

## 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. 2014-6, page 510.**

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 February 2014.

#### **REG-141036-13, page 516.**

Proposed regulations on the shared responsibility payment for not maintaining minimum essential coverage under section 5000A, which was added by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111-173. Comments must be received by April 28, 2014.

### EMPLOYEE PLANS

#### **Announcement 2014-4, page 523.**

This announcement extends to February 2, 2015, the deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle. The submission period for these applications was scheduled to expire on January 31, 2014. This extension applies to defined benefit mass submitter lead and specimen plans, word-for-word identical plans, master and prototype minor modifier placeholder applications, and non-mass submitter defined benefit plans. Rev. Proc. 2007-44, Rev. Proc. 2011-49 are modified.

### ESTATE TAX

#### **Rev. Proc. 2014-18, page 513.**

This revenue procedure provides an automatic extension pursuant to § 301.9100-3 for certain estates having no filing requirement under § 6018(a) to elect portability of the decedent's unused exclusion amount for the benefit of the decedent's surviving spouse pursuant to § 2010(c)(5)(A). The revenue procedure applies to estates of decedents dying after December 31, 2010, and before January 1, 2014, and includes estates of decedents survived by a same-sex spouse that were not eligible to elect portability until after the decision in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013) and the publication of Rev. Rul. 2013-17, 2013-38 I.R.B. 201. Rev. Proc. 2014-3, 2014-1 I.R.B. 111, is Amplified.

### ADMINISTRATIVE

#### **Rev. Proc. 2014-18, page 513.**

This revenue procedure provides an automatic extension pursuant to § 301.9100-3 for certain estates having no filing requirement under § 6018(a) to elect portability of the decedent's unused exclusion amount for the benefit of the decedent's surviving spouse pursuant to § 2010(c)(5)(A). The revenue procedure applies to estates of decedents dying after December 31, 2010, and before January 1, 2014, and includes estates of decedents survived by a same-sex spouse that were not eligible to elect portability until after the decision in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013) and the publication of Rev. Rul. 2013-17, 2013-38 I.R.B. 201. Rev. Proc. 2014-3, 2014-1 I.R.B. 111, is Amplified.

Finding Lists begin on page ii.  
Index for July through February begins on page iv.



# 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.

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014–6, page 510.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## 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 February 2014. See Rev. Rul. 2014–6, page 510.

## 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. 2014–6

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

REV. RUL. 2014-6 TABLE 1  
Applicable Federal Rates (AFR) for February 2014

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	.30%	.30%	.30%	.30%
110% AFR	.33%	.33%	.33%	.33%
120% AFR	.36%	.36%	.36%	.36%
130% AFR	.39%	.39%	.39%	.39%
		<i>Mid-term</i>		
AFR	1.97%	1.96%	1.96%	1.95%
110% AFR	2.17%	2.16%	2.15%	2.15%
120% AFR	2.36%	2.35%	2.34%	2.34%
130% AFR	2.57%	2.55%	2.54%	2.54%
150% AFR	2.96%	2.94%	2.93%	2.92%
175% AFR	3.46%	3.43%	3.42%	3.41%
		<i>Long-term</i>		
AFR	3.56%	3.53%	3.51%	3.50%
110% AFR	3.92%	3.88%	3.86%	3.85%
120% AFR	4.28%	4.24%	4.22%	4.20%
130% AFR	4.64%	4.59%	4.56%	4.55%

REV. RUL. 2014-6 TABLE 2  
Adjusted AFR for February 2014

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.30%	.30%	.30%	.30%
Mid-term adjusted AFR	1.56%	1.55%	1.55%	1.55%
Long-term adjusted AFR	3.56%	3.53%	3.51%	3.50%

REV. RUL. 2014-6 TABLE 3  
Rates Under Section 382 for February 2014

Adjusted federal long-term rate for the current month	3.56%
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.)	3.56%

REV. RUL. 2014-6 TABLE 4  
Appropriate Percentages Under Section 42(b)(1) for February 2014

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	7.64%
Appropriate percentage for the 30% present value low-income housing credit	3.27%

REV. RUL. 2014-6 TABLE 5

Rate Under Section 7520 for February 2014

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

2.4%

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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 February 2014. See Rev. Rul. 2014-6, page 510.

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**Section 2010.—Unified Credit Against Estate Tax**

This revenue procedure provides an automatic extension of time pursuant to § 301.9100-3 for certain estates without a filing requirement under § 6018(a) to elect portability of the decedent's unused exclusion

amount for the benefit of the decedent's surviving spouse pursuant to § 2010(c)(5)(A). The revenue procedure applies to estates of decedents dying after December 31, 2010, and before January 1, 2014, and includes estates of decedents survived by a same-sex spouse that were not eligible to elect portability until after the decision in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013) and the publication of Rev. Rul. 2013-17, 2013-38 I.R.B. 201. See Rev. Proc. 2014-18, page 513.

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**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014-6, page 510.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2014. See Rev. Rul. 2014-6, page 510.

## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.  
(Also Part I, Section 2010; 20.2010-2T; 301.9100-3)

### Simplified method for certain taxpayers to obtain an extension of time

#### Rev. Proc. 2014-18

##### SECTION 1. PURPOSE

This revenue procedure provides a simplified method for certain taxpayers to obtain an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a “portability” election under § 2010(c)(5)(A) of the Internal Revenue Code (Code), by which a decedent’s unused exclusion amount (deceased spousal unused exclusion amount, or DSUE amount) becomes available to apply to the surviving spouse’s subsequent transfers during life or at death. No user fee is required for submissions filed under this revenue procedure.

##### SECTION 2. BACKGROUND

###### .01 Rules for Portability

(1) Sections 302(a)(1) and 303(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJA), Pub. L. No. 111-312, 124 Stat. 3296, 3302 (2010), amended § 2010(c) of the Code to allow the estate of a decedent who is survived by a spouse to make a portability election, which allows the surviving spouse to apply the decedent’s DSUE amount to the surviving spouse’s own transfers during life and at death. The portability election applies to estates of decedents dying after December 31, 2010, if such decedent was survived by a spouse. The portability provisions under § 2010(c) of the Code were scheduled to expire on January 1, 2013, pursuant to § 304 of TRUIRJA. However, § 101(a) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-rev. 0, 126 Stat. 2313 (ATRA), made portability permanent.

(2) Section 2010(c)(2) defines the applicable exclusion amount used to determine the applicable credit amount as the

sum of the basic exclusion amount and, in the case of a surviving spouse, the DSUE amount. Section 2010(c)(3) defines the basic exclusion amount as \$5,000,000, as adjusted for inflation in each year after calendar year 2011. Section 2010(c)(4), as amended pursuant to a technical correction in § 101(c) of ATRA, defines the DSUE amount as the lesser of (A) the basic exclusion amount, or (B) the excess of the applicable exclusion amount of the last deceased spouse of the surviving spouse over the amount with respect to which the tentative tax is determined under § 2001(b)(1) on the estate of such deceased spouse.

(3) Section 2010(c)(5)(A) provides certain requirements that the executor of the estate of a deceased spouse must satisfy to allow the decedent’s surviving spouse to apply the decedent’s DSUE amount to the surviving spouse’s transfers. In particular, the executor of the estate of the deceased spouse must elect portability of the DSUE amount on a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, which must include a computation of the DSUE amount. Under § 2010(c)(5)(A), a portability election is effective only if made on a Form 706 that is filed within the time prescribed by law (including extensions) for filing such return.

(4) In June 2012, the Department of Treasury (Treasury) and the Internal Revenue Service (the Service) issued temporary regulations (T.D. 9593, 2012-28 I.R.B. 17) under §§ 2010 and 2505, which were published in the Federal Register on June 18, 2012 (77 FR 36150). The portability provisions of the temporary regulations have retroactive effect, applying to estates of decedents dying on or after January 1, 2011.

(5) Section 20.2010-2T(a)(1) of the Estate Tax Regulations provides that an estate that elects portability will be considered, for purposes of subtitle B and subtitle F of the Code, to be required to file a return under § 6018(a). Accordingly, the due date of an estate tax return required to elect portability is 9 months after the decedent’s date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained).

(6) Section 20.2010-2T(a)(2) provides that, upon the timely filing of a complete and properly-prepared estate tax return, an executor of an estate of a decedent survived by a spouse will have elected portability of the decedent’s DSUE amount unless the executor chooses not to elect portability and satisfies the requirements in § 20.2010-2T(a)(3)(i) for the election not to apply.

.02 *Effect of Decision in United States v. Windsor and Rev. Rul. 2013-17*

(1) The recent decision of the Supreme Court in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013), struck down § 3 of the Defense of Marriage Act (DOMA). Section 3 of DOMA provided that:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7. In *Windsor*, the Supreme Court held that § 3 of DOMA is unconstitutional because it violates Fifth Amendment principles.

(2) Prior to the *Windsor* decision, the Service interpreted § 3 of DOMA as prohibiting the Service from recognizing same-sex marriages for purposes of determining the marital status of taxpayers under the Code. Accordingly, prior to the *Windsor* decision, the surviving spouse was not treated as the decedent’s surviving spouse for portability purposes under § 2010(c) if the surviving spouse was of the same sex as the decedent.

(3) Subsequently, the Service issued Rev. Rul. 2013-17, 2013-38 I.R.B. 201, to provide guidance on the effect of the *Windsor* decision on the Service’s interpretation of the sections of the Code that refer to taxpayers’ marital status. Rev. Rul. 2013-17 holds as follows:

1. For Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a per-

son of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex.

2. For Federal tax purposes, the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

3. For Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

(4) Rev. Rul. 2013–17 provides that its holdings will be applied prospectively as of September 16, 2013, the date of its publication in the Internal Revenue Bulletin. In addition, except as otherwise provided in Rev. Rul. 2013–17, affected taxpayers may rely on Rev. Rul. 2013–17 for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claim under § 6511 has not expired. Rev. Rul. 2013–17 further provides that, if an affected taxpayer files an original return, amended return, adjusted return, or claim for credit or refund in reliance on Rev. Rul. 2013–17, all items required to be reported on the return or claim that are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the return or claim.

*.03 Extensions Granted to Elect Portability under § 301.9100–3*

(1) Section 301.9100–3 provides the standards that apply to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation or other regulatory guidance (and not by statute). The due date for

electing portability for those estates required to file an estate tax return under § 6018(a) is prescribed by statute. *See* §§ 2010(c)(5)(A), 6075(a), and 6018(a). However, if an executor is not required by § 6018(a) to file an estate tax return and the executor files or may file an estate tax return to elect portability, the due date for electing portability is prescribed by § 20.2010–2T(a), and not by statute. Therefore, in such a case, the executor may seek an extension of time under § 301.9100–3 to elect portability under § 2010(c)(5)(A).

(2) In general, under § 301.9100–3, relief will be granted if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that the grant of relief will not prejudice the interests of the government.

(3) To date, the Service has issued several letter rulings under § 301.9100–3 granting an extension of time to elect portability under § 2010(c)(5)(A) in situations in which the decedent’s estate was not required to file an estate tax return under § 6018(a) (as determined based on the value of the gross estate and adjusted taxable gifts, without regard to § 20.2010–2T(a)(1)). The Service believes that, in such circumstances, it is appropriate to provide a simplified method to obtain an extension of time to elect portability under § 2010(c)(5)(A), provided that certain requirements (set forth in sections 3 and 4 of this revenue procedure) are met. In such a case, the decedent’s DSUE amount then will be available to apply to the surviving spouse’s transfers in accordance with the rules prescribed under § 20.2010–3T and § 25.2505–2T.

### SECTION 3. SCOPE

*.01 In General.* This revenue procedure applies only if:

(1) The taxpayer is the executor (*see* § 20.2010–2T(a)(6)) of the estate of a decedent who:

- (a) has a surviving spouse;
- (b) died after December 31, 2010, and on or before December 31, 2013; and
- (c) was a citizen or resident of the United States on the date of death.

(2) The taxpayer is not required to file an estate tax return under § 6018(a) (as

determined based on the value of the gross estate and adjusted taxable gifts, without regard to § 20.2010–2T(a)(1));

(3) The taxpayer did not file an estate tax return within the time prescribed by § 20.2010–2T(a)(1) for filing an estate tax return required to elect portability; and

(4) All requirements of section 4 of this revenue procedure are satisfied.

*.02 Taxpayers That Timely-Filed an Estate Tax Return.* This revenue procedure does not apply to taxpayers that filed an estate tax return within the time prescribed by § 20.2010–2T(a)(1) for the purpose of electing portability. Such a taxpayer either will have elected portability of the DSUE amount by timely filing that estate tax return or will have affirmatively opted out of portability in accordance with § 20.2010–2T(a)(3)(i).

*.03 Failure to Qualify for Relief Under This Revenue Procedure.* Taxpayers that are not eligible for relief under this revenue procedure because they do not meet the requirements of section 4 of this revenue procedure or are outside the scope of this revenue procedure because the decedent died after December 31, 2013, may request an extension of time to make the portability election under § 2010(c)(5)(A) by requesting a letter ruling under the provisions of § 301.9100–3. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2014–1, 2014–1 I.R.B. 1 (or its successors).

## SECTION 4. RELIEF FOR CERTAIN LATE PORTABILITY ELECTIONS

*.01 Procedural Requirements for Relief.* The requirements for relief under this revenue procedure are as follows:

(1) A person permitted to make the election on behalf of a decedent, pursuant to § 20.2010–2T(a)(6), must file a complete and properly-prepared Form 706 on or before December 31, 2014. The Form 706 will be considered complete and properly prepared if it is prepared in accordance with § 20.2010–2T(a)(7).

(2) The person filing the Form 706 on behalf of the decedent’s estate must state at the top of the Form 706 that the return is “FILED PURSUANT TO REV. PROC. 2014–18 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A).”

.02 *Extent of Relief.* If it is determined that the requirements for granting relief, as provided in sections 3.01 and 4.01 of this revenue procedure, have been satisfied, the taxpayer will be deemed to meet the requirements for relief under § 301.9100–3 and relief is granted under the provisions of § 301.9100–3 to extend the time to elect portability under § 2010(c)(5)(A). Accordingly, for purposes of electing portability, the taxpayer's Form 706 will be considered to have been timely filed in accordance with § 20.2010–2T(a)(1). The taxpayer will receive an estate tax closing letter acknowledging receipt of the taxpayer's Form 706.

.03 *Subsequent Determination that Taxpayer Is Required to File a Return under § 6018(a).* If, subsequent to the grant of relief pursuant to this revenue procedure, it is determined that, based on the value of the gross estate and taking into account any taxable gifts, the taxpayer was required to file an estate tax return pursuant to § 6018(a), the grant of an extension referred to in section 4.02 of this revenue procedure is deemed null and void upon such a determination.

## **SECTION 5. LIMITATIONS PERIOD FOR CLAIM FOR CREDIT OR REFUND BY SURVIVING SPOUSE**

.01 Generally, under § 6511(a), a taxpayer's claim for credit or refund of an overpayment of tax must be filed within three years from the date of filing the tax return, or within two years from the date of payment of the tax, whichever period expires later. Accordingly, to obtain a credit or refund of an overpayment of tax by reason of a portability election made pursuant to a grant of relief under this revenue procedure, the surviving spouse (or the executor of the estate of the surviving spouse) of the decedent must file a

claim for credit or refund of tax before the expiration of the limitations period in § 6511(a).

### **.02 Example**

#### **(1) Facts**

(a) Predeceasing Spouse (S1) dies on January 1, 2011, survived by Surviving Spouse (S2). The assets includible in S1's gross estate consist of cash on deposit in bank accounts held jointly with S2 with rights of survivorship in the amount of \$2,000,000. S1 made no taxable gifts during life. S1's executor is not required to file an estate tax return under § 6018(a), and does not file such a return.

(b) S2 dies on January 14, 2011. S2's taxable estate is \$8,000,000 and S2 made no taxable gifts during life. S2's executor files a Form 706 on behalf of S2's estate on October 14, 2011, and includes payment of the estate tax on the \$3,000,000 in excess of S2's applicable exclusion amount.

(c) Pursuant to this revenue procedure, S1's executor files a Form 706 on behalf of S1's estate on November 1, 2014, reporting a DSUE amount of \$5,000,000. In 2015, the Service (i) determines that S1's estate has met the requirements for a grant of relief under this revenue procedure and is deemed to have made a valid portability election, (ii) accepts S1's return with no changes, and (iii) issues an estate tax closing letter to S1's estate.

(2) *Application of limitations period for credit or refund.* To recover the estate tax paid, S2's executor must file a claim for credit or refund of tax by October 14, 2014, even though a Form 706 to elect portability has not been filed on behalf of S1's estate at that time. Such a claim filed in anticipation of the filing of the Form 706 by S1's executor will be considered a protective claim for credit or refund of tax. Accordingly, as long as the claim of S2's estate for credit or refund of tax was filed by October 14, 2014, the Service can consider and process that claim for credit or refund of tax once S1's estate is considered to have elected portability pursuant to this revenue procedure.

## **SECTION 6. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2014–3, 2014–1 I.R.B. 111, is amplified.

## **SECTION 7. EFFECTIVE DATE**

.01 *In general.* This revenue procedure is effective January 27, 2014.

.02 *Letter rulings will not be issued.* Until January 1, 2015, for estates meeting the requirements of section 3.01(1)–(3) of this revenue procedure, the procedure described in section 4 must be used to obtain an extension of time under § 301.9100–3 to make a portability election under § 2010(c)(5)(A) in lieu of requesting a letter ruling under the provisions of § 301.9100–3. However, for requests for rulings pending on January 27, 2014, see section 7.03 of this revenue procedure.

.03 *Transition rule for pending letter ruling requests.* If an executor has filed a request for a letter ruling seeking an extension of time under § 301.9100–3 to make a portability election under § 2010(c)(5)(A), that letter ruling is pending in the national office on January 27, 2014, and the decedent's estate is within the scope of this revenue procedure as described in section 3, the executor may rely on this revenue procedure, withdraw the letter ruling request and receive a refund of its user fee. However, the national office will process letter ruling requests pending on January 27, 2014, unless, prior to the earlier of March 10, 2014, or the issuance of the letter ruling, the executor notifies the national office that it will rely on this revenue procedure and withdraw its letter ruling request.

## **SECTION 8. DRAFTING INFORMATION**

The principal author of this revenue procedure is Karlene Lesho of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Karlene Lesho on (202) 317-6859 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of proposed rulemaking and notice of public hearing Minimum Essential Coverage and Other Rules Regarding the Shared Responsibility Payment for Individuals

**REG-141036-13**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111-173. These proposed regulations affect individual taxpayers who may be liable for the shared responsibility payment for not maintaining minimum essential coverage. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by April 28, 2014. Outlines of topics to be discussed at the public hearing scheduled for May 21, 2014, at 10 a.m., must be received by April 28, 2014.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-141036-13), room 5205, 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-141036-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-141036-13). The public hearing will be held in the IRS Auditorium, Internal Revenue Building,

1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sue-Jean Kim or John B. Lovelace, (202) 317-7006; concerning the submission of comments, the public hearing, and to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### **Paperwork Reduction Act**

The collection of information contained in § 1.5000A-3(h)(3) and § 1.5000A-4(a)(1) of this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-0074 in conjunction with the final regulations under section 5000A (TD 9632). The information is necessary to determine whether the individual shared responsibility provision applies to a taxpayer and, if it applies, the amount of the payment. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Comments on the collection of information should be received by March 28, 2014.

#### **Background**

The Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), added section 5000A to the Internal Revenue Code. Section 5000A was subsequently amended by the TRICARE Affirmation Act of 2010, Public Law 111-159 (124 Stat. 1123) and Public Law 111-173

(124 Stat. 1215). Section 5000A provides that, for months beginning after December 31, 2013, a nonexempt individual must maintain minimum essential coverage or make a shared responsibility payment.

Final regulations under section 5000A (TD 9632) were published on August 30, 2013 (78 FR 53646). The preamble to the final regulations indicates that subsequent proposed regulations will provide that coverage under certain government-sponsored programs is not government-sponsored minimum essential coverage. The preamble to the final regulations also describes rules to be included in subsequent regulations for determining, for purposes of the lack of affordable coverage exemption, the required contribution for individuals eligible to enroll in an eligible employer-sponsored plan that provides employer contributions to health reimbursement arrangements (HRAs) or wellness program incentives. These proposed regulations address these issues, consistent with the rules contemplated in the preamble to the final regulations. In addition, these proposed regulations provide or clarify rules under section 5000A addressing the definition of excepted benefits, hardship exemptions that may be claimed on a Federal income tax return, and the computation of the monthly penalty amount.

#### *Minimum Essential Coverage*

Section 5000A(f)(1) enumerates the types of health care coverage that qualify as minimum essential coverage. They include, among others, coverage under specified government-sponsored programs and health benefits coverage that the Secretary of Health and Human Services (HHS), in coordination with the Secretary of the Treasury, recognizes as minimum essential coverage. Under section 5000A(f)(1)(A), specified government-sponsored programs include, among other things, the Medicaid program under title XIX of the Social Security Act and medical coverage under chapter 55 of title 10, United States Code, including the TRICARE program.

Section 1.5000A-2(b)(1)(ii) of the final regulations provides that government-

sponsored programs that are minimum essential coverage include the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 and following sections) other than certain Medicaid coverage that may provide limited benefits: (1) optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI)); (2) optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII)); (3) coverage of pregnancy-related services under section 1902(a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(IX)); and (4) coverage limited to the treatment of emergency medical conditions in accordance with 8 U.S.C. 1611(b)(1)(A), as authorized by section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)).

#### *Excepted Benefits*

Under section 5000A(f)(3) and § 1.5000A-2(g) of the final regulations, minimum essential coverage does not include any health insurance coverage that consists solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (42 U.S.C. 300gg-91(c)), or regulations issued under these provisions (45 CFR 148.220) (excepted benefits regulations). In general, excepted benefits are benefits that are limited in scope or are conditional. Under 2791(b)(1) of the Public Health Service Act (42 U.S.C. 300gg-91(b)(1)), *health insurance coverage* means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise, and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

#### *Lack of Affordable Coverage Exemption*

Section 5000A(e)(1) and § 1.5000A-3(e)(1) of the final regulations provide that an individual is exempt for a month when the individual cannot afford minimum essential coverage. For this purpose, an individual cannot afford minimum es-

sential coverage if the individual's required contribution (determined on an annual basis) for minimum essential coverage exceeds a percentage (8 percent for 2014) of the individual's household income for the most recent taxable year for which the Secretary of HHS, in consultation with the Secretary of the Treasury, determines information is available.

For individuals ineligible for coverage under an eligible employer-sponsored plan, the required contribution is the annual premium for the applicable plan reduced by the premium tax credit allowable under section 36B for the taxable year (determined as if the individual enrolled in a plan through an Exchange for the entire taxable year). The applicable plan is the lowest cost bronze plan available in the Exchange serving the rating area where the individual resides that would cover all members of the individual's nonexempt family taking into account the rating factors that an Exchange would use to determine the cost of coverage. If the Exchange serving the rating area where the individual resides does not offer a single bronze plan that would cover all members of the individual's nonexempt family, the premium for the applicable plan is the sum of the premiums for the lowest cost bronze plans available in the Exchange that provide coverage for all members of the nonexempt family.

#### *Hardship Exemptions*

Section 5000A(e)(5) and § 1.5000A-3(h)(1) of the final regulations provide that, in general, an individual is exempt for a month that includes a day on which the individual has in effect a hardship exemption certification. A hardship exemption certification is issued by an Exchange under section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) certifying that the individual has suffered a hardship (as that term is defined in 45 CFR 155.605(g)) with respect to the individual's ability to obtain coverage under a qualified health plan. Section 1.5000A-3(h)(3) of the final regulations provides that a taxpayer who meets the requirements of 45 CFR 155.605(g)(3) or 45 CFR 155.605(g)(5) may claim a hardship exemption for a

calendar year on a Federal income tax return.

Pursuant to the authority under 45 CFR 155.605(g), the Secretary of HHS has established an additional hardship exemption that applies to individuals enrolling in a qualified health plan through an Exchange prior to the close of the initial open enrollment period. Specifically, an individual may claim a hardship exemption for the months prior to the effective date of the individual's coverage on a Federal income tax return for 2014 without the need to request an exemption certification from the Exchange. See HHS Centers for Medicare and Medicaid Services, Shared Responsibility Provision Question and Answer (Oct. 28, 2013).

#### *Monthly Penalty Amount*

Under section 5000A(c)(1), the amount of the shared responsibility payment imposed on any taxpayer for any taxable year is equal to the lesser of (A) the sum of monthly penalty amounts for months when one or more failures to maintain minimum essential coverage occurred, or (B) an amount equal to the national average premium for qualified health plans that satisfy requirements enumerated in section 5000A(c).

Under section 5000A(c)(2), the monthly penalty amount, for any month, is 1/12 of the greater of (A) the flat dollar amount, or (B) a specified percentage of the taxpayer's household income over the taxpayer's applicable filing threshold (as defined in § 1.5000A-3(f)(2)).

The flat dollar amount is the lesser of (A) the sum of the defined applicable dollar amounts for all individuals in the shared responsibility family who did not have minimum essential coverage in a particular month, or (B) 300 percent of the applicable dollar amount. Under section 5000A(c)(3), the applicable dollar amount is \$95 in 2014, \$325 in 2015, and \$695 in 2016. After 2016, the applicable dollar amount will be indexed by a cost-of-living adjustment.

The specified percentage is 1.0 percent for taxable years beginning in 2014, 2.0 percent for taxable years beginning in 2015, and 2.5 percent for taxable years beginning after 2015.

The final regulations incorporate these provisions.

## Explanation of Provisions

### I. *Minimum Essential Coverage*

#### A. *Medicaid-related programs*

##### 1. Coverage for the Medically Needy

The Social Security Act provides states with flexibility to extend Medicaid eligibility to individuals with high medical expenses who would be eligible for Medicaid but for their income level (medically needy individuals). See section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)) and 42 CFR 435.300 and following sections. In general, individuals whose income is in excess of the maximum allowed for Medicaid eligibility but who are otherwise eligible for Medicaid may “spend down” their income, based on incurred medical expenses, and thereby become eligible for the benefits provided for medically needy individuals in the state. States providing coverage to medically needy individuals must establish a “budget period” lasting from one to six months. Eligibility for coverage as a medically needy individual, which must be determined each budget period, is provided only after an individual incurs sufficient medical expenses to spend down to the qualifying income level. Thus, depending on an individual’s medical needs and the options exercised by the state program, eligibility may be assessed as frequently as every month, and an individual may move in and out of coverage for medically needy individuals multiple times in a year. States are permitted, and some states have adopted the option, to offer benefits to the medically needy that are more limited than the benefits generally provided to Medicaid beneficiaries.

Because the benefits provided to medically needy individuals are not required to be comprehensive, the coverage is analogous to coverage consisting of excepted benefits that is not minimum essential coverage under section 5000A(f)(3). Other types of coverage under government-sponsored programs that potentially provide limited benefits are not minimum essential coverage under the final regulations (for example, the

optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI)), and the optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII)). Accordingly, the proposed regulations provide that coverage for medically needy individuals generally is not government-sponsored minimum essential coverage. To the extent such coverage in a particular state is comprehensive coverage, such coverage may be recognized as minimum essential coverage by the Secretary of HHS, in coordination with the Secretary of the Treasury, under section 5000A(f)(1)(E).

Because individuals receiving medically needy coverage may not know at the time of open enrollment for the 2014 plan year that coverage under the program is not minimum essential coverage, Notice 2014–10 (available at [www.irs.gov](http://www.irs.gov)), see § 601.601(d)(2)(ii)(b) of this chapter, released concurrently with these proposed regulations, provides that a taxpayer is not liable for the shared responsibility payment for a month in 2014 with respect to individuals in the taxpayer’s shared responsibility family who are enrolled in medically needy coverage.

##### 2. Section 1115 Demonstration Projects

Section 1115 of the Social Security Act (42 U.S.C. 1315) authorizes the Secretary of HHS to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid program (“Section 1115 demonstration projects”). Some Section 1115 demonstration projects involve waivers of Medicaid requirements that affect individuals eligible under the approved Medicaid state plan (for instance, waivers to permit changes in manners of delivering Medicaid services), but do not change the basic requirement to provide comprehensive Medicaid coverage. Other Section 1115 demonstration projects, authorized under section 1115(a)(2) of the Social Security Act (42 U.S.C. 1315(a)(2)), allow a state to extend benefits to additional populations (expansion populations). Because the expansion populations are not described in

approved Medicaid state plans, the coverage authorized under those Section 1115 demonstration projects is not required to be comprehensive and may be limited. Accordingly, the proposed regulations provide that coverage under Section 1115 demonstration projects authorized under section 1115(a)(2) of the Social Security Act generally is not government-sponsored minimum essential coverage. However, comprehensive coverage for expansion populations under certain Section 1115 demonstration programs may be recognized as minimum essential coverage by the Secretary of HHS, in coordination with the Secretary of the Treasury, under section 5000A(f)(1)(E).

The Treasury Department and IRS understand that individuals receiving benefits as part of an expansion population under a demonstration project authorized under section 1115(a)(2) may not know at open enrollment for the 2014 plan year that the coverage they receive under a Section 1115 demonstration project is not minimum essential coverage. Accordingly, Notice 2014–10 (available at [www.irs.gov](http://www.irs.gov)), see § 601.601(d)(2)(ii)(b) of this chapter, released concurrently with these proposed regulations, provides that a taxpayer will not be liable for the shared responsibility payment for a month in 2014 with respect to individuals in the taxpayer’s shared responsibility family receiving benefits as part of an expansion population authorized under section 1115(a)(2).

#### B. *Limited-benefit coverage under chapter 55 of title 10, U.S.C.*

Similar to Medicaid programs that provide a limited scope of benefits, two types of coverage provided under chapter 55 of title 10, U.S.C., do not provide a scope of benefits comparable to the full TRICARE program under the same chapter. Under sections 1079(a), 1086(c)(1), and 1086(d)(1) of title 10, U.S.C., the first type of limited-benefit coverage is provided for certain individuals who are excluded from TRICARE coverage for health care services from private sector providers and only eligible for space available care in a facility of the uniformed services (space available care). There is no guarantee of care and any care received is subject to the availability of

space and facilities, as well as the capabilities of the medical and dental staff. Coverage potentially available to an affected individual may not be accessible if there is no space available at the facility where the individual seeks care or treatment. These affected individuals are not entitled to comprehensive health care coverage under chapter 55 of title 10, U.S.C., and the Department of Defense has no statutory authority to pay claims for any outside care provided to these individuals.

Under sections 1074a and 1074b of title 10, U.S.C., the second type of limited-benefit coverage is provided for certain individuals who are not on active duty and are entitled to episodic care for an injury, illness, or disease incurred or aggravated in the line of duty (line-of-duty care). Line-of-duty care is limited to care appropriate for treating the covered injury, illness, or disease. This type of limited-benefit coverage is similar to coverage consisting of excepted benefits, including workers' compensation, that is not minimum essential coverage under section 5000A(f)(3).

Neither of these types of limited-benefit coverage offers beneficiaries coverage for comprehensive medical care. Accordingly, the proposed regulations provide that Military Health System eligibility limited only to space available care and line-of-duty care are not government-sponsored programs providing minimum essential coverage. Because individuals enrolled in space available care or line-of-duty care may not know at open enrollment for the 2014 plan year that space available care and line-of-duty care are not minimum essential coverage, Notice 2014-10 (available at [www.irs.gov](http://www.irs.gov)), see § 601.601(d)(2)(ii)(b) of this chapter, released concurrently with these proposed regulations, provides that a taxpayer is not liable for the shared responsibility payment for a month in 2014 with respect to individuals in the taxpayer's shared responsibility family who are enrolled in either space available care or line-of-duty care.

### C. Excepted benefits

Section 5000A(f)(3) and § 1.5000A-2(g) of the final regulations provide that minimum essential coverage does not include

health insurance coverage that consists solely of excepted benefits. In the rule-making process under section 5000A, the Treasury Department and the IRS have provided that minimum essential coverage does not include plans or programs that do not provide a comprehensive scope of benefits. See, for example, § 1.5000A-2(b)(1)(ii)(A) describing the Medicaid program for family planning services and § 1.5000A-2(b)(1)(v) excluding from the definition of minimum essential coverage medical care for veterans that does not provide comprehensive health care benefits. Consistent with this treatment, the proposed regulations clarify that minimum essential coverage excludes any coverage, whether through insurance or otherwise, that consists solely of excepted benefits.

## II. Exemption for Individuals Who Cannot Afford Coverage

### A. Health reimbursement arrangements

The preamble to the final regulations provides that guidance on how employer contributions to HRAs are counted in determining an employee's or a related individual's required contribution will be consistent with final rulemaking under section 36B. The regulations proposed under section 36B addressing the treatment of employer contributions to HRAs were published on May 3, 2013 (78 FR 25909) (the section 36B proposed regulations). The section 36B proposed regulations provide that amounts newly made available for the current plan year under an HRA that is integrated with an eligible employer-sponsored plan are counted toward the employee's required contribution in determining the affordability of the coverage if the employee may use the amounts only for premiums or may choose to use the amounts for either premiums or cost sharing. An HRA generally must be integrated with an eligible employer-sponsored plan to satisfy the market reform provisions imposed by title I of the Affordable Care Act. See Notice 2013-54 (2013-40 IRB 287 (September 30, 2013)), see § 601.601(d)(2)(ii)(b) of this chapter, which is available at [www.irs.gov](http://www.irs.gov).

Similar to the 36B proposed regulations, under these proposed regulations, an employer's new contributions to an HRA are taken into account in determining (in other

words, they reduce) an employee's required contribution if the HRA is integrated with an employer-sponsored plan and the employee may use the amounts to pay premiums. Amounts in an HRA that may be used only for cost-sharing are not taken into account when determining affordability because they cannot affect the employee's out-of-pocket cost of acquiring minimum essential coverage.

### B. Contributions to a cafeteria plan

Many employers maintain section 125 cafeteria plans under which employees are given the option of making salary reduction contributions toward the cost of non-taxable benefits or receiving an equivalent amount in taxable cash. The nontaxable benefit choices may include both health and non-health benefits. If an employee elects to make salary reduction contributions and to have those amounts applied towards the cost of premiums, those contributions are treated as employee contributions, and the employee's household income is increased by the amount of the contributions for purposes of the affordability determination under section 5000A(e)(1)(A).

Alternatively, employers may make contributions that can be received only in the form of nontaxable benefits under the plan (sometimes referred to as flex contributions). In addition, some employers subsidize benefits available under the section 125 cafeteria plan so that an employee can elect a benefit while making salary reduction contributions in an amount less than the value of the benefit. Some employers will provide contributions even if the employee declines the subsidized benefit. For example, an employer might offer a benefit with a value of \$10,000 for an employee salary reduction of \$4,000, but provide other benefits with a value of \$3,000 if the employee declines the \$10,000 benefit.

Comments are requested on the treatment of employer contributions under a section 125 cafeteria plan for purposes of section 5000A to the extent employees may not opt to receive the employer contributions as a taxable benefit, such as cash. Specifically, comments are requested regarding how these contributions should be taken into account for purposes of determining the affordability of coverage.

### III. *Wellness program incentives*

#### A. *Individuals eligible for employer-sponsored coverage*

The preamble to the final section 5000A regulations provides that guidance on how wellness program incentives are counted in determining the affordability of coverage under section 5000A will be consistent with final rulemaking under section 36B. The proposed section 36B regulations address the treatment of wellness incentives by providing that, for purposes of determining an individual's required contribution for employer-sponsored coverage under section 36B(c)(2)(C)(i), wellness program incentives are treated as earned only if the incentives relate to tobacco use. This rule is consistent with other Affordable Care Act provisions (such as one allowing insurers to charge higher premiums based on tobacco use). Accordingly, these proposed regulations provide that, for purposes of determining for section 5000A an individual's required contribution for coverage under an employer-sponsored plan, wellness program incentives are treated as earned only if the incentives relate to tobacco use.

#### B. *Individuals ineligible for employer-sponsored coverage*

In general, for individuals ineligible for coverage under employer-sponsored plans, the required contribution is the premium for the applicable plan reduced by the maximum amount of any premium tax credit allowable under section 36B for the taxable year. In general, the applicable plan is the lowest cost bronze plan available in the individual market through the Exchange serving the rating area in which the individual resides that would cover all members of the individual's nonexempt family. Pursuant to section 36B(b)(3)(C), the premium tax credit allowable under section 36B is calculated by reference to the adjusted monthly premium for the applicable second lowest cost silver plan without regard to any premium discounts or rebates in a state participating in the wellness discount demonstration project described in section 2705(l) of the Public Health Service Act (42 U.S.C. 300gg-4(l)).

A comment received on previously issued proposed regulations under section

5000A asked that, for purposes of computing the required contribution for an individual not eligible for coverage under an eligible employer-sponsored plan, the applicable plan for an individual residing in a rating area in a state participating in the individual market wellness program demonstration project disregard any premium-based wellness incentive requirements, including incentives relating to tobacco use. Standards and processes implementing the individual market wellness program demonstration project have not yet been established. After the individual market wellness program demonstration project is implemented, additional guidance will be provided on whether and how individuals residing in a rating area participating in the project will take wellness incentives into account in determining the affordability of their coverage for purposes of section 5000A.

#### C. *Simplified method*

Proposed regulations previously issued under section 5000A (78 FR 7314) included an alternative method of identifying the premium for the applicable plan when a single bronze plan is not offered that would cover all members of the nonexempt family. During the comment period to the proposed regulations, questions arose concerning the efficacy of the proposed simplified method, as well as whether an election to use the simplified method should be revocable. The final regulations removed the proposed alternative method, and the Treasury Department and the IRS continue to consider this issue.

A taxpayer may be unable to find a single bronze plan that would cover all members of the taxpayer's nonexempt family. The final regulations provide the general rule that, if the Exchange serving the rating area where the individual resides does not offer a single bronze plan that would cover all members of the taxpayer's nonexempt family, the premium for the applicable plan is the sum of the premiums for the lowest cost bronze plans available in the Exchange that provide coverage for all members of the nonexempt family. The Treasury Department and the IRS request comments on alternative methods for identifying the premium for the applicable plan when a single

bronze plan would not cover all members of the taxpayer's nonexempt family.

### IV. *Hardship Exemptions*

The final regulations specify that an individual who meets the requirements of 45 CFR 155.605(g)(3) (relating to individuals with gross income below the applicable return filing threshold who filed a return) or 45 CFR 155.605(g)(5) (relating to the affordability of coverage under an eligible employer-sponsored plan for family members) may claim a hardship exemption for a calendar year on a Federal income tax return. Consistent with guidance released by the Secretary of HHS on October, 28, 2013, the proposed regulations provide that an individual who enrolls in a plan through an Exchange during the open enrollment period for coverage for 2014 may claim a hardship exemption for months in 2014 prior to the effective date of the individual's coverage without obtaining a hardship exemption certification from an Exchange.

If additional situations are identified where an individual should be allowed to claim a hardship exemption without obtaining a hardship exemption certification from an Exchange, the Secretary of HHS and the Secretary of the Treasury will continue to coordinate guidance. To facilitate issuing guidance in this situation, the proposed regulations provide that a taxpayer may claim a hardship exemption on a return if the Secretary of HHS issues published guidance of general applicability describing the hardship and indicating that the hardship exemption can be claimed on a Federal income tax return pursuant to guidance published by the Secretary of the Treasury, and the Secretary of the Treasury issues published guidance of general applicability allowing an individual to claim such hardship exemption on a Federal income tax return without obtaining a hardship exemption certification from an Exchange.

#### *Monthly Penalty Amounts*

The final regulations provide that, for each taxable year, the shared responsibility payment is the lesser of the sum of monthly penalty amounts for each individual in the shared responsibility family or the sum of the monthly national average bronze plan premiums for the shared

responsibility family. The monthly penalty amount is computed for the taxpayer, not for each individual in the shared responsibility family. To avoid any confusion about this treatment, the proposed regulations remove from § 1.5000A-4(a) the clause “for each individual in the shared responsibility family” and add a reference to the taxpayer on whom the shared responsibility payment is imposed under § 1.5000A-1(c).

### Applicability Date

These regulations are proposed to apply for months beginning after December 31, 2013.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the proposed regulations. Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The applicability of the proposed regulations is limited to individuals, who are not small entities as defined by the RFA (5 U.S.C. 601). Accordingly, the RFA does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for May 21, 2014, beginning at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 28, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of the proposed regulations are Sue-Jean Kim and John B. Lovelace, Office of the Associate Chief Counsel (Income Tax & Accounting). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

Par 2. An undesignated center heading is added immediately following § 1.1563-4 to read as follows:

### Individual Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

Par. 3. Section 1.5000A-0 is amended by:

1. Revising the entry for § 1.5000A-2(b)(2).
2. Removing the entries for § 1.5000A-2(b)(2)(i), (b)(2)(ii), and (b)(2)(iii).
3. Revising the entries for § 1.5000A-3(e)(4)(ii)(C) and (e)(4)(ii)(D).
4. Adding a new entry for § 1.5000A-3(e)(4)(ii)(E).
5. Revising the entry for § 1.5000A-3(h)(3).

The revisions and addition read as follows.

#### § 1.5000A-0 Table of contents.

\* \* \* \* \*

#### § 1.5000A-2 Minimum essential coverage.

\* \* \* \* \*

(b) \* \* \*

(2) Certain health care coverage not minimum essential coverage under a government-sponsored program.

\* \* \* \* \*

#### § 1.5000A-3 Exempt individuals.

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(C) Wellness program incentives.

(D) Credit allowable under section 36B.

(E) Required contribution for part-year period.

\* \* \* \* \*

(h) \* \* \*

(3) Hardship exemption without hardship exemption certification.

\* \* \* \* \*

Par. 4. Section 1.5000A-2 is amended by:

1. Revising paragraphs (b)(1)(ii) and (b)(2).
2. Removing the language “health insurance” in paragraph (g).

The revisions read as follows:

§ 1.5000A–2 *Minimum essential coverage.*

\* \* \* \* \*

(b) \* \* \*(1) \* \* \*

(ii) *Medicaid.* The Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 and following sections);

\* \* \* \* \*

(2) *Certain health care coverage not minimum essential coverage under a government-sponsored program.* Government-sponsored program does not mean any of the following:

(i) Optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI));

(ii) Optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII));

(iii) Coverage of pregnancy-related services under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX));

(iv) Coverage limited to treatment of emergency medical conditions in accordance with 8 U.S.C. 1611(b)(1)(A), as authorized by section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v));

(v) Coverage for medically needy individuals under section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)) and 42 CFR 435.300 and following sections; or

(vi) Coverage authorized under section 1115(a)(2) of the Social Security Act (42 U.S.C. 1315(a)(2));

(vii) Coverage under section 1079(a), 1086(c)(1), or 1086(d)(1) of title 10, U.S.C., that is solely limited to space available care in a facility of the uniformed services for individuals excluded from TRICARE coverage for care from private sector providers; and

(viii) Coverage under sections 1074a and 1074b of title 10, U.S.C for an injury, illness, or disease incurred or aggravated in the line of duty for individuals who are not on active duty.

\* \* \* \* \*

Par. 5. Section 1.5000A–3 is amended by:

1. Revising paragraphs (e)(3)(ii)(D) and (e)(3)(ii)(E).

2. Redesignating paragraphs (e)(4)(ii)(C) and (e)(4)(ii)(D) as (e)(4)(ii)(D) and (e)(4)(ii)(E), respectively, and adding and reserving a new paragraph (e)(4)(ii)(C).

3. Revising paragraphs (h)(1) and (h)(3).

The revisions and additions read as follows:

§ 1.5000A–3 *Exempt individuals.*

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(D) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that is integrated with an eligible employer-sponsored plan and that an employee may use to pay premiums are taken into account in determining the employee's or a related individual's required contribution.

(E) *Wellness program incentives.* Non-discriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining an employee's or a related individual's required contribution to the extent the incentives relate to tobacco use. Wellness program incentives that do not relate to tobacco use are treated as not earned for this purpose.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(C) *Wellness programs incentives.* [Reserved]

\* \* \* \* \*

(h) *Individuals with hardship exemption certification—*(1) *In general.* Except as provided in paragraph (h)(3) of this section, an individual is an exempt individual for a month that includes a day on which the individual has in effect a hardship exemption certification described in paragraph (h)(2) of this section.

\* \* \* \* \*

(3) *Hardship exemption without hardship exemption certification.* An individual may claim an exemption without obtaining a hardship exemption certification described in paragraph (h)(2) of this section—

(i) For any month that includes a day on which the individual meets the require-

ments of 45 CFR 155.605(g)(3) or 45 CFR 155.605(g)(5);

(ii) For the months in 2014 prior to the individual's effective date of coverage, if the individual enrolls in a plan through an Exchange prior to the close of the open enrollment period for coverage in 2014; or

(iii) For any month that includes a day on which the individual meets the requirements of any other hardship for which:

(A) The Secretary of Health and Human Services issues guidance of general applicability describing the hardship and indicating that an exemption for such hardship can be claimed on a Federal income tax return pursuant to guidance published by the Secretary; and

(B) The Secretary issues published guidance of general applicability, see § 601.601(d)(2) of this chapter, allowing an individual to claim the hardship exemption on a return without obtaining a hardship exemption certification from an Exchange.

\* \* \* \* \*

Par. 6. Section 1.5000A–4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1.5000A–4 *Computation of shared responsibility payment.*

(a) *In general.* For each taxable year, the shared responsibility payment imposed on a taxpayer in accordance with § 1.5000A–1(c) is the lesser of—

(1) The sum of the monthly penalty amounts; or

\* \* \* \* \*

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

(Filed by the Office of the Federal Register on January 23, 2014, 4:15 p.m., and published in the issue of the Federal Register for January 27, 2014, 79 F.R. 4302)

# Deadline to Submit opinion and Advisory Letter Applications for Pre-approved Defined Benefit Plans is extended to February 2, 2015

## Announcement 2014-4

This announcement extends to February 2, 2015, the deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle. This extension applies to defined benefit mass submitter lead and specimen plans, word-for-word identical plans, master and prototype minor modifier placeholder applications, and non-mass submitter defined benefit plans. Under Rev. Proc. 2007-44, 2007-2 C.B. 54, and Rev. Proc. 2011-49, 2011-44 I.R.B. 608, the submission period for these applications is scheduled to expire on January 31, 2014.

### Extension applies to all pre-approved defined benefit plan submissions

The extension is made in response to recent requests from the employee benefits community that the Internal Revenue Service ("IRS") develop a pre-approved plan program for defined benefit plans with cash balance features, as referenced in § 411(a)(13)(C) of the Internal Revenue Code, that would be available for the second six-year remedial amendment cycle. The IRS intends to expand the pre-approved program to permit plans with certain cash balance features to be submitted by sponsors and practitioners as part of their pre-approved defined benefit submissions, and the submission deadline is extended to allow time for the IRS to develop the necessary language and tools to implement this expansion. However,

this extension applies to all on-cycle pre-approved defined benefit plan submissions, even those that will not be modified to contain cash balance features. In general, plans submitted in accordance with this extension will continue to be reviewed for qualification items based on the 2012 Cumulative List (Notice 2012-76, 2012-52 I.R.B. 775), which is the Cumulative List applicable to sponsors of defined benefit pre-approved plans submitting during the second six-year remedial amendment cycle. Future guidance will address permissible cash balance features under the pre-approved program.

### When to submit plans with cash balance features

The IRS will announce in future guidance when applications for opinion and advisory letters for pre-approved defined benefit plans with cash balance features may be submitted. Until that time, such plans should not be submitted under the pre-approved program.

### Applicable user fee

Rev. Proc. 2014-8, 2014-1 I.R.B. 242 (updated annually), contains the user fees that apply for applications submitted after January 31, 2014. The user fees under Rev. Proc. 2013-8, 2013-1 I.R.B. 237, will apply to pre-approved defined benefit plan applications submitted by January 31, 2014, which are not intended to contain cash balance features.

### Deadline for Cycle C Individually Designed Plans to Complete Form 8905

In order to preserve (or, in the case of a new plan, obtain) reliance on the terms of their plans, sponsors of individually designed plans who intend to adopt a pre-approved defined benefit plan document in the future may, before the end of their

applicable individually designed on-cycle deadline, complete Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, in lieu of submitting an application for an individually designed determination letter. The deadline for individually designed Cycle C filers to complete the Form 8905 or apply for a determination letter as an individually designed plan would normally be January 31, 2014. However, pursuant to this announcement, sponsors of individually designed Cycle C plans that do not intend to file a determination letter as an individually designed plan but intend to adopt a pre-approved defined benefit plan document will have until March 31, 2014 to complete Form 8905.

### Request for comments

The IRS invites interested persons to comment on the expansion of the pre-approved defined benefit program to accommodate submissions of plans with cash balance features, including, for example, program parameters and proposals for sample plan language. Comments should be submitted to the attention of Donald J. Kieffer, at [retirementplanquestions@irs.gov](mailto:retirementplanquestions@irs.gov).

### Effect on Other Documents

Rev. Proc. 2007-44 and Rev. Proc. 2011-49 are modified.

### Drafting Information

The principal author of this announcement is Donald J. Kieffer of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please call the Employee Plans taxpayer assistance answering service at (877) 829-5500 (a toll-free number) or email Mr. Kieffer at [retirementplanquestions@irs.gov](mailto:retirementplanquestions@irs.gov).

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–27 through 2013–52 is in Internal Revenue Bulletin 2013–52, dated December 23, 2013.

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### Key to Abbreviations:

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

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# Internal Revenue Service

## Washington, DC 20224

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## INTERNAL REVENUE BULLETIN

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

## CUMULATIVE BULLETINS

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

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