

(3) *IRC § 6402 Requirements.* To be a valid protective claim for credit or refund for purposes of this revenue procedure, the claim must be in writing and meet the requirements of section 6402 of the Code and the regulations thereunder other than the requirement in Treas. Reg. §301.6402-3 to file the claim on the appropriate form. Accordingly, a protective claim must, at a minimum: (a) fully advise the IRS of the grounds on which the credit or refund is claimed; (b) contain sufficient facts to apprise the IRS of the exact basis of the claim; (c) describe and identify the contingencies affecting the claim; (d) state the year for which the claim is being made; (e) be verified by written declaration made under penalties of perjury; and (f) be filed before the expiration of the applicable period of limitation to which the claim relates.

(4) *Methods for Making Protective Claims.* For purposes of this revenue procedure only, a protective claim for credit or refund may be made in any of the following ways: (a) including the claim in a pre-filing memorandum; (b) including the claim in a MAP request; or (c) filing a letter specifically stating that a protective claim is being made. In conjunction with any of these methods, the taxpayer may, but is not required to, file the form specified in Treas. Reg. §301.6402-3.

.03 *Making Protective Claim in Pre-Filing Memorandum or MAP Request.* For the placement of a protective claim within a MAP request, *see* the appendix. If the protective claim is made in a pre-filing memorandum, the memorandum must contain a separate section captioned "Protective Claim Pursuant to Section 13 of Rev. Proc. 2014-XX". In that section, the

taxpayer must declare that it is making a protective claim prior to filing a potential MAP request regarding the MAP issues set forth in the memorandum. The section must also contain the information described in section 13.02(3). Any pre-filing memorandum or MAP request submitted after a protective claim is made in the form of a letter (*see* section 13.04) should refer to such letter. The U.S. competent authority will notify the taxpayer it has received the protective claim or that the claim made by the taxpayer does not constitute a valid protective claim and give instructions as to whether, and how, the claim can be remedied to be valid.

.04 *Making Protective Claim by Letter.*

(1) *In General.* There may be situations in which a taxpayer will be unable to submit a pre-filing memorandum or file a MAP request before the applicable period of limitations expires. In such situations, a separate protective claim in the form of a letter should be filed. For example, a letter would be appropriate when a foreign tax authority is considering, but has not yet proposed, an adjustment; a foreign tax authority has proposed an adjustment and administrative or judicial remedies are expected to be pursued in the treaty country before a MAP request is filed; or the terms of the applicable treaty require that notification of a claim be made within a certain time, independent of any action by a tax authority.

(2) *Filing of Letter.* The protective claim letter must be filed in the same place and manner as a pre-filing memorandum or MAP request. If a taxpayer filing a protective claim letter is under examination by the IRS, or if an examination begins after the letter is filed, the taxpayer must send a copy of the letter to the IRS office conducting the examination. A template of a letter suitable for making a protective claim is provided on the APMA website [link to be included when available].

.05 *Effect of Protective Claim.* A protective claim made in the form of a letter, a pre-filing memorandum, or a MAP request that complies with the provisions of this revenue procedure will meet the filing requirements for a valid claim for credit or refund under section 6402 of the Code and the regulations thereunder with respect to the MAP issues set forth in the claim, so

long as it is filed before the expiration of the applicable statutory period of limitations for filing claims for credit or refund under the Code.

.06 Annual Notification Requirement. After initially filing a protective claim letter or after making a protective claim in a pre-filing memorandum and before filing its MAP request, the taxpayer must annually notify the U.S. competent authority as to whether it may still file a MAP request. The annual notification must be filed no later than the date on which the taxpayer timely files its tax return for each taxable year ending after the taxable year in which it filed the protective claim (*see* section 1.03 for the rule applicable to deadlines). The annual notification must: (1) be titled “Annual Notification of Protective Claim”; (2) reference the initial protective claim; (3) contain a declaration that the taxpayer is providing its annual notice of protective claim pursuant to this section 13 and that it is requesting that its protective claim remain active; and (4) where appropriate, update or otherwise correct the information set forth in the protective claim or any subsequent annual notifications. The annual notification must be filed in the same place and manner as a pre-filing memorandum or MAP request. The U.S. competent authority may deny assistance to a taxpayer that fails to provide the annual notification.

SECTION 14. TREATY NOTIFICATIONS

.01 In General. Some U.S. tax treaties require that the competent authority of the country that has not received a formal request for competent authority assistance be notified that such a request has been submitted to the competent authority of the other country. If such notice is not provided within the number of years specified in the treaty, domestic barriers to the implementation of a MAP resolution will not be removed (*see, e.g.,* United States-Canada Income Tax Convention (1980), Article XXVI(2)). Therefore, a taxpayer seeking assistance of the U.S. competent authority under such a treaty with regard to a foreign-initiated adjustment must submit a treaty notification to the U.S. competent authority within the time set forth in the treaty.

.02 Manner of Notification. For purposes of this revenue procedure, a treaty notification to the U.S. competent authority may be made as a part of a taxpayer’s MAP request (*see* the appendix) or may take the form of a letter to the U.S. competent authority. A template of a letter suitable for making a treaty notification is provided on the APMA website [link to be included when available].

.03 Taxpayer Responsible for Notifying Foreign Competent Authority. With regard to a U.S.-initiated adjustment under such a treaty, the taxpayer must notify the foreign competent authority of its having filed a MAP request with the U.S. competent authority. In making such notification, the taxpayer should follow any applicable procedures prescribed by the treaty country. The U.S. competent authority is not responsible for notifying a foreign competent authority that it has received a MAP request.

.04 Annual Notification Requirement. Treaty notification in the form of a letter must be updated on an annual basis until a formal MAP request has been filed. The annual notification must be submitted no later than the date on which the taxpayer timely files its tax return for each taxable year ending after the taxable year in which it submitted the treaty notification (*see* section 1.03 for the rule applicable to deadlines). The annual update must contain the following subject line: “Treaty Notification Annual Update under Rev. Proc. 2014–XX”. The annual update must refer to prior treaty notifications.

.05 Consolidation of Protective Claim and Treaty Notification. The taxpayer may consolidate an initial protective claim and a treaty notification into a single letter, pre-filing memorandum, or MAP request. A template of a letter suitable for consolidating an initial protective claim and treaty notification is provided on the APMA website [link to be included when available]. The taxpayer may also consolidate an annual protective claim notification and annual treaty notification in a single letter. In whatever manner such initial or annual notifications are consolidated, the taxpayer should ensure that the submission clearly states that it is to serve as both a protective claim and as a treaty notification.

SECTION 15. REQUESTS FOR RULINGS

.01 In General. Requests for advance rulings regarding the interpretation of a tax treaty, as distinguished from MAP requests under this revenue procedure, must be submitted to the Associate Chief Counsel (International) according to the provisions of the applicable revenue procedure governing such submissions. *See* Rev. Proc. 2013–1, 2013–1 I.R.B. 1 (or successor guidance), and Rev. Proc. 2013–7, 2013–1 I.R.B. 233.

.02 Foreign Tax Rulings. Neither the U.S. competent authority nor any other office within the IRS will issue an advance ruling on the effect of the provisions of a U.S. tax treaty on the application of the domestic tax laws of a treaty country.

SECTION 16. USER FEES

.01 In General. Except as otherwise provided in this section 16, no user fee is required for a MAP request.

.02 Requests for Discretionary LOB Relief. A \$27,500 user fee is required for all requests for discretionary LOB relief as described in section 3.06(2). *See* Rev. Proc. 2013–1 (or successor guidance). The fee must be paid according to instructions set forth in the letter from the U.S. competent authority to the applicant formally informing the applicant it is accepting the request. The fee will apply regardless of whether the request is for an initial determination, a renewal of a previously issued determination, or a supplemental determination. If a MAP request requires discretionary LOB relief for two or more entities, a separate user fee will be charged for each entity.

.03 Timing of User Fee Charge. Within 30 days of receipt of a complete submission for a request for discretionary LOB relief, the U.S. competent authority will notify the taxpayer whether it accepts or rejects the request for assistance. No user fee will be charged unless and until the U.S. competent authority notifies the taxpayer that it formally accepts the request. If the U.S. competent authority accepts the request, the taxpayer must pay the applicable user fee or fees electronically using the Pay.gov website within 60 days of the notification of the acceptance (*see*

section 1.03 for the rule applicable to deadlines). Upon receipt of the user fee, the U.S. competent authority will commence analysis of the case.

.04 *Refund of User Fee.* The U.S. competent authority has sole discretion over whether it will, and the circumstances under which it may, refund a user fee. Generally, the U.S. competent authority will not refund a user fee: (1) once it accepts the MAP request and the taxpayer has remitted the user fee, even if the taxpayer subsequently withdraws the request; (2) if the taxpayer fails to submit additional information that has been requested by the U.S. competent authority; or (3) the U.S. competent authority ultimately declines to grant discretionary LOB relief. If the U.S. competent authority ultimately declines to grant discretionary LOB relief, after taking into account all the facts and circumstances, including the resources devoted to the request, the U.S. competent authority may in its sole discretion determine that a refund is appropriate.

SECTION 17. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006–54, 2006–2 C.B. 1035, is modified and superseded by this revenue procedure. Rev. Proc. 2003–40, 2003–1 C.B. 1044, is modified. Rev. Proc. 2014–YY, is amplified. References in this revenue procedure to Rev. Proc. 99–32 will be treated as references to Rev. Proc. 65–17, 1965–1 C.B. 833, as modified, amplified, and clarified from time to time, for taxable years beginning before August 24, 1999.

SECTION 18. EFFECTIVE DATE

This revenue procedure is effective for MAP requests received on or after [DATE].

SECTION 19. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2044.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information un-

less the collection of information displays a valid control number.

The collection of information in this revenue procedure is in sections 3.02(2) – (6), 3.05, 3.08, 4.02, 5.01, 8.02, 9.01(1), 11.02(2), 13.04, 13.06, and 14.03 – 14.05 and in the appendix. This information is required, and will be used, to evaluate and process the request for competent authority assistance. The likely respondents are individuals or business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 9,000 hours.

The estimated annual burden per respondent/recordkeeper is 30 hours. The estimated number of respondents and/or recordkeepers is 300.

The estimated annual frequency of responses is on occasion.

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 Code.

SECTION 20. DRAFTING INFORMATION

The principal authors of this revenue procedure are John Hughes, Robert Cole, Rebecca Kalmus, and Anthony Ferrise of the Office of the Deputy Commissioner (International), LB&I; and Michael Skutley of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, contact either Mr. Ferrise at (202) 515-4349 or Mr. Skutley at (202) 317-5440 (not toll-free calls).

APPENDIX

This appendix sets forth instructions on preparing and filing a MAP request. Unless the U.S. competent authority has explicitly instructed the taxpayer otherwise in writing, the MAP request must be prepared and submitted according to the instructions provided in this appendix. The U.S. competent authority may reject a MAP request that does not comply with these instructions. Certain MAP request requirements apply only to MAP requests filed with APMA. Other MAP request re-

quirements apply only to MAP requests filed with TAIT. Unless otherwise stated, the MAP request requirements listed in this appendix apply to MAP requests filed with either APMA or TAIT.

A complete MAP request must include the general MAP request items as set forth in section 1 of this appendix and, when applicable, the specific MAP request items for discretionary LOB relief and foreign pension plan determinations as set forth in sections 2 and 3, respectively. Instructions on filing printed and electronic copies of MAP requests are set forth in section 4. Section 5 provides addresses and contact information.

SECTION 1. GENERAL MAP REQUEST ITEMS

.01 *Overview.* General MAP request items must be presented in a cover letter followed by the attachments, presented in the order listed in section 1.03 of this appendix. The cover letter and the attachments must contain or respond to the required statements, descriptions, explanations, and other requested information. If the requested information is not applicable to the MAP request, this must be indicated by “N/A.”

.02 *MAP Request Cover Letter.*

(1) *Process.* The cover letter must be addressed to the Deputy Commissioner (International) at the address provided in section 5 of this appendix. An original of the cover letter, signed and dated by a person having authority to sign the taxpayer’s federal tax returns, must be included in one of the three required printed copies of the MAP request (*see* section 4 of this appendix). In a case involving a request for either discretionary LOB relief or a foreign pension plan determination where the person requesting relief does not file federal tax returns, the cover letter may be signed and dated by any authorized representative or officer of such person.

(2) *Content.* The cover letter must contain an introductory statement that the taxpayer seeks assistance of the U.S. competent authority. The letter then must contain or respond to each of the statements, descriptions, explanations, and other requested information listed under this section 1.02, according to the instructions and structure set forth in this section.

Part 1. Identifying Information and Summary of Issues and Proceedings

1.1	<i>U.S. competent authority office:</i> State the office of the U.S. competent authority – APMA (transfer pricing) or TAIT (non-transfer pricing) – to which the MAP request is directed
1.2	<i>Identifying information:</i> List the names, addresses, country of residence for purposes of the treaty, U.S. taxpayer identification number(s), and foreign taxpayer identification number(s) (if any) of the members of the controlled group whose taxable incomes would be affected by a MAP resolution being reached in the taxpayer’s MAP case
1.3	<i>Authorization:</i> List the names and contact information for the taxpayer’s point of contact for the U.S. competent authority, together with an indication as to which point of contact (if any) has been empowered by a Form 2848, <i>Power of Attorney and Declaration of Representative</i> , or Form 8821, <i>Tax Information Authorization</i> (see Attachments, Tab 1)
1.4	<i>IRS Office:</i> Provide the following information: a. For U.S.-initiated adjustments, the IRS office that has made the adjustment, together with the name of and contact information for the taxpayer’s IRS Examination team manager; or b. For non-U.S.-initiated actions, the contact information for the IRS office having examination jurisdiction over the taxpayer or U.S. members of the controlled group, together with the name of and contact information for the taxpayer’s IRS Examination team manager if the taxpayer is under examination when the MAP request is filed
1.5	<i>Treaty(ies):</i> Identify the U.S. tax treaty(ies) and articles under which the request is being filed
1.6	<i>Summary of MAP issue(s):</i> Provide a summary of the discussion in Part 2.1, setting forth the MAP issue(s) for which assistance is being requested
1.7	<i>Years and amounts:</i> Provide the taxable years and amounts at issue, presented in both U.S. dollars and foreign currency, together with the exchange rate(s) that was (were) used for currency conversion during the applicable taxable years
1.8	<i>Taxpayer proceedings:</i> Provide a summary of relevant U.S. and foreign judicial or administrative proceedings involving the taxpayer or other members of the controlled group, including all information related to notifications provided to the treaty country(ies)
1.9	<i>Other proceedings:</i> To the extent known, provide a summary of relevant foreign judicial or public administrative proceedings not involving the taxpayer or members of the controlled group but concerning a similar MAP issue for which the MAP request is being filed
1.10	<i>Statutes of limitations:</i> Provide the expiration dates of applicable statutes of limitations in both the United States and the treaty country(ies) for the taxable years covered by the MAP request

Part 2. MAP Issue(s)

2.1	<i>MAP issue(s):</i> Provide a thorough, informative explanation of the MAP issue(s) for which assistance is requested, including, but not limited to, descriptions or discussions of the: a. Relevant transactions, activities, or other circumstances surrounding the MAP issues for which the request is made; b. The taxpayer’s understanding of the legal basis for the adjustment; c. The taxpayer’s view on the justification for assistance under the applicable U.S. tax treaty(ies); and d. Content of any related requests for assistance submitted to the foreign competent authority, together with an explanation of any material differences between the MAP request filed under this revenue procedure and the request filed with the foreign competent authority
2.2	<i>Prior U.S. competent authority assistance:</i> State whether or not the MAP issue(s) set forth in the MAP request is (are) the same or similar to an issue(s) considered in a prior MAP or APA request covering the same or prior taxable years, and, if so, summarize the terms of the resolution of the issue by the U.S. competent authority
2.3	<i>Pre-filing information:</i> Provide the following information: a. Whether a mandatory or optional pre-filing memorandum was filed; and b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference

Part 3. Assistance Requested and Required Statements

3.1	<p><i>Coordination with other proceedings:</i> Provide the following information:</p> <p>a. Whether the taxpayer seeks SAP review;</p> <p>b. Whether and when the taxpayer filed an examination resolution notification pursuant to section 9.01(1) of the revenue procedure and, if so, the date upon which the U.S. competent authority notified the taxpayer of its agreement to the terms of such resolution; and</p> <p>c. The date of any opening conference with IRS Appeals in which the MAP issue(s) in the MAP request was (were) discussed; and the issues, if any, set forth in the taxpayer’s protest that remained within the jurisdiction of IRS Appeals and from which the MAP issue(s) covered by the MAP request has (have) been severed</p>
3.2	<p><i>ACAP years:</i> For MAP requests filed with APMA, provide the following information:</p> <p>a. Whether the taxpayer requests ACAP and, if so, the ACAP years proposed to be covered;</p> <p>b. Whether the taxpayer does not seek to apply the MAP resolution to one or more ACAP years and its reasons for not requesting ACAP (such as the transactions at issue not having occurred in subsequent taxable years); and</p> <p>c. Whether the taxpayer has filed a bilateral or multilateral APA request pursuant to Rev. Proc. 2014–YY that proposes to cover the same issues covered by the MAP request and whether it includes a rollback request for ACAP years</p>
3.3	<p><i>Ancillary issues:</i> List the ancillary issues (if any) the taxpayer requests be addressed in the MAP resolution</p>
3.4	<p><i>Attachments:</i> List any required MAP request attachments that the taxpayer has not included in its MAP request, together with explanations as to why such items are not included (e.g., “N/A”)</p>

.03 *MAP Request Attachments.* The MAP request must also include the following attachments after the cover letter, separated and ordered as indicated in this section 1.03. If an attachment in the list below is not applicable to the MAP request, the attachment should indicate this by “N/A.”

Tab 1	<p><i>Authorization form:</i> Include a properly executed Form 2848 (<i>Power(s) of Attorney and Declaration of Representative</i>) or Form 8821 (<i>Tax Information Authorization</i>)</p>
Tab 2	<p><i>ACAP requests:</i> If the taxpayer is requesting ACAP, provide a statement that the taxpayer agrees to the following:</p> <p>a. The inspection of books of account or records under ACAP will not preclude or impede (under section 7605(b) of the Code or any administrative provision adopted by the IRS) a later examination of a return or inspection of books of account or records for any taxable period covered in the ACAP request; and</p> <p>b. The IRS need not comply with any applicable procedural restrictions (e.g., providing notice under section 7605(b) of the Code) before beginning such examination or inspection</p>
Tab 3	<p><i>Protective claim and treaty notification:</i> If applicable, provide the following information:</p> <p>a. A statement that the MAP request is to serve as a protective claim pursuant to section 13 of the revenue procedure, together with the information required by section 13.02(3); and</p> <p>b. A statement that the MAP request is to provide treaty notification pursuant to section 14 of the revenue procedure</p>
Tab 4	<p><i>Consent to disclosure:</i> Include a declaration, dated and signed by a person having authority to sign the taxpayer’s federal tax returns, that the taxpayer consents to the disclosure of the contents of the MAP request – other than trade secrets, if the taxpayer so requests – to the applicable foreign competent authority(ies) within the limits contained in the U.S. tax treaty(ies) governing the MAP request</p>
Tab 5	<p><i>“Penalties of perjury” declaration:</i> Include the following “penalties of perjury” declaration:</p> <p>Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the MAP request are true, correct, and complete.</p> <p>The declaration must be dated and signed by the person(s) on whose behalf the request is being made and not by the taxpayer’s representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer having personal knowledge of the facts. The person signing for a trust, an estate, or a partnership must be a trustee, an executor, or a partner, respectively, who has personal knowledge of the facts</p>
Tab 6	<p><i>Written notice of adjustment:</i> Provide the following information:</p> <p>a. For U.S.-initiated adjustments, a copy of the written notice of the adjustment, e.g., the Form 5701 or Form 4549, and any related attachments received from IRS Examination; or</p> <p>b. For non-U.S.-initiated actions: (1) an English translation of any official notice(s) of the adjustment to taxable income reported in the treaty country(ies) upon which the MAP request is based; and (2) a copy of the official notice(s) of such adjustment(s) in the original language</p>

Tab 7	<i>E-mail authorization:</i> Except for individuals or for taxpayers eligible to file small case MAP requests under section 5 of the revenue procedure, include a signed original of the memorandum of understanding authorizing communications with the U.S. competent authority via e-mail, or a statement that the taxpayer does not authorize e-mail communications, together with a brief explanation for declining to do so (<i>see</i> section 3.08 of the revenue procedure)
Tab 8	<i>Information or documents in a foreign language:</i> List any information or documents in a foreign language that are submitted to a foreign tax authority or foreign competent authority in connection with, or that are otherwise relevant to, the MAP request and for which a full translation in English is not provided
Tab 9	<i>MAP requests filed with APMA:</i> For MAP requests filed with APMA, provide the following information: <ul style="list-style-type: none"> a. A copy of documentation prepared pursuant to section 6662 of the Code or other documentation analyzing the MAP issues for the taxable years covered by the MAP request; b. Financial data prepared for official statutory, regulatory, or other reporting purposes for the taxpayer’s controlled group (whether corporate parent is a U.S. person or not) for all taxable years covered by the MAP request; c. Income statements and balance sheets, segmented as necessary to demonstrate the effect of the MAP issue(s) on taxable income for the taxpayer and the members of the controlled group for all taxable years covered by the MAP request and, as applicable, for the three taxable years ending before and the three taxable years ending after the years covered by the MAP request; and d. Diagrams similar to “covered issue diagrams” required for APA requests, as described in the appendix to Rev. Proc. 2014–YY
Tab 10	<i>Pre-filing submissions:</i> Include any pre-filing memoranda or other materials submitted in connection with the MAP request

.04 *Small Case MAP Requests Filed with APMA.* Taxpayers filing small case MAP requests with APMA may exclude the information requested in Tabs 8, 9(a), and 9(d) from their MAP requests. This section does not apply to a MAP request involving a taxpayer-initiated position.

SECTION 2. REQUESTS FOR DISCRETIONARY LOB RELIEF

.01 *In General.* In addition to the requirements of section 1 of this appendix, a request for discretionary LOB relief must also include the following information.

Part 4. Additional Information for Requests for Discretionary LOB Relief

4.1	Information necessary for identification and request review: <ul style="list-style-type: none"> a. Statement about the type(s) of benefits requested (e.g., dividends, interest, royalties, branch profits, etc.) and the relevant treaty provision(s) and amount of income at issue; b. Date on which the applicant requests that the determination become effective; and c. Statement as to whether the applicant made a previous request and the ultimate disposition of that request
4.2	Applicant organization information: <ul style="list-style-type: none"> a. Narrative description of the business activities of the applicant’s U.S., foreign, and group holdings that describes the ownership structure and any recent restructurings in ownership and the purposes therefor relevant to the applicant and its ultimate owner(s), including the tax reasons for the use of any hybrid entities in the structure; b. In the case of a country that applies a territorial or exemption system for relieving double taxation on income or gain attributable to an office or branch in a third country, whether the applicant conducts business in the United States through such an office or permanent establishment, and if so, the name of the country in which the office or branch is located, the type of income or gain derived by the office or branch, and the applicable rate of tax applied to that income in that third jurisdiction; c. Name, address, and U.S. taxpayer identification number of U.S. entities related to the applicant from whom income covered by the request was or will be received; d. A chart with the name and country of tax residence or organization of every entity, along with its ownership interest in any intermediate entity, including its entity classification under U.S. and foreign law, between the applicant and ultimate owners of the applicant, (e.g., publicly traded corporations, pensions or other tax-exempt entities, governments, or individuals); e. Description of the control and business relationships between the applicant and relevant persons for the years in issue, including any changes in such relationships prior to the date of the request; and f. Description of the relevant transactions, activities, or other circumstances involved in the matter covered by the request

4.3	<p>Applicant financial statement information:</p> <ol style="list-style-type: none"> a. Financial statements, if available, for the years in issue of the applicant and any U.S. branch or related entity that paid or will pay income to the applicant during the period covered by the request; and b. Annual reports of any publicly traded shareholder that directly or indirectly owns stock in the applicant for the years in issue, and an English translation of any similar filings with securities regulators reflecting the structure or transaction that is the subject of the request for the years in issue, if applicable
4.4	<p>Additional applicant information:</p> <ol style="list-style-type: none"> a. Analysis of why the applicant does not meet each of the objective tests listed in the treaty LOB article (e.g., if the company fails the base erosion test because it pays more than half of its gross income in the form of deductible expenses to persons not authorized by the treaty, including an explanation as to the reasons for making payments to such persons, or if a company is engaged in the active conduct of a trade or business in its country of residence, an explanation of what specifically prevents the company from meeting the active trade or business test in the treaty, or if the applicant's parent was recently delisted from a recognized stock exchange and why, or if the applicant's parent is publicly traded on a stock exchange not recognized under the treaty); b. Explanation of the non-tax business reasons why the applicant was formed or maintained in the particular treaty country (e.g., that the country is the source of raw materials, the customer base is located in the country, substantial functions of the company's business are located in the country, a substantial amount of services are performed in the country, or rents or royalties are derived from such country), and an explanation for any recent changes in these activities; c. Detailed description of the facts and circumstances that demonstrate that the applicant has a sufficient relationship or nexus to the treaty country; d. Analysis of any relevant factor for determining whether to grant a request for discretionary LOB relief, as indicated, for example, by the applicable U.S. tax treaty and Treasury Department Technical Explanation to the U.S. tax treaty; e. Statement from the applicant as to whether any entity in the ownership chain between the applicant and the publicly held entity (including the publicly held entity) is a nominee, agent, or otherwise a conduit, and if so, why it is arranged in that manner; f. English translations of all tax rulings or tax concessions issued to the applicant by the country in which it is organized, or a statement of whether the applicant otherwise benefits from a special tax regime in that country, and a description of the benefits; g. If the applicant has requested a certification from its country of residence regarding entitlement to the benefits of the treaty, where applicable, a copy of all correspondence from the treaty country; h. Statement from the applicant whether an examination by any tax authority has been or is currently in process that is related to the relief request; i. Whether a request for an APA has been or is anticipated to be made with respect to the income that is covered by the request; j. Statement whether each entity between the applicant and the ultimate shareholders meets the base erosion test of the treaty; k. If the requested treaty benefits relate to dividends, a description of the capital structure of the applicant and of the U.S. entity paying the dividends, including details about each class of shares and associated rights (e.g., voting, conversion, dividend rate, etc.), the period during which the structure was in effect, and any reorganizations in the United States or of the applicant abroad, including change of residence; l. If the requested treaty benefits relate to interest, a general description of the terms of indebtedness, the method used to calculate interest, and the existence of embedded options or other derivative structures; whether the debt is registered or in bearer form; whether it is publicly traded and, if so, on which exchange; whether it is held by a hedge fund or other type of investment vehicle; and whether the ultimate owners are known to the applicant; m. If the requested treaty benefits relate to royalties, a description of the intangible property generating the royalty payments, when the applicant gained the rights to this property, and the terms of the royalty agreement; n. In the case of an applicant that is a hybrid entity, or that owns an interest in a hybrid entity through which it derives income, profit, or gain with respect to which it seeks treaty benefits, a detailed explanation of why the applicant derives the income in accordance with the relevant treaty provisions; and o. Statement of understanding that if the request for discretionary LOB relief is accepted by the U.S. competent authority the applicant is required to remit the user fee as provided by section 16 of the revenue procedure

.02 *Pre-filing Memorandum*. The applicant must submit a pre-filing memorandum indicating whether a pre-filing conference is requested in accordance with section 3.02(3)(f) of the revenue procedure.

SECTION 3. “GENERALLY CORRESPONDS” PENSION DETERMINATIONS

In addition to the requirements of section 1 of this appendix, a request seeking a determination that a foreign pension plan generally corresponds to a pension plan recognized for tax purposes in the United States must also include the following information:

Part 5. Additional Information for Requests for “Generally Corresponds” Pension Determinations

5.1	Copies of the Plan Documents (translated into English). For this purpose, the Plan Documents include the plan itself, the trust agreement, the summary plan description or similar document provided to participants, and any other document that will assist the U.S. competent authority in making its determination.
5.2	If the plan at issue relates to another plan of the employer, copies of the Plan Documents (as defined above) for that other plan (translated into English)
5.3	Copies of all applicable statutory provisions that govern the foreign pension plan (translated into English)
5.4	An explanation of why the foreign pension plan should be deemed to “generally correspond” to a pension plan recognized for tax purposes in the United States.

SECTION 4. MANNER OF FILING MAP REQUESTS

.01 *In General*. The taxpayer must provide four copies of its MAP request as follows: one (1) original, bound printed submission containing signed originals of the cover letter, “penalties of perjury” declaration, consent to disclosure, and, as applicable, authorization forms, including e-mail authorization, along with printed copies of all other required information; two (2) bound photocopies of the contents of the original printed submission; and one (1) electronic copy of the contents of the original printed submission on CD or flash drive or similar acceptable electronic storage medium. All four (4) copies of the MAP request must be filed with the U.S. competent authority at the address set forth in section 5 of this appendix.

.02 *Exemptions for Small Case Filings with TAIT*. Unless otherwise instructed by the U.S. competent authority, taxpayers filing small case MAP requests with TAIT are only required to file a single printed copy of the request. Also, such taxpayers may, but are not required to, file an electronic copy of the MAP request.

.03 *Format of Printed Copies*. Each printed copy may be filed in one or more bound volumes. The attachments must be tabbed or separated and identified and ordered as presented in section 1 of this appendix. If an attachment is not applicable to the MAP request, a statement to this effect must be included in the relevant tabbed section.

.04 Content and Format of Electronic Copy.

(1) *Content*. The electronic copy of the MAP request must contain: (1) the cover letter to the MAP request, with all required statements, declarations, explanations, documents, information, data, and all other requested materials; and (2) all required attachments. The attachments should consist of separate electronic files named in a manner that corresponds to the tab numbers presented in section 1 of this appendix. If an attachment is not applicable to the MAP request, a statement to this effect must be included in the electronic file.

(2) *Format*. Suitable formats for the documents in the electronic copy include Microsoft Word, Excel, PowerPoint, and Adobe Portable Document Format. Any document that is readily available in Microsoft Word, Excel, or PowerPoint format should be provided in that format rather than, or in addition to, Adobe Portable Document format.

SECTION 5. ADDRESSES AND CONTACT INFORMATION

.01 APMA Contact Information.

Telephone number:
Mailing address:

TBD
Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Routing: M3-370
Washington, D.C. 20224
(Attention: APMA)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website: [link to be included when available]
Office location: 801 Ninth Street, N.W., Washington, D.C. 20001.
Mail should not be sent to this address.

.02 TAIT Contact Information.

Telephone number: TBD
Mailing address: Deputy Commissioner (International)
Large Business and International Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Routing: M4-365
Washington, D.C. 20224
(Attention: TAIT)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website: [link to be included when available]
Office location: 801 Ninth Street, N.W., Washington, D.C. 20001.
Mail should not be sent to this address.

Proposed Revision of Procedures for Advance Pricing Agreements

Notice 2013-79

PURPOSE

This notice proposes a revenue procedure that would update and supersede Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1

C.B. 1133, which is also superseded. The proposed revenue procedure would provide guidance and instructions on APAs and guidance and information on the IRS's administration of APAs.

The proposed revenue procedure would substantially restate Rev. Proc. 2006-9 to improve clarity, readability, and organization. The proposed revenue procedure also would reflect structural changes undertaken by the IRS since 2006, including the establishment of the

Large Business & International Division, the realignment and consolidation of IRS transfer pricing resources under the Director, Transfer Pricing Operations, and the creation of the Advance Pricing and Mutual Agreement Program, the office responsible for evaluating, executing, and administering APAs on behalf of the IRS.

Additionally, the proposed revenue procedure would effect a limited number of significant substantive changes. These changes may be summarized as follows:

Section of Proposed Update to Rev. Proc. 2006-9	Nature of Addition or Changes
2.02(3)	Explains potential interactions between requests for advance pricing agreements and requests for competent authority assistance. Recognizes that APMA may, in appropriate circumstances, condition its acceptance of an APA request upon taxpayer's agreeing to roll back the terms of the proposed APA. Further recognizes that APMA may, in appropriate circumstances, encourage a taxpayer that has sought APMA's assistance for a MAP case to extend the MAP resolution to APA years.
2.02(4)	Restates a preference for bilateral and multilateral APAs over unilateral APAs and makes clear that APMA may reject a unilateral APA request if its acceptance would be inconsistent with procedures and practices established with particular treaty partners.
2.03(3)	Requires that the taxpayer execute consent agreement(s) as necessary to extend the period of limitations for assessment of tax for each proposed APA year and each proposed APA rollback year.
3.02	Provides expanded pre-filing procedures, including mandatory submission of a pre-filing memorandum in cases raising certain issues.
3.02(2)	Provides that a taxpayer filing an APA request eligible for the small case APA user fee may seek permission to submit an abbreviated APA request.
3.03(3)-(5)	Provides for a new filing deadline for bilateral and multilateral APA requests.
3.04(1)	Establishes an appendix listing revised specifications for the content of APA requests.
3.06	Provides for e-mail communications between APMA and a taxpayer's representative pursuant to a memorandum of understanding executed by the taxpayer.
3.07	Provides that a protective claim for credit or refund may be made by including the claim in a bilateral or multilateral APA request.
3.08	Clarifies that a complete APA request (updated and supplemented as required) will be a factor in determining whether the taxpayer has met the documentation requirements of Treas. Reg. §1.6662-6(d)(2)(iii) for the proposed APA years.
4.01	Describes procedures for notification of receipt of an APA request.
4.02	States circumstances in which APMA may deny assistance with respect to an APA request or during the APA process.
4.02(3)	Clarifies that APMA's decision as to whether an APA request is complete or to deny, suspend or terminate assistance is not subject to administrative review.
4.03	Describes general practices that APMA will follow after an APA request has been filed with respect to, among other things, issuing case plans, conducting due diligence, and conveying its views on APA requests to the taxpayer.
4.05	Clarifies that mandatory arbitration may apply to certain bilateral or multilateral APA requests.
5.01	Elaborates on potential coordination between requests for advance pricing agreements and requests for competent authority assistance. Provides that a taxpayer may seek permission to submit an abbreviated APA request if the relevant factors surrounding its proposed APA years and any proposed APA rollback years are substantially the same as those in its MAP years or its MAP and ACAP years covered by a MAP resolution. Presents protocols for seeking permission to file an abbreviated APA request in these circumstances.
5.02(4)	States that APMA reserves the right to coordinate with applicable IRS offices to pursue an APA rollback to any or all of the taxpayer's open pre-APA years, regardless of whether the taxpayer requests an APA rollback.
5.02(5)	Clarifies that an APA rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable year under the jurisdiction of IRS Appeals will constitute a request for the Simultaneous Appeals Procedure, provided that the taxpayer provides an affirmative statement requesting SAP review.
5.02(6)	Clarifies that, except in unusual circumstances, an APA rollback will not be made to a taxable year whose period of limitations for assessment of tax has expired in the United States.
7.02	Restates and revises the treatment of and procedures regarding repatriation payments for bilateral or multilateral APAs and unilateral APAs.
8.01	Provides that a taxpayer may seek permission to submit an abbreviated APA request in cases involving renewals of current APAs if the relevant factors of the current APA are substantially the same as those in the proposed renewal APA years. Presents protocols for seeking permission to file an abbreviated APA request in these circumstances.
Appendix – 3.04	Revises qualifications for small case APA user fee eligibility.

The IRS and the Treasury Department request comments on this proposed revenue procedure. Comments may be submitted in writing on or before March 10, 2014. Comments should be submitted to Internal Revenue Service, CC:PA:LP-D:PR (Notice 2013-79), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to *Notice.Comments@irs.counsel.treas.gov*.

Please include "Notice 2013-79" in the subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LP-D:PR (Notice 2013-79), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. All comments will be available for public inspection and copying.

The procedures for APAs are proposed to be revised as follows:

PROPOSED REVENUE PROCEDURE

Procedures for Advance Pricing Agreements

Internal Revenue Code § 482: Allocation of income and deductions among taxpayers

Rev. Proc. [2014-YY]

SECTION 1: DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 2: PURPOSE, BACKGROUND, SCOPE, AND GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

SECTION 3: PROCEDURES FOR FILING APA REQUESTS

SECTION 4: ACTIONS ON APA REQUESTS

SECTION 5: APA ROLLBACKS AND COORDINATION WITH REV. PROC. 2014-XX

SECTION 6: LEGAL EFFECT OF AN APA

SECTION 7: ADMINISTERING AN APA

SECTION 8: RENEWING AN APA

SECTION 9: DISCLOSURE

SECTION 10: EFFECT ON OTHER DOCUMENTS

SECTION 11: EFFECTIVE DATE

SECTION 12: PAPERWORK REDUCTION ACT

SECTION 13: DRAFTING INFORMATION

APPENDIX

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION

.01 *Definitions.* For purposes of this revenue procedure, the following terms have the meanings set forth in this section.

Abbreviated APA request	An APA request from which APMA has explicitly authorized the taxpayer to omit otherwise required information, documents, or content, in contrast to a complete APA request, which must meet all of the requirements discussed in section 3.04 and as set forth in the appendix
ACAP	Accelerated competent authority procedure (<i>see</i> section 4 of Rev. Proc. 2014–XX)
ACAP request	A request filed under section 4 of Rev. Proc. 2014–XX to include ACAP years in a MAP case
ACAP years	Taxable years covered by an ACAP request or eligible for ACAP
Ancillary issues	Subsidiary issues eligible for coverage by an APA, including APA repatriation (<i>see</i> section 7), interest on refunds and deficiencies, penalties with respect to U.S.-initiated adjustments, and the determination of whether a payment is compulsory for foreign tax credit purposes as provided in Treas. Reg. §1.901–2(e)(5)
APA	An advance pricing agreement
APA annual report	The report prepared for each APA year demonstrating the taxpayer’s compliance with the covered method(s) and APA terms and conditions
APA primary adjustment	An adjustment made to a taxpayer’s actual results such that its reported taxable income is consistent with the application of the covered method(s)
APA process	The series of formal or informal steps described in this revenue procedure or established by the APA team during the course of its evaluation of an APA request that are involved in reaching an APA, including steps involved in meeting pre-filing requirements
APA repatriation	The treatment of repatriation payments under an APA
APA request	A request for a unilateral, bilateral, or multilateral APA submitted under this revenue procedure
APA rollback	The application (with appropriate modifications, if necessary) of the covered method(s) of an APA to specific pre-APA years
APA rollback request	A request for an APA rollback submitted under this revenue procedure
APA team	The IRS team assembled to process an APA request
APA team leader	The designated APMA team leader who serves as the taxpayer’s point of contact during the APA process
APA term	All of the APA years covered by an APA
APA terms and conditions	The terms and conditions of the APA, including the APA years, operational and compliance provisions, critical assumptions, and record-keeping and annual reporting responsibilities
APA year	A taxable year covered by an APA
APMA	The Advance Pricing and Mutual Agreement Program, a representative office of the U.S. competent authority and one of the divisions of TPO
Arbitration treaty	A U.S. tax treaty in which the mutual agreement procedure article includes a provision for mandatory arbitration of certain cases, as described in section 12 of Rev. Proc. 2014–XX
Bilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are premised on an underlying MAP resolution reached between the U.S. competent authority and a foreign competent authority
Bilateral APA request	A request for a bilateral APA submitted under this revenue procedure
Code	The Internal Revenue Code of 1986 (26 U.S.C.), as amended
Controlled group	The group of controlled taxpayers, within the meaning of the term set forth in Treas. Reg. §1.482-1(i), of which the taxpayer filing the APA request is a member
Coverable issues	The issues eligible to be covered by an APA, including issues arising under section 482 of the Code; certain MAP issues, notably those arising under the business profits and associated enterprises articles of U.S. income tax treaties; determinations of the income effectively connected with the conduct of a trade or business within the United States; determinations of the respective amounts of income sourced from within and without the United States in the case of income derived from both such sources; ancillary issues; and any other issues for which transfer pricing principles may be relevant to their resolution by APMA

Covered group	The group of U.S.- and non-U.S. taxpayers within a controlled group, including the taxpayer filing the APA request, whose intercompany transactions or other business activities are within the scope of the covered issue(s)
Covered issue diagrams	Diagrams, charts, or similar representations described in the appendix that depict, among other items, the legal structure, tax structure, business unit structure, intercompany flows, and value chain of the controlled group and proposed covered group
Covered issue(s)	The coverable issue(s) that is (are) covered by the APA
Covered method(s)	The transfer pricing method(s) or other method(s) set forth in the APA for determining the taxable income of each member of the covered group in relation to the covered issue(s)
Critical assumption	Any fact the continued existence of which is material to the issue(s) and method(s) covered by an APA, whether related to the taxpayer, a third party, an industry, or business and economic conditions
Dollar file request	An APA request for which the required user fee is paid before, and which is then submitted by, the deadline set forth in section 3.03(4)
Filed year	A taxable year for which a U.S. federal income tax return has been filed, determined by reference to the stage in the APA process at which the characterization as filed or not filed is relevant
Foreign competent authority	The competent authority of a treaty country
Global trading arrangement	Global trading arrangement: Any arrangement involving multiple associated enterprises or the business unit(s) of an enterprise that operate in more than one country and that trade or deal in securities and/or other financial products, either on their own behalf or on behalf of clients. Global trading arrangements may encompass functions ancillary to the foregoing activities.
Intangible development arrangement	Any arrangement for sharing the costs and risks of developing intangibles, including a cost sharing arrangement as defined in Treas. Reg. §1.482-7 or a qualified cost sharing arrangement as defined in Treas. Reg. §1.482-7A (collectively, a “CSA”), or an arrangement (other than a CSA) for sharing the costs and risks of developing intangibles to which the consideration of the principles, methods, comparability, and reliability considerations set forth in Treas. Reg. §1.482-7 is relevant in determining the best method, under Treas. Reg. §1.482-4(g) or Treas. Reg. §1.482-9(m)(3), as appropriately adjusted in light of the differences in the facts and circumstances between such arrangement and a CSA. <i>See also</i> Treas. Reg. §1.482-1(b)(2)(iii)
IRS	Internal Revenue Service
IRS Examination	The function(s) within the IRS responsible for examining federal tax and information returns and ascertaining the correctness of any return for purposes of determining the tax liability of taxpayers
LB&I	Large Business & International Division of the IRS
MAP	Actions taken by the U.S. competent authority and consultations between the U.S. and foreign competent authorities under U.S. tax treaties, principally the mutual agreement procedure article
MAP case	A case initiated by a MAP request or by the U.S. competent authority under Rev. Proc. 2014-XX involving one or more MAP issues in a given MAP year or set of years
MAP issue	An issue that can be resolved by the U.S. competent authority, principally under the mutual agreement procedure article of a U.S. tax treaty
MAP process	All steps in the process of reaching a MAP resolution of a MAP case under Rev. Proc. 2014-XX
MAP repatriation	The treatment of repatriation payments pursuant to a MAP resolution, as defined in Rev. Proc. 2014-XX
MAP request	A request for assistance of the U.S. competent authority filed under Rev. Proc. 2014-XX
MAP resolution	A resolution of (i) MAP issues constituting a MAP case under Rev. Proc. 2014-XX or (ii) MAP issues constituting a case initiated by a bilateral or multilateral APA request under this revenue procedure
MAP year	A MAP year, as defined in Rev. Proc. 2014-XX
Multilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are premised on one or more underlying MAP resolutions reached between the U.S. competent authority and more than one foreign competent authority
Multilateral APA request	A request for a multilateral APA submitted under this revenue procedure

OECD Guidelines	The transfer pricing guidelines promulgated by the Organisation for Economic Cooperation and Development
Opening conference	The first meeting between the taxpayer and an APA team after an APA request has been submitted
Pre-APA year	Any taxable year ending before the first APA year
Pre-filing conference	A conference held with APMA before an APA request is filed
Pre-filing memorandum	A memorandum or similar paper submitted to APMA before an APA request is filed
Pre-filing requirements	The requirements regarding pre-filing memoranda and pre-filing conferences as described in section 3
Protective claim	A notification to the U.S. competent authority described in section 13 of Rev. Proc. 2014–XX and section 3.07
Regulations	U.S. Treasury regulations promulgated under the Code
Repatriation payment	A payment (within the meaning of section 4.01 of Rev. Proc. 99–32) or prepayment offset (within the meaning of section 4.02 of Rev. Proc. 99–32) made with respect to and not exceeding the amount of an APA primary adjustment
Rev. Proc. 2014–XX	Rev. Proc. 2014–XX, 2014–Y I.R.B. ZZ
Rev. Proc. 99–32	Rev. Proc. 99–32, 1999–2 C.B. 296
SAP review	The review of a MAP issue undertaken by IRS Appeals for the purpose of making a recommendation to the U.S. competent authority under the Simultaneous Appeals Procedure of Rev. Proc. 2014–XX
Small case APA user fee	The user fee required for APA requests that meet the criteria set forth in the appendix
Taxpayer	Unless indicated otherwise by context, the member of the covered group that (i) submits the APA request, (ii) executes the APA with the IRS, and (iii) is either a U.S. person, as defined in section 7701(a)(30) of the Code, or a non-U.S. person that is expected to file U.S. federal income tax returns during the proposed APA years
TPO	Transfer Pricing Operations, the director of which reports to the Deputy Commissioner (International), LB&I
Treas. Reg.	U.S. Treasury regulations promulgated under the Code
Treaty country	A country other than the United States that has a U.S. income tax treaty in force
U.S. competent authority	The Deputy Commissioner (International), LB&I, the Assistant Deputy Commissioner (International), and each other IRS official performing competent authority functions pursuant to applicable delegation orders (<i>see</i> section 2.03 of Rev. Proc. 2014–XX)
U.S. tax treaty	A convention governing income, estate, or gift taxes to which the United States is a party and that has entered into force, together with its implementing protocols, exchanges of diplomatic notes, memoranda of understanding, and competent authority arrangements
U.S.-initiated adjustment	A proposed or final adjustment made by the IRS to the taxable income reported by a taxpayer on its U.S. federal income tax return
Unilateral APA	An APA in which the covered issue(s), covered method(s), and APA terms and conditions are not premised upon an underlying MAP resolution
Unilateral APA request	A request to enter into a unilateral APA under this revenue procedure

.02 *Section References.* Unless indicated by context or otherwise, section references are to the sections of this revenue procedure (including the appendix).

.03 *Deadline References.* If a deadline under this revenue procedure falls on a Saturday, Sunday, or a legal holiday in the District of Columbia, the deadline is extended to the next succeeding day that is not a Saturday, Sunday, or a legal holiday in the District of Columbia.

SECTION 2: PURPOSE, BACKGROUND, SCOPE, AND GENERAL CONDITIONS UNDER WHICH THIS PROCEDURE APPLIES

.01 *Purpose.* This revenue procedure provides taxpayers with guidance and instructions on filing APA requests and guidance and information on the administration of APAs. This revenue procedure updates and supersedes Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded.

.02 *Background and Principles.*

(1) In February 2012, the IRS established APMA to oversee its APA program and to act as the representative office of the U.S. competent authority responsible for handling MAP cases arising under the business profits and associated enterprises articles of U.S. tax treaties. APMA also has shared responsibility for cases arising under the permanent establishment articles of U.S. income tax treaties. (See section 2.04 of Rev. Proc. 2014-XX.) In accordance with its mission, APMA endeavors to administer the programs within its jurisdiction in a manner that secures the appropriate tax bases of the United States and its treaty partners, prevents fiscal evasion, and is otherwise consistent with sound tax administration.

(2) APMA's APA program provides a voluntary process whereby the IRS and taxpayers may resolve transfer pricing issues and issues for which transfer pricing principles may be relevant in a principled and cooperative manner on a prospective basis. APMA is committed to conducting the APA process in a manner that is fair, timely, and consistent with principles of sound tax administration. The APA process increases the efficiency of tax administration by encouraging taxpayers to come forward and present all the facts

necessary for a proper evaluation of their coverable issues and to work towards a resolution of such issues in a spirit of openness and cooperation. The voluntary and prospective nature of the APA process lessens the burden of compliance by giving taxpayers greater certainty regarding their covered issues and promotes the principled resolution of these issues by allowing for their discussion and resolution in advance before the consequences of such resolution are fully known to either taxpayers or the IRS.

(3) APAs and MAP resolutions of MAP cases are two interconnected means by which taxpayers can manage and address transfer pricing and other cross-border tax issues. In recognition of these connections, APMA seeks to resolve APA and MAP requests to achieve substantive and procedural consistency and coordination in their coverage and application. For example, when warranted by similarity of facts and circumstances across taxable years, APMA will encourage a taxpayer to expand the scope of its APA request to include an APA rollback (with appropriate modifications, if necessary) when a comprehensive resolution of coverable issues would further the interests of sound tax administration. APMA may also condition its acceptance of an APA request upon the taxpayer's agreement to roll back the terms of its proposed APA (with appropriate modifications, if necessary) where APMA has clear interests in doing so and the taxpayer does not offer clear reasons against doing so. Conversely, APMA may require a taxpayer that has sought APMA's assistance for a MAP case to pursue ACAP to extend the MAP resolution of the MAP case to one or more of its ACAP years. APMA may also encourage the taxpayer to extend the MAP resolution even further into APA years. The relationship between APAs, MAP cases, and ACAP is addressed in more detail in section 5 and in Rev. Proc. 2014-XX.

(4) APMA's interest in coordinating APAs and MAP cases is also reflected in its preference for bilateral and multilateral APAs over unilateral APAs. To minimize taxpayer and governmental uncertainty and administrative cost, bilateral and multilateral APAs are generally preferable to unilateral APAs, particularly when a contemporaneous bilateral or multilateral APA request would have been effective and prac-

tical (within the meaning of Treas. Reg. §1.901-2(e)(5)(i)) to obtain consistent treatment of the covered issue(s) with a treaty country or treaty countries. Furthermore, in some circumstances, APMA may reject a unilateral APA request if accepting it would be inconsistent with procedures and practices established with particular treaty partners. For these reasons, the taxpayer must explain in a pre-filing memorandum why a unilateral APA is appropriate to cover an issue that could be covered by a bilateral or multilateral APA (see section 3.02(4)).

(5) Additionally, because APMA has a strong interest in resolving transfer pricing and other coverable issues in a timely manner, APMA may encourage the taxpayer to expand the scope of the proposed APA to include coverable issues relevant to the proposed covered issues when a comprehensive resolution of coverable issues would further the interests of sound tax administration. APMA may also condition its acceptance of an APA request upon the taxpayer's agreement to include such other issues among the covered issues, when APMA has clear interests in doing so and the taxpayer does not offer clear reasons against doing so.

(6) As appropriate, APMA will provide oral, informal advice to taxpayers, whether or not in the course of the APA process, on general and specific matters concerning APAs, including whether an issue may be covered by an APA. Any such informal advice is advisory and is not binding on the IRS.

.03 *General Requirements for Initiating and Continuing the APA Process.*

(1) To initiate the APA process, the taxpayer must (i) meet the pre-filing requirements set forth in section 3.02, as applicable; (ii) submit a complete APA request, as described in section 3.04; and (iii) pay the correct user fee, as described in section 3.05 and as instructed in the appendix to this revenue procedure (generally referred to as the "appendix").

(2) Throughout the APA process, the taxpayer must supplement its APA request and provide updated information in accordance with sections 3.10 and 3.11.

(3) Throughout the APA process, the taxpayer and the IRS will execute consent agreement(s) as necessary to extend the period of limitations for assessment of tax for each proposed APA year and for each

proposed APA rollback year. The taxpayer will be instructed as to the type of consent to execute, viz., general or restricted, and the duration of the extension for each proposed APA year and each proposed APA rollback year. Any general questions regarding the execution of consents required by this section may be directed to APMA by one of the means identified in the appendix.

SECTION 3: PROCEDURES FOR FILING APA REQUESTS

.01 *General.* This section sets forth procedures, rules, and guidelines relevant to filing an APA request. This section also addresses the taxpayer's obligations before and after filing the request. Instructions on preparing and filing an APA request are also set forth in the appendix.

.02 *Pre-filing Requirements and Requests for Pre-filing Guidance.*

(1) *General.* In the interest of making the APA process effective and efficient, APMA invites, and in some cases requires, the taxpayer to meet with APMA in a pre-filing conference prior to filing the APA request. For the same reason, APMA invites, and in some cases requires, the taxpayer to submit a pre-filing memorandum prior to filing the APA request. Pre-filing requirements are set forth in sections 3.02(3) through 3.02(7). Questions about pre-filing requirements may be directed to APMA by one of the means identified in the appendix.

(2) *APA Requests Eligible for Small Case APA User Fee.* The pre-filing requirements set forth in sections 3.02(3) through 3.02(7) do not apply to APA requests that are eligible for the small case APA user fee. A taxpayer that seeks to file such an APA request may submit the small case APA user fee together with a complete APA request or may contact APMA by one of the means identified in the appendix to discuss filing an abbreviated APA request.

(3) *Requesting Pre-filing Conferences.* A taxpayer that wishes to hold a pre-filing conference with APMA must submit its request as part of a pre-filing memorandum filed pursuant to section 3.02(4) or 3.02(5).

(4) *Mandatory Pre-filing Memoranda.* A pre-filing memorandum must be filed if (a) the taxpayer wishes to file a unilateral APA request to cover an issue that is eligible for coverage by a bilateral or mul-

tilateral APA (*see* section 2.02(4)); (b) the taxpayer seeks permission to file an abbreviated APA request (*see* section 5.01 or 8); or (c) the covered issue(s) proposed by the taxpayer will, or could reasonably be expected to, involve any of the following: (i) the license or other transfer of intangibles in connection with, or the development of intangibles under, an intangible development arrangement; (ii) any arrangement that qualifies as a global trading arrangement; or (iii) unincorporated branches, pass-through entities, hybrid entities, or entities disregarded for U.S. tax purposes. If a pre-filing memorandum is not filed in the cases described in this section, APMA may, among other possible actions, require that a pre-filing memorandum be submitted before it will take action on the APA request from the taxpayer. APMA will not accept anonymous pre-filing memoranda in the cases described in this section.

(5) *Optional Pre-filing Memoranda.* A taxpayer may voluntarily submit a pre-filing memorandum in cases other than those set forth in section 3.02(4). Although not required, APMA recommends that a pre-filing memorandum be submitted for APA requests that may present novel or complex substantive or procedural issues. Optional pre-filing memoranda may be submitted on an anonymous basis. APMA generally recommends, however, that optional pre-filing memoranda be provided on a named basis so as to facilitate a more informed understanding of the procedural and substantive issues that may arise during the APA process.

(6) *Contents of Pre-filing Memorandum.* If submitted pursuant to section 3.02(4), a pre-filing memorandum must have a length and content appropriate to the size and complexity of the covered issue(s) proposed by the taxpayer. If submitted pursuant to section 3.02(5), the pre-filing memorandum must have a length and content appropriate to the substantive or procedural issues the taxpayer wishes to raise with APMA. The memorandum must also do the following:

(a) Include a "penalties of perjury" statement modeled on the statement set forth in the appendix (unless the memorandum is submitted on an anonymous basis);

(b) State whether the taxpayer seeks a pre-filing conference and, if so, the issues the taxpayer wishes to discuss;

(c) Propose at least three possible dates for a pre-filing conference, whether or not the taxpayer seeks a pre-filing conference, in case APMA requires a pre-filing conference;

(d) Include covered issue diagrams if the pre-filing memorandum is required under section 3.02(4);

(e) If the pre-filing memorandum is submitted pursuant to section 3.02(4)(b), it must (i) present the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years are substantially the same as those surrounding the current APA or surrounding the MAP resolution in the MAP case, (ii) specify any information, documents, or other materials the taxpayer proposes to omit from its APA request, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request (*see* sections 5.01 and 8);

(f) List the name and contact information for the taxpayer's point of contact and, unless the pre-filing memorandum is submitted on an anonymous basis, provide a Form 2848 authorizing the point of contact to represent the taxpayer in connection with the APA request or a Form 8821 authorizing the point of contact to inspect or receive confidential tax information about the taxpayer in connection with the APA request; and

(g) Identify all open pre-APA years of the taxpayer and which of such years, if any, are under examination by the IRS.

(7) *Place for Submission of Pre-filing Memorandum.* Two printed copies and one electronic copy of the pre-filing memorandum must be submitted to APMA at the address provided in section 4 of the appendix.

(8) *Actions Taken with Respect to Pre-filing Conferences and Memoranda.*

(a) APMA will notify the taxpayer whether it will accept or decline the taxpayer's request to hold a pre-filing conference. The taxpayer will also be notified if a pre-filing conference is required, even if the taxpayer did not request a conference. If a pre-filing conference is held, it will address procedural and substantive issues pertinent to the APA request. During the conference, the taxpayer should be prepared to discuss the relevant facts and

circumstances surrounding the issue(s), method(s), and terms and conditions it proposes to cover in the APA. If APMA declines the taxpayer's request for a pre-filing conference or decides that no pre-filing conference is required, APMA will direct the taxpayer as to how to proceed with its APA request.

(b) Unless the taxpayer is required to submit a pre-filing memorandum pursuant to section 3.02(4), a pre-filing conference may be held on an anonymous basis. APMA generally recommends, however, that pre-filing conferences be held on a named basis so as to facilitate a more informed discussion of procedural and substantive issues that may arise during the APA process.

(9) *Informal Advice in Pre-filing Conference.* Statements or representations made by APMA in a pre-filing conference constitute informal advice and are, therefore, advisory only (see section 2.02(6)).

.03 Time for filing.

(1) *In General.* An APA request must be filed by the applicable deadline set forth in this section.

(2) *Unilateral APA Requests.* Except as provided in section 3.03(4), the taxpayer must file a complete unilateral APA request no later than the due date prescribed by statute (including extensions) for filing its Federal income tax return (or, if the taxpayer receives an extension to file its Federal income tax return, a date no later than the actual filing date of the return) ("return due date") for the first proposed APA year.

(3) *Bilateral and Multilateral APA Requests.* A complete bilateral or multilateral APA request must be filed no later than the earlier of (i) the return due date for the first proposed APA year, except as provided in section 3.03(4), and (ii) within 60 days after the bilateral or multilateral APA request regarding the same proposed covered issue(s) and APA years has been filed with a foreign competent authority, except as provided in section 3.03(5).

(4) *"Dollar File" Requests.* APMA will consider an APA request as having been filed on the return due date for the first proposed APA year if (i) the correct user fee is paid (within the meaning of section 7502(a) of the Code) by the return due date for the first proposed APA year, and (ii) a complete APA request is filed

within 120 days of the return due date for the first proposed APA year. APMA may agree to extend the 120-day filing deadline by 30 days if the taxpayer requests such an extension before the 120-day filing deadline expires. This paragraph does not apply to APA requests that must meet the filing deadline set forth in section 3.03(3)(ii) or 3.03(5).

(5) *Transition Rule for Bilateral and Multilateral APA Requests.* For some taxpayers, the filing deadline set forth in section 3.03(3)(ii) will be on a date before the effective date of this revenue procedure (see section 11). This paragraph presents a transition rule that provides such taxpayers with a grace period by which to submit the correct user fee and complete APA request, as follows. If (a) the taxpayer intends to file a bilateral or multilateral APA request that must meet the filing deadline set forth in section 3.03(3)(ii), and (b) the filing deadline set forth in section 3.03(3)(ii) is before the effective date of this revenue procedure, then APMA will consider the APA request as having been filed by the deadline set forth in section 3.03(3)(ii) so long as all of the following conditions are met: (i) the taxpayer pays the correct user fee no later than the earlier of (A) 30 days from the effective date of this revenue procedure, and (B) the return due date for the first proposed APA year; and (ii) the taxpayer submits a complete bilateral or multilateral APA request no later than the earlier of (A) 120 days from the effective date of this revenue procedure, and (B) 120 days from the return due date for the first proposed APA year.

.04 Content and Form of Complete APA Requests.

(1) *In General.* The appendix sets forth the required contents of a complete APA request, identifies the order in which such contents should be presented, and provides information and instructions on other administrative matters relevant to filing a request. An APA request must comply with the requirements set forth in the appendix before it will be considered complete. Any questions about filing an APA request not addressed in this section or in the appendix should be directed to APMA by one of the means identified in the appendix.

(2) Any information submitted by a taxpayer in connection with its APA request must be true, correct, and complete (see the appendix). All documents in or described in the APA request must be explained in sufficient detail to make their contents readily understandable. Such an explanation might include, for example, definitions of terms used, explanations of the goal and flow of calculations, the sources of data, and the identity of a document's creator and the purpose for which it was created.

.05 User Fees.

(1) The user fee requirements and rules of application are set forth in the appendix. A taxpayer that seeks a decision on the user fee applicable to its APA request must contact APMA or submit a pre-filing memorandum.

(2) The taxpayer must pay the applicable user fee no later than the date it files the APA request. User fees must be paid through the Pay.gov website. APMA will consider an APA request to be complete only when the correct user fee has been paid through the Pay.gov website.

(3) APMA will notify the taxpayer if it has paid less than the correct user fee. In such a case, the taxpayer has the option of making up the difference or withdrawing its APA request and receiving a refund of the amount it has paid.

.06 E-mail Communications. A complete APA request must include either an executed memorandum of understanding permitting APMA to communicate with the taxpayer's authorized representatives through encrypted e-mail or a statement that the taxpayer does not permit such e-mail communications and an explanation for its declining to do so. See the appendix. An electronic copy of the standard form memorandum of understanding is available on the APMA website [link to be included when available].

.07 APA Request as Protective Claim. For purposes of this revenue procedure only, a protective claim for credit or refund may be made by including the claim in a bilateral or multilateral APA request. To be a valid protective claim for credit or refund, the protective claim must fulfill the requirements of section 13.02(3) of Rev. Proc. 2014-XX. See section 13 of Rev. Proc. 2014-XX and the appendix.

.08 *Effect of Filing.* The submission of a complete APA request, updated and supplemented in accordance with the requirements of this section 3, will be a factor taken into account in determining whether the taxpayer has met the documentation requirements of Treas. Reg. §1.6662-6(d)(2)(iii) for the proposed APA years. Submission of a complete APA request does not, in itself, suspend examination or enforcement proceedings. Although APMA will coordinate within the IRS to minimize duplicative requests in conducting its due diligence, the taxpayer remains obligated to respond to information document requests issued, and according to deadlines set, by other IRS offices in any examination or enforcement proceedings.

.09 *APA Term.* In its APA request, the taxpayer must propose a term for the APA that is appropriate to the proposed covered issue(s) and to the commercial factors surrounding the taxpayer's industry and line(s) of business. Although the appropriate APA term will be determined on a case-by-case basis, a request for an APA should propose an APA term of at least five years, unless the taxpayer states a compelling reason for a shorter term. Additionally, it is in the interest of sound tax administration for APMA to seek to have at least three prospective taxable years remaining in the APA term upon the execution of an APA (in the case of a unilateral APA) or upon the execution of a MAP resolution (in the case of a bilateral or multilateral APA). Accordingly, APMA may require that the taxpayer agree to extend the APA term in order to ensure such prospectivity. In the case of a bilateral or multilateral APA, any proposed term extension will be coordinated with the relevant foreign competent authority(ies).

.10 *Requested and Supplemental Items.*

(1) The information, documents, and materials required of APA requests that are identified in the appendix may not exhaust items relevant to an APA team's evaluation of a given APA request. If the APA team determines that it needs additional information to analyze the APA request, the taxpayer will be asked, and thereby required, to provide such information. The taxpayer must respond similarly to requests made by a foreign competent authority, as applicable.

(2) In general, the taxpayer must provide to all relevant competent authorities

any responses, information, documents, or analyses that it provides to one competent authority, whether such responses, information, documents, or analyses are provided in response to a request from a competent authority or are submitted voluntarily by the taxpayer in support of its APA request. In the interest of minimizing administrative burdens, the APA team will work with the taxpayer during the APA process to find efficient procedures for disseminating responses, information, documents, or analyses to the competent authorities, such as using indexes to catalogue information, documents, or analyses the taxpayer will make available to the competent authorities upon request.

.11 *Corrected and Updated Information.*

(1) After the APA request is filed, any material errors or any material omissions in the APA request or in supplemental submissions must be promptly corrected or remedied. The taxpayer must also submit any information or documents discovered or created during the APA process that are, or reasonably may be, relevant to the APA request.

(2) The taxpayer must notify APMA of all material changes and updates to information previously submitted in connection with the APA request.

(3) Any financial data produced in connection with the APA request during the APA process must be updated annually or on a schedule that is mutually acceptable to the taxpayer and to APMA. In addition, the APA request must be supplemented with a demonstration of the application of the proposed covered method(s) to the actual financial results of the applicable members of the proposed covered group for each taxable year completed while the APA request is pending. Such a supplemental submission must be provided within 180 days of the close of the taxable year. APMA may, at its discretion, grant an extension or modify these requirements if the taxpayer provides written notification before the date the supplemental submission would otherwise be due.

.12 *Withdrawing the Request.* The taxpayer may withdraw its APA request at any time before it executes the APA. APMA generally will not refund user fees if the taxpayer withdraws its APA request after APMA has begun its due diligence.

SECTION 4: ACTIONS ON APA REQUESTS

.01 *Decision Letter and Contact Information.* APMA will notify the taxpayer in writing that it has received the APA request. The letter will also provide the name and contact information of the assigned APA team leader to which the request has been assigned. In addition, the letter will state either: (1) that the request is complete and that the APA process will proceed, together with any administrative or procedural steps the taxpayer must take pertaining to the APA request; (2) that the request is provisionally accepted but that the APA process will not proceed until specified deficiencies in the request have been addressed; or (3) that the request is rejected and the circumstances, if any, under which the request might be accepted. APMA will also instruct the taxpayer as to other offices within the IRS to which full or partial copies of the APA request must be provided.

.02 *Denial of Assistance.*

(1) APMA may deny assistance, in whole or in part, at any point in the APA process, either at the outset by rejecting the APA request or by terminating or suspending the APA process after it has accepted an APA request. APMA will generally take such actions if any of the circumstances described in, or similar to those described in, section 6.02 of Rev. Proc. 2014-XX are present, including failure to include the materials required by this revenue procedure in the APA request (*see* section 3) or the materials requested by the APA team during the APA process.

(2) If APMA denies assistance, it will determine whether to refund the taxpayer's user fee. APMA will base its decision on various considerations, including the extent of the due diligence and analysis the APA team had undertaken before further assistance is denied.

(3) APMA's decision as to whether an APA request is complete or to deny, suspend, or terminate assistance is not subject to administrative review.

.03 *Formation of APA Team, Opening Conference, Case Plan, and Taxpayer Review*

(1) Once APMA has determined that the APA request is complete and that it will continue with the APA process, the APA team leader will contact the taxpayer to set a date for an opening conference or,

depending on the nature of the proposed covered issue(s) and method(s) and other aspects of the APA request, to inform the taxpayer that an opening conference may be unnecessary before the APA team moves forward with its analysis. If the opening conference is held, the taxpayer may be asked to respond to questions from the APA team about the APA request by a given date before the opening conference or at the opening conference itself. The APA team leader may postpone the opening conference if the responses are not provided by the date set or agreed to by the APA team leader.

(2) The primary purpose of an opening conference is to give the taxpayer an opportunity to acquaint the APA team with the APA request and the issue(s), method(s), and terms and conditions the taxpayer is proposing to be covered by the APA. The meeting may also include a more detailed discussion of particular aspects of the taxpayer's proposals. Accordingly, the taxpayer should be prepared to discuss the APA request in detail and respond as fully as possible to questions about its proposals.

(3) The opening conference will also cover general procedural issues, including whether a case plan is appropriate and, if so, when it may be useful in the APA process for a case plan to be implemented, in light of the due diligence and analysis the APA team expects to undertake in the APA process. If feasible in light of the scope and complexity of the proposed APA, the APA team may also provide an estimate of the time it will take to complete its evaluation of the APA request. Whether this estimate holds true in any given case will primarily depend upon a variety of factors: the quality of the APA request; the extent of the taxpayer's cooperation with the APA team, including the completeness and timeliness of its responses to information requests and other due diligence inquiries during the APA process; and, in the case of bilateral or multilateral APAs, the speed with which the foreign competent authority is able to be prepared to discuss the case with the APA team. Accordingly, any timetable discussed or set forth in a case plan is only an estimate and is subject to revision and extension.

(4) For a bilateral or multilateral APA request, APMA will consider requests from, and may invite or require, the taxpayer to make presentations jointly to the U.S. and foreign competent authorities during the APA process. APMA will consult with the foreign competent authority as to its interest in joint presentations and notify the taxpayer accordingly.

(5) At the conclusion of the APA team's due diligence and evaluation of a bilateral or multilateral APA request, the APA team leader will provide to the taxpayer a memorandum conveying the substance of the APA team's views on the proposed APA. The memorandum will have a length, content, and format appropriate to the size and complexity of the proposed covered issue(s) and method(s) and other relevant facts and circumstances surrounding the case. The taxpayer will be invited to respond to the memorandum by a deadline set by the APA team leader.

.04 Finalizing the APA. In the case of a unilateral APA, the APA team and taxpayer will proceed to finalize an APA after the APA team has completed its due diligence and evaluation of the APA request. In the case of a bilateral or multilateral APA, the APA team and the taxpayer will proceed to finalize an APA after a MAP resolution has been reached in the case.

.05 Arbitration. The mutual agreement procedure article in arbitration treaties requires that the competent authorities refer certain cases to mandatory arbitration in the event direct consultation does not lead to a mutual agreement within a prescribed time period. Taxpayers requesting bilateral or multilateral APAs should consult the mutual agreement procedure article under the applicable U.S. tax treaty and any ancillary agreements to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies to cases initiated by bilateral or multilateral APA requests under such treaty. See section 12 of Rev. Proc. 2014-XX.

.06 Execution of Agreement. The APA will enter into force as of the date it is executed by APMA and by the taxpayer and have effect as provided therein. In the case of an APA that includes a member of a consolidated group other than the common parent (as defined in Treas. Reg. §1.1502-1), the common parent must also

sign the APA as provided in Treas. Reg. §1.1502-77. The person signing the APA must be an authorized officer of the taxpayer, have personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions, perform duties not limited to obtaining letter rulings or determination letters from the IRS or entering into APAs, and have authorization to sign the taxpayer's income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual having personal knowledge of the APA's covered issue(s), covered method(s), and terms and conditions and have authorization to sign the taxpayer's income tax return pursuant to sections 6061 or 6063 of the Code, as applicable.

.07 Not an Examination. APMA's evaluation of the APA request will not constitute an examination or inspection of the taxpayer's books and records under section 7605(b) or other provisions of the Code.

SECTION 5: APA ROLLBACKS AND COORDINATION WITH REV. PROC. 2014-XX

.01 Extension from MAP or ACAP Years to APA Years

(1) Under Rev. Proc. 2014-XX, APMA may propose that a taxpayer pursue ACAP to extend a MAP resolution in its MAP case to one or more ACAP years. APMA may also affirmatively seek of its own accord to roll forward a MAP resolution in a MAP case to the taxpayer's ACAP years where it is feasible, practicable, and in the interest of sound tax administration to do so. APMA may also discuss with the taxpayer the possibility of extending the MAP resolution into APA years. A request to extend a MAP resolution into APA years may be made either by filing a complete APA request or by filing an abbreviated APA request. A taxpayer must file a complete APA request unless it has obtained APMA's permission to file an abbreviated APA request. APMA will grant permission to file an abbreviated APA request only if (i) the taxpayer satisfies the pre-filing requirements set forth in section 3 and detailed in this section 5, and (ii) the applicable law, facts and circumstances, economic conditions, and other relevant factors surround-

ing the taxpayer's proposed APA years and proposed APA rollback years are reasonably expected to be substantially the same as such factors surrounding its MAP years or its MAP and ACAP years covered by the MAP resolution. If either of these requirements is not satisfied, the taxpayer must file a complete APA request and otherwise comply with all other provisions of this revenue procedure.

(2) As noted in section 3.02(4), a taxpayer that seeks to file an abbreviated APA request to extend a MAP resolution in a MAP case to APA years must submit a pre-filing memorandum. Among the other required items, the pre-filing memorandum must (i) present the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years and any proposed APA rollback years are substantially the same as those surrounding the MAP resolution in the MAP case, (ii) specify any information, documents, or other materials the taxpayer proposes to omit in its submission, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request.

(3) In accordance with section 3.02(8), APMA will determine whether to hold a pre-filing conference after reviewing the pre-filing memorandum. APMA may determine that no pre-filing conference is required and that an abbreviated APA request will be acceptable. In that event, APMA will provide the taxpayer with instructions on preparing the request. If APMA determines that a pre-filing conference is required, the taxpayer will be expected to discuss the arguments presented in its pre-filing memorandum. If APMA decides to accept an abbreviated APA request after the pre-filing conference, it will provide the taxpayer with instructions on preparing the abbreviated APA request. If APMA decides that it will not accept an abbreviated APA request, the taxpayer will be instructed to file a complete APA request.

.02 APA Rollbacks

(1) A taxpayer may request an APA rollback to cover one or more of its pre-

APA years. An APA rollback request should be included in the taxpayer's APA request. APMA may consider a later request for an APA rollback only if the APA rollback request is submitted in writing within 3 months after the APA request is filed, unless APMA agrees otherwise.

(2) Whether included in the APA request or in a subsequent written request, the APA rollback request must include the same information for the pre-APA years that is required to be submitted for the APA years proposed by the taxpayer.

(3) After coordinating and collaborating with other offices within the IRS, APMA will inform the taxpayer whether its APA rollback request has been accepted.

(4) Regardless of whether the taxpayer pursues an APA rollback request, APMA reserves the right to coordinate with applicable IRS offices to pursue an APA rollback to any or all of the taxpayer's open pre-APA years. In general, APMA will consider taking such action where there is sufficient similarity in relevant facts and circumstances across the taxpayer's APA and pre-APA years. APMA will inform the taxpayer in writing, either before the APA process begins or at any time during the APA process, whether it will pursue an APA rollback and the pre-APA years it will seek to cover. If the taxpayer refuses to accept an APA rollback, APMA may decline to initiate the APA process or suspend or terminate the process if it has already begun.

(5) An APA rollback request submitted in connection with a bilateral or multilateral APA request and involving a taxable year under the jurisdiction of IRS Appeals will be deemed to constitute a request for SAP review, provided that an affirmative statement requesting SAP review is included in the APA request or in the subsequent written APA rollback request (*see* the appendix). Any request for SAP review made in connection with an APA request will be subject to the provisions governing SAP review set forth in section 8 of Rev. Proc. 2014-XX.

(6) Except in unusual circumstances, APMA will not accept a rollback to a taxable year whose period of limitations for assessment of tax has expired in the United States.

SECTION 6: LEGAL EFFECT OF THE APA

.01 Binding Agreement. An APA is a binding agreement between the taxpayer and the IRS.

.02 Effect of Compliance. If the taxpayer complies with the APA terms and conditions, the IRS will not contest the application of the covered method(s) to the covered issue(s) of the APA except as provided in this revenue procedure. The taxpayer remains otherwise subject to U.S. income tax laws and applicable U.S. income tax treaties.

.03 Scope of Agreement. An APA will have no legal effect except with respect to the taxpayer, taxable years, and issues to which the APA specifically relates.

.04 Use as Evidence. Unless provided otherwise by written agreement or regulations, the IRS and the taxpayer may not introduce the APA or non-factual oral and written representations made in conjunction with the APA request as evidence in any judicial or administrative proceeding regarding any tax year, issue, or person not covered by the APA. This paragraph does not preclude the IRS and the taxpayer from agreeing to roll back the APA covered method(s), or the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because the parties considered the same or similar material in the APA process.

.05 Use as Admissions. Unless provided otherwise by written agreement or regulations, the IRS and the taxpayer may not introduce a proposed, cancelled, or revoked APA, or any non-factual oral or written representations or submissions made during the APA process, as an admission by the other party, in any judicial or administrative proceeding regarding any taxable year of the requested APA term. This paragraph does not preclude the IRS's use of any non-factual material otherwise discoverable or obtained other than in the APA process merely because APMA and the taxpayer considered the same or similar material in the APA process.

SECTION 7: ADMINISTERING THE APA

.01 Annual Reports

(1) An APA annual report must be filed for each APA year. The report must dem-

onstrate the taxpayer's compliance with the APA terms and conditions, including the amount of any APA primary adjustment for a given APA year. The report must also include all other items required by the APA and disclose any pending or contemplated requests to renew, modify, or cancel the APA. In addition, the report must identify and correct any materially false, incorrect, or incomplete information submitted during the APA process that the taxpayer discovers during the APA year.

(2) The taxpayer must file two printed copies and one electronic copy of the annual report before the later of (i) the fifteenth day of the twelfth month following the close of the APA year, and (ii) 90 days after the effective date of the APA. APMA may agree to alternative filing dates if requested by the taxpayer. The taxpayer must file all three copies of the annual report with APMA at the address set forth in the appendix. For bilateral and multilateral APAs, APMA may require the taxpayer to simultaneously file a copy of the annual report with the applicable foreign competent authority(ies).

(3) The taxpayer will be notified if it is necessary to clarify or complete the information submitted in the annual report. The taxpayer must supply the additional information by the date specified in the notice.

(4) Any request the taxpayer receives to clarify or complete information in an annual report is not an examination or the commencement of an examination of the taxpayer for purposes of section 7605(b) of the Code or any other provision of the Code.

(5) The taxpayer must amend its annual report within 45 days after becoming aware of any incomplete or incorrect information or any incorrect application of the covered method(s) presented in the report.

(6) APMA may, at its discretion, grant an extension to submit the annual report if the taxpayer provides written notification of its request before the due date and explains the circumstances necessitating the extension.

(7) The annual report must contain the following declarations, as applicable:

Under penalties of perjury, I declare that I have examined this annual report including accompanying documents, and, to the best of my

knowledge and belief, this annual report contains all the relevant facts relating to the annual reporting requirements pursuant to the APA, and such facts are true, correct, and complete.

[If applicable: An adjustment to conform taxable income and other relevant items to reflect the results reported herein has been reported to IRS Examination.]

[If applicable: An amended income tax return to conform taxable income and other relevant items to reflect the results reported herein [has been] [will be] filed with the appropriate Internal Revenue Service Center.]

(8) The taxpayer must sign the declaration according to the instructions in the appendix regarding perjury statements.

(9) Failure to file a timely, complete, or accurate annual report may be grounds for canceling or revoking the APA under section 7.06.

.02 APA Repatriation

(1) *Bilateral and Multilateral APAs.* Subject to the requirements of section 7.02(2), APMA will apply the rules and principles set forth in section 11 of Rev. Proc. 2014–XX governing MAP repatriation to determine the terms of APA repatriation for bilateral and multilateral APAs. When MAP repatriation is not agreed to as part of the MAP resolution, APMA will instead determine the terms of APA repatriation for bilateral and multilateral APAs by following the terms under which repatriation payments may be made under Rev. Proc. 99–32.

(2) *Requirements Pertaining to Repatriation in Bilateral or Multilateral APAs.* APMA will not apply the rules and principles set forth in section 11 of Rev. Proc. 2014–XX governing MAP repatriation to determine the terms of APA repatriation in a bilateral or multilateral APA unless the following conditions are satisfied: (i) no person (whether or not a “United States taxpayer” within the meaning of Rev. Proc. 99–32) that will make or receive repatriation payments would be barred from making or receiving repatriation payments under the principles of section 3.01 or 3.03 of Rev. Proc. 99–32; and (ii) the taxpayer explicitly requests MAP repatriation in its APA request or in a supplemental written submission filed with

APMA prior to a MAP resolution being reached in its case.

(3) *Unilateral APAs.* APMA will determine the terms of APA repatriation for unilateral APAs by following the terms under which repatriation payments may be made under Rev. Proc. 99–32.

.03 Examination

(1) With respect to the covered issue(s) in the APA, the IRS will not reconsider the covered method(s) but will instead limit the examination of a taxpayer's income tax return in any given APA year to, and may require that the taxpayer establish, the following: (i) the taxpayer's compliance with the APA terms and conditions; (ii) the accuracy of the APA annual report's material representations; and (iii) the correctness of the supporting data and computations used to apply the covered method(s).

(2) The IRS may audit and propose adjustments to the taxpayer's results as determined under the covered method(s) of the APA without affecting the APA's validity or applicability. The taxpayer may agree with the proposed adjustments in the same manner as any other adjustment, in which case the IRS will assess any resulting additional tax or refund any resulting overpayment of tax accordingly. If it does not agree with the proposed adjustment, the taxpayer may contest it through available administrative and judicial procedures. The taxpayer must include the audit adjustments as finally determined for the purpose of applying the covered method(s). As necessary, it must also make any APA primary adjustments, unless otherwise determined by APMA.

.04 Record Retention

(1) The taxpayer must maintain books and records that are sufficiently detailed to verify that it has complied with the APA terms and conditions. The taxpayer's compliance with this paragraph fulfills the record-keeping requirements of sections 6038A and 6038C of the Code as applied to the covered issue(s).

(2) Upon examination, IRS may request that the taxpayer submit additional information or translate specific documents within 30 days. The IRS may extend this period for good cause. The fact that a non-U.S. jurisdiction may impose a penalty upon the taxpayer or other person for disclosing any such requested material

will not constitute reasonable cause for noncompliance with the IRS's request.

.05 Revising the APA

(1) An APA may be revised by agreement of the parties (including the foreign competent authority(ies) in the case of a bilateral or multilateral APA) and any such revision is effective upon the date of the execution of the revision. APMA may agree to revise an APA in lieu of canceling or revoking it.

(2) If APMA agrees to revise a bilateral or multilateral APA, it will submit the revised APA to obtain the consent of the applicable foreign competent authority(ies) to do the same. If the foreign competent authority(ies) refuse(s) to accept the revised APA, or if the competent authorities cannot agree on a revised APA acceptable to all parties, APMA and the taxpayer may agree to (i) apply the existing APA or the revised APA for domestic U.S. purposes to one or more APA years, or (ii) seek to cancel the APA as of a specific date.

.06 Revoking or Canceling the APA

(1) APMA may revoke an APA due to fraud or malfeasance (as defined in section 7121 of the Code), or disregard (as defined in sections 6662(b)(1) and (c) of the Code) by the taxpayer in connection with the APA, including, but not limited to, fraud, malfeasance, or disregard involving (i) material facts in the request or subsequent submissions (including an annual report) or (ii) lack of good faith compliance with the APA terms and conditions.

(2) APMA may cancel an APA due to the taxpayer's misrepresentation, mistake with respect to a material fact, failure to state a material fact, failure to file a timely annual report, or lack of good faith compliance with the APA terms and conditions.

(3) Unless the parties agree to revise the APA, APMA will cancel an APA in the event of a failure of a critical assumption or a material change in governing case law, statute, regulation, or applicable treaty.

(4) For purposes of this section 7.06(1) and (2), APMA will consider facts material if, for example, knowledge of the facts could reasonably have resulted in an APA with significantly different terms and conditions. With respect to annual reports, APMA will consider facts material if, for example, knowledge of the facts would have resulted in (a) a materially different allocation of income, deductions, or cred-

its than those reported in the annual report, or (b) the failure to meet a critical assumption.

(5) APMA may waive cancellation if the taxpayer can show good faith and reasonable cause and agrees to make all adjustments proposed to correct for the misrepresentation, mistake regarding a material fact, failure to state a material fact, or noncompliance.

(6) If APMA revokes an APA, the revocation relates back to the first day of the first APA year. The IRS may (a) determine deficiencies in income taxes and additions thereto; (b) deny relief under Rev. Proc. 99-32; (c) allow the taxpayer relief under Rev. Proc. 99-32, but determine the interest on any account receivable established under section 4.01 of Rev. Proc. 99-32 without mutual agreement or correlative relief; (d) revoke the APA as an "egregious case" under Rev. Rul. 80-231, 1980-2 C.B. 219, to deny the taxpayer a foreign tax credit; and (e) deny a request for relief submitted under Rev. Proc. 2014-XX. APMA will seek to coordinate these or any other action concerning revocation of a bilateral or multilateral APA with the foreign competent authority(ies).

(7) APMA's cancellation of an APA generally is effective as of the beginning of the taxable year in which the critical assumption failed or the beginning of the year to which the misrepresentation, mistake regarding a material fact, failure to state a material fact, or noncompliance relates. If, however, the cancellation results from a change in case law, statute, regulation, U.S. income tax treaty, or coordination agreement, the cancellation generally is effective at the beginning of the year that contains the effective date of the change in case law, statute, regulation, U.S. income tax treaty, or coordination agreement.

(8) For periods following the effective date of the cancellation, the APA has no further force and effect with respect to the IRS and the taxpayer for U.S. income tax purposes. APMA will seek to coordinate any action concerning the cancellation of a bilateral or multilateral APA with the foreign competent authority(ies).

.07 Change in Case Law, Statute, Regulation, or Treaty. If applicable U.S. case law, statutes, regulations, or treaties change the federal income tax treatment

of any matter covered by the APA, the new case law, statute, regulation, or treaty provision supersedes any inconsistent terms and conditions of the APA.

SECTION 8: RENEWING THE APA

.01 General. A request to renew a current APA may be made either by filing a complete APA request or by filing an abbreviated APA request. A taxpayer must file a complete APA request unless it has obtained APMA's permission to file an abbreviated APA request. APMA will grant permission to file an abbreviated APA request only if (i) the taxpayer satisfies the pre-filing requirements set forth in section 3 and detailed in this section 8, and (ii) the applicable law, facts and circumstances, economic conditions, and other relevant factors surrounding the covered issue(s), covered method(s), and terms and conditions of the current APA are reasonably expected to be substantially the same as those in the proposed renewal APA years. If either of these requirements is not satisfied, the taxpayer must file a complete APA request and otherwise comply with all other provisions of this revenue procedure.

.02 Timing. Taxpayers are encouraged to file a request to renew a current APA nine months before the expiration of the final APA year.

.03 Pre-filing Memorandum Requirement for Abbreviated APA Requests. As noted in section 3.02(4), a taxpayer that seeks to file an abbreviated APA request to renew an APA must submit a pre-filing memorandum. Among the other required items, the pre-filing memorandum must (i) present the taxpayer's arguments that the applicable law, facts and circumstances, economic conditions, and other factors surrounding its proposed covered issue(s) and method(s) for the proposed APA years are substantially the same as those surrounding the current APA, (ii) specify any information, documents, or other materials the taxpayer proposes to omit from its submission, and (iii) discuss the taxpayer's arguments that the information, documents, or other materials the taxpayer proposes to omit from its APA request are not necessary for APMA's evaluation of the APA request.

.04 Actions Taken on APA Renewal Requests. In accordance with section 3.02(8),

APMA will determine whether to hold a pre-filing conference after reviewing the pre-filing memorandum. APMA may determine that no pre-filing conference is required and that an abbreviated APA request will be acceptable. In that event, APMA will provide the taxpayer with instructions on preparing the abbreviated APA request. If APMA determines that a pre-filing conference is required, the taxpayer will be expected to discuss the arguments presented in its pre-filing memorandum. If after the pre-filing conference APMA decides that an abbreviated APA request is acceptable, it will provide the taxpayer with instructions on preparing the request. If APMA decides that it will not accept an abbreviated APA request, the taxpayer will be instructed to file a complete APA request.

SECTION 9: DISCLOSURE

.01 *Confidentiality.* An APA, any background information relating to an APA, and the taxpayer's APA request and any supplementary materials submitted in conjunction with the APA request are return information and are confidential. See sections 6103, 6105, 894, and 7852(d) of the Code.

.02 *Not "Written Determinations".* An APA, background information related to the APA, an APA request, and supplementary materials submitted in conjunction with the APA request are not "written determinations" and are not open to public inspection. See section 6110 of the Code.

.03 *Statutory Report.* The Secretary must prepare an annual report for public disclosure. See section 521(b) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170, 113 Stat. 1860, 1925. That report includes specifically designated information concerning all APAs, in a form that does not identify taxpayers, their trade secrets, or proprietary or confidential business or financial information.

.04 *Exchange of Information.* APAs, annual reports, and factual information contained in APA requests are subject to exchange of information under U.S. income tax treaties or U.S. income tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality and the protection of trade secrets). In cases in which the exchange of information would be discretionary, information may be exchanged to

the extent consistent with sound tax administration and the practices of the relevant foreign competent authority.

SECTION 10: EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2006-09, 2006-1 C.B. 278, and 2008-31, 2008-1C.B. 1133, are modified and superseded by this revenue procedure. Rev. Proc. 2014-XX is amplified.

SECTION 11: EFFECTIVE DATE

This revenue procedure will apply to all APA requests, including requests for renewal, received on or after [DATE]. By agreement, this revenue procedure may apply to any APA resulting from an APA request pending on [DATE].

SECTION 12: PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545 - 1503.

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

The collection of information in this revenue procedure is in sections 3.02, 3.04, 3.10, 3.11, 5.01, 7.01, 7.04, 8.01 and 8.03 and in the appendix. This information is required, and will be used, to provide the IRS sufficient information to evaluate and process the APA request or to determine whether the taxpayer is in compliance with the terms and conditions of an APA. APMA will use this information to evaluate the proposed covered method(s) and the taxpayer's compliance with the terms and conditions of any APA to which it is a party. The collection of information is required to obtain an APA. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 10900 hours.

The estimated average burden for an APA pre-filing conference is 10 hours; the estimated average burden for an APA request is 60 hours; and the estimated average burden for preparation of an annual

report by a party to an APA is 15 hours. The estimated number of respondents and/or recordkeepers is 390.

The estimated annual frequency of responses is one request or report per year per applicant or party to an APA, except that a taxpayer requesting an APA may also submit a pre-filing memorandum.

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 Code.

DRAFTING INFORMATION

The principal authors of this document are John Hughes and Rebecca Kalmus of the Office of the Deputy Commissioner (International), LB&I; and Angela Holland of the Office of the Associate Chief Counsel (International). For further information regarding this revenue procedure, please contact Ms. Kalmus at (202) 515-4746 or Ms. Holland at (202) 317-5474 (not toll free numbers).

APPENDIX

This appendix sets forth instructions on preparing and filing an APA request. Unless APMA has explicitly instructed the taxpayer in writing to file an abbreviated APA request pursuant to section 5 or 8 of this revenue procedure, the APA request must be prepared and submitted according to the instructions provided in this appendix. APMA may reject an APA request that does not comply with these instructions.

A complete APA request will provide the information specified below and all other information reasonably necessary to permit the APA team to evaluate fully the proposed covered method(s). The level of detail required will depend on the facts and circumstances of each case and will be governed by relevancy and materiality considerations (keeping in mind that the APA request should provide enough information to allow the reader to concur that a matter is not relevant or material). The information in the APA request should be tailored to the facts relating to the proposed covered group, the proposed covered issue(s) (including information supporting the inclusion of any proposed

APA rollback years), and relevant legal authority. It should also take into account discussions with APMA in any pre-filing memorandum or pre-filing conference.

Section 1 of this appendix addresses the required content of APA requests. Section 2 sets forth instructions on submitting printed and electronic copies of APA requests. Section 3 presents instructions on paying user fees for APA requests. Section 4 provides addresses and contact information.

SECTION 1. CONTENT OF APA REQUESTS

.01 *General.* An APA request must include a cover letter followed by the exhibits presented in the order as listed in this section. An original of the cover letter, signed and dated by the taxpayer or the taxpayer's authorized representative, must be included in one of the three required printed copies of the APA request (see section 2 of this appendix). If the taxpayer's authorized representative signs the original of the cover letter, the tax-

payer and authorized representative must satisfy the relevant instructions on signatures in Rev. Proc. 2005-1, 2005-1 I.R.B. 1 (or its successor). The cover letter and the exhibits must contain or respond to the required statements, descriptions, explanations, and other requested information. If the requested information is not applicable to the APA request, a suitable explanation must be provided.

.02 *Cover Letter.* The cover letter to the APA request must be presented according to the instructions and structure set forth below.

Part 1. Executive Summary

1.1	<i>Identifying information:</i> List the name, address, and taxpayer identification number(s) of each member of the proposed covered group and the Standard Industrial Classification ("SIC") and the North American Industry Classification System ("NAICS") codes (number and code description) of the controlled group as reported on the taxpayer's most recently filed federal tax returns
1.2	<i>Summary of APA request:</i> Provide an executive summary of the content of the APA request that addresses the following: <ul style="list-style-type: none"> a. Whether the taxpayer proposes a unilateral APA or a bilateral or multilateral APA, and, if applicable, the U.S. tax treaty(ies) and treaty articles governing the APA request; b. Whether the APA request proposes a renewal of an existing APA or the extension of a MAP resolution from MAP or ACAP years into APA years; c. The proposed APA years and the proposed APA rollback years; d. The proposed covered issue(s) and an estimated dollar value of such issue(s) in the proposed APA years and, if relevant, the dollar values of the proposed covered issue(s) in the prior three pre-APA years; and e. The proposed covered method(s), including, as applicable, the proposed tested party(ies), profit level indicator(s), and inter-quartile range(s)

Part 2. Administrative Information

2.1	<i>Authorization:</i> List the names of and contact information for all individuals authorized by a Form 2848 to represent the taxpayer in connection with the APA request and all individuals authorized by a Form 8821 to inspect or receive confidential tax information about the taxpayer in connection with the APA request, along with a designation as to which individual will serve as the point of contact for the APA team
2.2	<i>IRS Office:</i> Identify the IRS office having examination jurisdiction over the taxpayer, together with the name of and contact information for the taxpayer's IRS Examination team manager if the taxpayer is under examination when the APA request is filed
2.3	<i>Filed Years:</i> Provide a table with the following information for each member of the proposed covered group: <ul style="list-style-type: none"> a. All open filed years in the United States and the relevant treaty country(ies), whether or not such years are currently under examination by the IRS or a foreign tax authority; b. All open filed years in which a proposed covered issue or a substantially similar issue is under review by IRS Appeals or its equivalent in the relevant treaty country(ies); c. All open filed years in which an actual or proposed adjustment has been made by either the IRS or a foreign tax authority relating to the proposed covered issue(s) or to substantially similar issues; and d. The expiration dates of statutes of limitations for all open filed years in the United States and in the relevant treaty country(ies)
2.4	<i>Request for SAP Review:</i> If applicable, include a statement that the APA request is intended to serve as a request for SAP review for such taxable years specified by the taxpayer pursuant to section 5.02(5) of this revenue procedure

Part 3. Proposed Covered Issue(s)

3.1	<p><i>Pre-filing information:</i> Provide the following information:</p> <ul style="list-style-type: none"> a. Whether a mandatory or optional pre-filing memorandum was filed; and b. Whether a pre-filing conference was held and, if so, the date of and attendees at the conference
3.2	<p><i>APA rollback:</i> Provide the following information:</p> <ul style="list-style-type: none"> a. If the taxpayer is seeking consideration of an APA rollback, list the open pre-APA years to which the APA rollback would apply; and b. If the taxpayer is not seeking consideration of an APA rollback to one or more of its open pre-APA years, discuss the reasons as to why an APA rollback is not appropriate
3.3	<p><i>Background on proposed covered group:</i> Provide background on the following points, with reference to the covered issue diagrams:</p> <ul style="list-style-type: none"> a. The general history of the business operations of the proposed covered group and of the controlled group; b. The worldwide gross revenue of the controlled group in the most recent taxable year available; c. The functional currency of each member of the proposed covered group; d. For each member of the proposed covered group, any business line(s) that is (are) outside the scope of the proposed covered issue(s); and e. The industry in which the proposed covered group operates, including discussion of relevant macroeconomic and other industry-wide factors affecting the proposed covered group, the commercial features of the markets and geographical areas in which the proposed covered group operates, and the participants and competitors in the proposed covered group's industry
3.4	<p><i>Covered issue diagrams:</i> Provide a detailed discussion of each proposed covered issue with reference to the covered issue diagrams:</p> <ul style="list-style-type: none"> a. The functions performed by each member of the proposed covered group in relation to the proposed covered issue; b. The assets employed by each member of the proposed covered group in relation to the proposed covered issue; c. The risks assumed by each member of the proposed covered group in relation to the proposed covered issue; d. Transactional or commercial flows between and among members of the proposed covered group, between members of the proposed covered group and customers and other uncontrolled parties, and between members of the proposed covered group and members of the controlled group outside of the proposed covered group; e. Principal intercompany contracts or other agreements, written or otherwise, between and among members of the proposed covered group; and f. Unless the proposed covered method involves a profit split (within the meaning of Treas. Reg. § 1.482-6 or Chapter II of the OECD Guidelines) between two or more members of the proposed covered group, the identity of the member of the controlled group that is proposed to be regarded as the principal in relation to the proposed covered issue, whether or not it is a member of the proposed covered group
3.5	<p><i>Rulings, determinations, and proceedings:</i> Provide information on the following:</p> <ul style="list-style-type: none"> a. Current or expired rulings issued by a relevant foreign tax authority covering intercompany transactions or business activities of members of the proposed covered group that are within the scope of the proposed covered issue(s); b. The terms of any MAP resolution of a MAP case addressing intercompany transactions or business activities of members of the proposed covered group that are within the scope of the proposed covered issue(s); and c. Any judicial or administrative proceedings in the United States or in the relevant treaty country(ies) to which any members of the proposed covered group are or have been parties involving intercompany transactions or business activities that are within the scope of the proposed covered issue(s)
3.6	<p><i>Ancillary issues:</i> List the ancillary issues (if any) included in or among the proposed covered issue(s) of the APA request, e.g., terms of APA repatriation</p>

Part 4. Proposed Covered Method(s)

4.1	<i>Selection of proposed covered method(s)</i> : Discuss the selection of the proposed covered method(s) with reference to the standards governing the selection of the “best method” under Treas. Reg. § 1.482-1(c) and, in the case of bilateral or multilateral APA requests, the selection of the “most appropriate” method under Chapter I of the OECD Guidelines
4.2	<i>Search and screening process</i> : Describe the research and screening process and criteria used to identify and select independent comparable agreements or independent companies upon which the proposed covered method is based, including the initial search universe, the qualitative and quantitative screens used to accept or reject potential comparable agreements or companies, and the numbers of potential comparable agreements or companies accepted and rejected at the different stages of the search and screening process
4.3	<i>Adjustments within proposed covered method(s)</i> : Provide a detailed explanation of any adjustments made to the selected proposed comparable agreements or results of independent companies or to the results of the tested party, such as adjustments relating to product line segregations; differences in accounting practices; differences in functions performed, assets employed, or risks assumed; volume or scale differences; or differences in economic or market conditions
4.4	<i>Demonstration of proposed covered method(s)</i> : Provide a table summarizing the results of applying the proposed covered method(s) to the relevant members of the proposed covered group for (i) the most recent three pre-APA years (or to as many pre-APA years as are available, if fewer than three are available), (ii) the first proposed APA year, and (iii) to the extent available, forecasted data of the relevant members of the proposed covered group for the proposed APA years
4.5	<i>Segmentation of financial results</i> : If the proposed covered method(s) is(are) applied to a subset of the assets, liabilities, income, and expenses in the financial statements (<i>see</i> Exhibit 17), provide a segmentation of the financial statements and describe in detail (i) those items in the segmented financial statements that have been allocated or apportioned to the applicable proposed covered issue(s) and to other issues, and (ii) the method(s) of allocation or apportionment applied

Part 5. Proposed APA Terms and Conditions

5.1	<i>Review of Proposed APA</i> : Provide a detailed discussion and explanation of the proposed APA terms and conditions as reflected in the draft APA submitted with the APA request, noting, in particular, any proposed APA terms and conditions that differ from the APA terms and conditions as reflected in the model APA available on the APMA website [link to be provided when available]
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.03 *Exhibits*. The APA request must also include the following exhibits after the cover letter, separated and ordered as indicated. While all of the exhibits must be included as part of a complete APA request, certain exhibits are required to be produced in both printed and electronic forms; other exhibits need be produced only in electronic form (*see* section 2 of this appendix).

Exhibit 1	<i>Contents of exhibits</i> : Provide a table or similar comprehensive list of the exhibits submitted in both printed and electronic form and those submitted in only electronic form
Exhibit 2	<i>Authorization form</i> : Include a properly executed Form 2848 (<i>Power of Attorney and Declaration of Representative</i>) or Form 8821 (<i>Tax Information Authorization</i>)
Exhibit 3	<i>Protective claim</i> : In the case of a bilateral or multilateral APA request, provide a statement affirming whether the APA request is to serve as a protective claim pursuant to section 13 of Rev. Proc. 2014-XX and, if so, include the information required by section 13.02(3) of Rev. Proc. 2014-XX
Exhibit 4	<i>Waiver of ex parte communication</i> : If the APA request involves a rollback to pre-APA years in which the proposed covered issue(s) or a related issue is unresolved and under consideration by IRS Appeals, include a waiver, modeled on the following language, of the taxpayer’s right to be present during communications between IRS Appeals and members of the APA team: Waiver of Ex Parte Communication: [Name of taxpayer(s)] agrees to the participation of IRS Appeals in the consideration of this APA request and hereby waives its right to be present during, or to participate in, meetings relating to the APA request or to be a party to discussions concerning the proposed covered issue(s) between IRS Appeals and members of the APA team

Exhibit 5	<i>Consent to disclosure:</i> In the case of a bilateral or multilateral APA request, include a declaration, dated and signed by an authorized officer of the taxpayer having personal knowledge of the facts concerning the proposed covered issue(s), that the taxpayer consents to the disclosure of the contents of the APA request – other than trade secrets, if the taxpayer so requests – to the applicable foreign competent authority(ies) within the limits contained in the U.S. tax treaty(ies) governing the APA request
Exhibit 6	<p><i>“Penalties of perjury” declaration:</i> Include the following “penalties of perjury” declaration:</p> <p>Under penalties of perjury, I declare that I have examined this [APA request] [supplemental submission relating to this APA request], including accompanying documents, and, to the best of my knowledge and belief, the [APA request] [supplemental submission] contains all the relevant facts relating to the [APA request] [supplemental submission], and such facts are true, correct, and complete.</p> <p>The declaration must be signed by the taxpayer on whose behalf the request is being made and not by the taxpayer’s representative. The person signing for a corporate taxpayer must be an authorized officer of the taxpayer who has personal knowledge of the facts, whose duties are not limited to obtaining letter rulings or determination letters from the IRS or negotiating APAs, and who is authorized to sign the taxpayer’s income tax return pursuant to section 6062 of the Code. The person signing for any non-corporate taxpayer must be an individual who has personal knowledge of the facts and who is authorized to sign in accordance with sections 6061 or 6063 of the Code, as applicable</p>
Exhibit 7	<i>E-mail authorization:</i> Include a signed original of the memorandum of understanding authorizing communications with APMA via e-mail; or a statement that the taxpayer does not authorize e-mail communications, together with a brief explanation for its declining to do so (<i>see</i> section 3.06 of this revenue procedure)
Exhibit 8	<i>User fee receipt:</i> Include a copy of the receipt obtained after paying the required APA user fee (<i>see</i> section 3 of this appendix)
Exhibit 9	<i>Documents submitted to foreign competent authorities:</i> List all information or documents submitted to a foreign tax authority or foreign competent authority in connection with the APA request, either prior to or concurrently with the submission of the APA request to APMA, noting the information or documents for which English translations are available and any information or documents submitted to a foreign tax authority or foreign competent authority in connection with the APA request that are not included in the APA request submitted to APMA
Exhibit 10	<i>Pre-filing Submissions:</i> Include any pre-filing memoranda or other materials submitted in connection with the APA request
Exhibit 11	<p><i>Covered issue diagrams:</i> Include diagrams, charts, or similar representations depicting the following information, each presented in a manner similar to and with a degree of detail no less than that presented in the diagrams accompanying the case studies “Alpha” through “Foxtrot” in Joint Committee on Taxation, <i>Present Law and Background Related to Possible Income Shifting and Transfer Pricing</i> (JCX-37-10), July 20, 2010 (available at www.jct.gov; <i>see also</i> APMA website [link to be included when available]):</p> <ol style="list-style-type: none"> The controlled group’s legal structure, with clear indications as to the members of the proposed covered group; The controlled group’s tax structure, with clear indications as to, among other items, ownership relationships and tax filing characterizations of members of the proposed covered group under the Code and under applicable rules in the relevant treaty country(ies) (e.g., partnerships, branches, or disregarded entities); The controlled group’s and proposed covered group’s business units or similar organizational divisions as used for management purposes, together with a table or other reconciliation showing the relationship between such business units and the legal entities comprising the controlled and proposed covered groups; The value chain of the proposed covered group, comprising commercial or transactional flows between and among members or business units of the proposed covered group, between members or business units of the proposed covered group and customers and other uncontrolled parties, and between members or business units of the proposed covered group and any other members or business units of the controlled group outside the proposed covered group; Organization or similar charts identifying executive-level functional or occupational roles within the business units or within members of the proposed covered group that are relevant to the proposed covered issue(s) (e.g., vice president of marketing for transactions involving sales of tangible goods), together with (i) the names of individuals occupying such executive-level functional roles at the time the APA request is filed, and (ii) headcounts for the relevant business units or members of the proposed covered group; and Intercompany contracts or agreements, whether written or implied, between and among members of the proposed covered group and between and among members of the proposed covered group and members of the controlled group outside the proposed covered group

Exhibit 12	<i>APAs</i> : Include a copy of any prior or current APA the taxpayer or another member of the proposed covered group has entered into with the IRS or with a foreign tax authority involving intercompany transactions or business activities within the scope of the proposed covered issue(s)
Exhibit 13	<i>Selection process</i> : Provide a table or similar report on the step-by-step results of applying criteria for selecting comparable agreements or independent comparable companies (<i>see</i> part 4.2)
Exhibit 14	<i>Information on selected comparables</i> : Include a detailed discussion or detailed presentation, as applicable, of the following: the contractual terms (within the meaning of Treas. Reg. § 1.482–1(d)(3)(ii)) of selected comparable agreements, including the form of consideration charged or paid; and for APA requests in which the proposed covered method(s) involve(s) an application of the comparable profits method (as defined in Treas. Reg. § 1.482–5) or the transactional net margin method (as defined in the OECD Guidelines), (i) unadjusted income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) of the selected independent comparable companies, and (ii) (if applicable) the application to such financial data of any adjustments pursuant to the proposed covered method(s) (<i>see</i> parts 4.3 and 4.4)
Exhibit 15	<i>Application of APA template</i> : For APA requests in which the proposed covered method involves an application of the comparable profits method (as defined in Treas. Reg. § 1.482–5) or the transactional net margin method (as defined in the OECD Guidelines), provide income statement data for the most recent five taxable years (or as many years as are available, if fewer than five years are available) and balance sheet data for the most recent six taxable years (or as many years as are available, if fewer than six years are available) for the relevant member(s) of the proposed covered group in the APA template (available on the APMA website [link to be included when available])
Exhibit 16	<i>Federal income tax filings</i> : Provide copies of the following federal income tax forms for each of the three most recent filed years of the taxpayer: a. Form 1120 or applicable equivalent; b. Form 5471 (<i>Information Return of U.S. Persons With Respect to Certain Foreign Corporations</i>); c. Form 5472 (<i>Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business</i>); and d. Form 8858 (<i>Information Return of U.S. Persons With Respect to Foreign Disregarded Entities</i>)
Exhibit 17	<i>Financial statements</i> : Provide copies of financial statements (audited, if available) for each relevant member of the proposed covered group for each of the most recent three pre-APA years and specify the accounting standard used (e.g., U.S. GAAP)
Exhibit 18	<i>Section 6662 documentation</i> : Include a copy of the documentation prepared in consideration of section 6662(e) of the Code relating to intercompany transactions or business activities that are within the scope of the proposed covered issue(s) for each relevant member of the proposed covered group for each of the most recent three pre-APA years
Exhibit 19	<i>Regulatory filings</i> : Include a copy of the Form 10-K or similar annual SEC filing submitted for U.S. regulatory purposes by the controlled group for each of the most recent three pre-APA years
Exhibit 20	<i>APA annual reports</i> : For renewal APA requests, provide all APA annual reports filed with APMA with respect to the current APA
Exhibit 21	<i>Proposed draft APA</i> : Provide a proposed draft APA in a form substantially similar to APMA’s current model APA (available on the APMA website [link to be included when available]), together with a “redline” version of the same showing the differences between the model APA and the proposed draft APA
Exhibit 22	<i>Intercompany agreements</i> : Include copies of intercompany contracts or agreements between the taxpayer and other members of the proposed covered group that are within the scope of the proposed covered issue(s)

SECTION 2. MANNER AND MEDIA OF APA REQUEST FILINGS

.01 *General*. The taxpayer must provide four copies of its APA request as follows: one (1) original, bound printed submission containing signed originals of the cover letter and “penalties of perjury” declaration and, as applicable, of the authorization forms, consent to disclosure, and e-mail authorization, together with copies of all other required printed information; two (2) bound photocopies of the contents of the original printed submission; and one (1) electronic copy of the contents of the original printed submission, together with the required electronic-only attachments, on CD or flash drive or similar acceptable electronic storage medium. All four copies of the APA request must be filed with APMA at the address set forth in section 4 of this appendix.

.02 *Contents and Format of Printed Submissions*. Each printed copy of the APA request must contain (i) the cover letter to the APA request, and (ii) Exhibits 1 through 11. If possible, each printed copy should contain all such content in a single, bound volume. The exhibits must be tabbed or separated and identified and ordered as presented in section 1 of this appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the relevant tabbed section.

.03 Contents and Format of Electronic Copy.

(1) The electronic copy of the APA request must contain (i) the cover letter to the APA request, and (ii) Exhibits 1 through 22. The exhibits should consist of separate electronic files named in a manner that corresponds to the exhibit numbers presented in section 1 of this appendix. If an exhibit is not applicable to the APA request, a statement to this effect must be included in the electronic file.

(2) The electronic copy of the APA request must include the cover letter to the APA request in both Microsoft Word (“Word”) and in Adobe Portable Document (“.pdf”) formats. Exhibit 21 must be provided in Word format. All other exhibits readily available in Word or Microsoft Excel (“Excel”) format should be provided in those forms, as applicable, instead of, or in addition to, .pdf format.

(3) All electronic documents provided in conjunction with an APA request and throughout the APA process must be searchable, unless the file is not readily available in searchable form (e.g., a photocopy of an intercompany agreement).

(4) All documents presented in Excel format must be provided with formulas and linkages intact.

SECTION 3. USER FEES

.01 General. User fees must be paid through the Pay.gov website. Instructions on making user fee payments are available on the IRS website at <http://www.irs.gov/Individuals/International-Taxpayers/ChangestoAPAandLOBUserFeeFilingProcedures>. APMA will not consider APA request complete, and will hold the APA request in suspense, until the correct user fee is paid through the Pay.gov website.

.02 Separate Fees. Subject to the provisions of this section, a separate user fee is required for each unilateral, bilateral, or multilateral APA request.

.03 Amounts. The user fee amounts are as follows:

- (1) \$50,000 for each unilateral, bilateral, or multilateral APA request;
- (2) \$35,000 for each renewal APA request;
- (3) \$22,500 for each APA request eligible for the small case APA user fee; and
- (4) \$10,000 for each amendment to a current unilateral, bilateral, or multilateral APA

.04 Small Case APA User Fee Eligibility. An APA request is eligible for the small case APA user fee only if all of the following apply: (i) the controlled group has sales revenues, within the meaning of Treas. Reg. §1.482–5(d)(1), of less than \$500 million in each of its most recent three pre-APA years; (ii) the aggregate value of the proposed covered issue(s) is not expected to exceed \$50 million in any given year of the proposed APA years; (iii) the aggregate value of any transfer of rights in, or rights to use, intangibles is not expected to exceed \$10 million in any given year of the proposed APA years; and (iv) no proposed covered issue involves intangible property arising from, or otherwise related to, an intangible development arrangement.

.05 Fees for Amendments. For purposes of section 3.03 of this appendix, an amendment includes coverage of additional issues or other determinations and material changes to a proposed covered method. APMA will not impose this amendment fee if APMA or a foreign competent authority initiates the request to amend the proposed covered issue(s) or method(s).

SECTION 4. ADDRESSES AND CONTACT INFORMATION

Phone number:	TBD
Mailing address:	Deputy Commissioner (International) Large Business and International Division Internal Revenue Service 1111 Constitution Avenue, N.W. Routing: M3-370 Washington, D.C. 20224 (Attention: APMA)

All mail should be sent to this mailing address, including regular mail, express mail, overnight mail, and mail sent by USPS, FedEx, UPS, or any other carrier.

Website:	[link to be included when available]
Office location:	801 Ninth Street, N.W., Washington, D.C. 20001. Mail should not be sent to this address.

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Authority for Voluntary Withholding on Other Payments

REG-146620-13

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. In this issue of the Bulletin, the IRS is also issuing temporary regulations to allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of those temporary regulations also generally serves as the text of these proposed regulations. The regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: Written or electronic comments and requests for a public hearing must be received by February 25, 2014.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-146620-13), 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-146620-13), 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-146620-13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Linda L. Conway-Hataloski at (202) 317-6798; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-5179 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)-1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

Explanation of Provisions

The proposed regulations amend the headings to paragraphs (a) and (b) of §31.3402(p)-1 to clarify that those paragraphs apply to voluntary withholding agreements between an employer and employee. Temporary regulations in this issue of the Bulletin also amend the Employment Tax Regulations (26 CFR part 31) under section 3402(p). 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 Exec-

utive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comment on their 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 the Addresses heading in this preamble. The IRS and Treasury Department request comments on all aspects of the proposed regulations. 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 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 Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3402(p)-1 is amended by:

1. Revising the headings of paragraphs (a) and (b).

2. Removing the language “3402(b)” in the first sentence and “3402(p)” in the third sentence and adding “3402(p)(3)(A)” in its place as it appears in paragraph (a) and the

five places “3402(p)” as it appears in paragraph (b).

3. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

§31.3402(p)-1 Voluntary Withholding Agreements.

(a) *Employer-employee agreement.* * * *
* * * * *

(b) *Form and duration of employer-employee agreement.* * * *
* * * * *

(c) [The text of this paragraph (c) is the same as the text of paragraph (c) of

§31.3402(p)-1T published elsewhere in this issue of the Bulletin].

(d) [The text of this paragraph (d) is the same as the text of paragraph (d)(1) of §31.3402(p)-1T published elsewhere in this issue of the Bulletin].

John Dalrymple,
*Deputy Commissioner
for Services and Enforcement.*

(Filed by the Office of the Federal Register on November 27, 2013, 8:45 a.m. and published in the issue of the Federal Register for November 29, 2013, 78 F.R. 71542)

Definition of Terms

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.

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 pub-

lished 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.

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 List¹

Bulletins 2013–27 through 2013–50

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¹A 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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¹A 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.

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