

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

Announcement 2014-18, page 983.

This document contains corrections to final regulations (TD 9644) that were published in the Federal Register on Monday, December 2, 2013 (78 FR 72394). The final regulations provide guidance on the general application of the Net Investment Income Tax and the computation of Net Investment Income.

Announcement 2014-19, page 984.

This document contains corrections to final regulations (TD 9644) that were published in the Federal Register on Monday, December 2, 2013 (78 FR 72394). The final regulations provide guidance on the general application of the Net Investment Income Tax and the computation of Net Investment Income.

Notice 2014-25, page 981.

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for calendar year 2013. The inflation adjustment factor and reference price are used to determine the credit allowable on sales of fuel produced from a nonconventional source under § 45K.

EMPLOYEE PLANS

Rev. Rul. 2014-9, page 975.

This revenue ruling provides simplified safe harbor due diligence procedures a plan administrator may use in order to be deemed to have reasonably concluded that an amount was a valid rollover contribution. The revenue ruling provides two new streamlined safe harbor due diligence procedures that, in the absence of evidence to the contrary, will give rise to the presumption that the administrator of the receiving plan reasonably concluded that a rollover was valid.

Announcement 2014-16, page 983.

Opinion and advisory letters for pre-approved (i.e., master and prototype (M&P;) and volume submitter (VS)) defined contribution plans that were restated for changes in plan qualification requirements listed in Notice 2010-90, 2010-52 I.R.B. 909 (2010 Cumulative List) and that were filed with the Service for their second submission period under the remedial amendment cycle under Rev. Proc. 2007-44, 2007-2 C.B. 54 will be issued soon. Employers using these pre-approved plan documents to restate a plan for the plan qualification requirements in the 2010 Cumulative List will be required to adopt the plan document by April 30, 2016. Starting May 1, 2014 and ending April 30, 2016, the Service will accept applications for individual determination letters from employers under the second six-year remedial amendment cycle for defined contribution pre-approved plans.

Notice 2014-19, page 979.

The purpose of this notice is to provide guidance on the application (including the retroactive application) of the decision in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), and the holdings of Rev. Rul. 2013-17, 2013-38 I.R.B. 201 (Sept. 16, 2013), to retirement plans qualified under section 401(a) of the Internal Revenue Code (Code). Rev. Rul. 2013-17 is amplified.

Finding Lists begin on page ii.
Index for July through April 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.

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

(Also §§ 401(a)(31), 402(c), 408(d)(3); 26 CFR 1.401(a)(31)–1)

Rollovers to Qualified Plans

Rev. Rul. 2014–9

ISSUE

In the following situations, may the plan administrator for a plan that is qualified under § 401(a) of the Internal Revenue Code reasonably conclude that a potential rollover contribution is a valid rollover contribution under § 1.401(a)(31)–1, Q&A–14(b)(2), of the Income Tax Regulations?

FACTS

Situation 1

Employer X maintains Plan M, a profit-sharing plan qualified under § 401(a) of the Code that covers a class of its employees. Plan M provides that any employee of Employer X who is in the covered class may make a rollover contribution to Plan M. Plan M does not accept rollover contributions of after-tax amounts or amounts attributable to designated Roth contributions. Employee A is an employee of Employer X who is eligible to make rollover contributions to Plan M. Employee A has a vested account balance in Plan O (a retirement plan maintained by Employee A's prior employer) and is eligible for a distribution under the terms of Plan O.

In 2014, Employee A requests a distribution of her vested account balance in Plan O and elects that it be paid to Plan M in the form of a direct rollover. The trustee for Plan O distributes Employee A's vested account balance in a direct rollover to Plan M by issuing a check payable to the trustee for Plan M for the benefit of Employee A, and provides the check to Employee A. Employee A provides the plan administrator for Plan M with the name of Employee A's prior employer and delivers the check, with an attached

check stub that identifies Plan O as the source of the funds, to the plan administrator. Employee A also certifies that the distribution from Plan O does not include after-tax contributions or amounts attributable to designated Roth contributions.

The plan administrator for Plan M accesses the EFAST2 database maintained by the Department of Labor at *www.efast.dol.gov* and searches for the most recently filed Form 5500 for Plan O. The latest Form 5500 for Plan O that the plan administrator for Plan M locates in the database is the Form 5500 filed for the plan year beginning January 1, 2012, and ending December 31, 2012. On that filing, line 8a does not include code 3C (for a plan not intended to be qualified under Code § 401, 403, or 408).

Situation 2

The facts are the same as in Situation 1, except as follows.

Employee A has an account balance in IRA N, which is titled "IRA of Employee A." IRA N is a traditional IRA within the meaning of § 1.408A–8, Q&A–1(a)(2) (rather than a Roth IRA or a SIMPLE IRA as described in § 408(p)), and is not an inherited IRA within the meaning of § 408(d)(3)(C)(ii). Employee A requests a distribution of her account balance in the form of a direct payment from IRA N to Plan M. The trustee for IRA N issues a check payable to the trustee for Plan M for the benefit of Employee A and provides the check to Employee A. Employee A delivers the check, including a check stub that identifies "IRA of Employee A" as the source of the funds, to the plan administrator for Plan M. Employee A certifies that her distribution from IRA N includes no after-tax amounts. Employee A also certifies that she will not have attained age 70½ by the end of the year in which the check is issued.

LAW AND ANALYSIS

Section 401(a)(31) provides that a trust does not constitute a qualified trust unless the plan of which the trust is a part provides that if the distributee of any eligible

rollover distribution elects to have the distribution paid directly to an eligible retirement plan and specifies the eligible retirement plan to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer.

Section 402(a) provides generally that any amount distributed from a trust described in § 401(a) that is exempt from tax under § 501(a) is taxable, in the taxable year of the distributee in which distributed, under § 72.

Section 402(c) provides taxability rules for an amount that is rolled over from a qualified trust to an eligible retirement plan. Subject to certain exceptions, § 402(c)(1) provides that if any portion of an eligible rollover distribution paid to the employee from a qualified trust is transferred to an eligible retirement plan, the portion of the distribution so transferred is not includible in gross income in the taxable year in which paid.

Under § 402(c)(4), an eligible rollover distribution for purposes of § 402(c) generally means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust. However, certain distributions are not eligible rollover distributions: a distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; a distribution to the extent such distribution is required under § 401(a)(9) of the Code; and a hardship distribution.

Section 402(c)(8) provides that an eligible retirement plan is an individual retirement account described in § 408(a) or individual retirement annuity described in § 408(b) (IRA), a qualified trust described in § 401(a), an annuity plan described in § 403(a), or an annuity contract described in § 403(b). An eligible retirement plan also includes an eligible plan under § 457(b) that is maintained by a state, political subdivision of a state, or any

agency or instrumentality of a state or political subdivision of a state.

Sections 403(a)(4)(A), 403(b)(8)(A), and 457(e)(16)(A) provide that if any portion of an eligible rollover distribution from a § 403(a) plan, § 403(b) plan, or eligible governmental § 457(b) plan, respectively, is transferred to an eligible retirement plan, the portion of the distribution so transferred is not includible in gross income in the taxable year in which transferred. Sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B) provide that the rules of paragraphs (2) through (7), (9), and (11) of § 402(c) apply for purposes of §§ 403(a)(4)(A), 403(b)(8)(A), and 457(e)(16)(A), respectively. Sections 403(a)(5), 403(b)(10), and 457(d)(1)(C) provide that requirements similar to the requirements of § 401(a)(31) apply to a § 403(a) plan, a § 403(b) plan, and an eligible governmental § 457(b) plan, respectively.

Section 408(d)(1) provides that any amount distributed from an IRA generally is included in the gross income of the distributee as provided in § 72.¹ Section 408(d)(2) provides that, for purposes of applying § 72 to a distribution from an IRA, all IRAs of an individual shall be treated as one contract and all distributions during any taxable year shall be treated as one distribution.

Section 408(d)(3)(A) provides that, subject to certain limitations, amounts distributed from an IRA that are paid into an eligible retirement plan are not included in gross income. Section 408(d)(3)(A)(ii) provides that the maximum amount which may be paid from an IRA into an eligible retirement plan (other than an IRA) as a rollover contribution may not exceed the portion of the distribution that otherwise would have been includible in income. In the case of a rollover contribution, § 408(d)(3)(H) provides special rules for determining the character of the distribution either as includible in income or as after-tax amounts.

Section 408(d)(3) further provides that amounts required to be distributed under § 408(a)(6) or (b)(3) and amounts distributed from inherited IRAs may not be transferred to a plan as a rollover contri-

bution. In addition, § 408(d)(3)(G) provides that a distribution from a SIMPLE IRA during the 2-year period beginning on the date an individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under § 408(p)(2) may not be transferred as a rollover contribution to a plan other than another SIMPLE IRA. Further, § 1.408A-6, Q&A-17, provides that any amount distributed from a Roth IRA and contributed to another type of retirement plan (other than a Roth IRA) is treated as a distribution from the Roth IRA that is neither a rollover contribution for purposes of § 408(d)(3) nor a qualified rollover contribution within the meaning of § 408A(e) to the other type of retirement plan. This treatment also applies to any amount transferred from a Roth IRA to any other type of retirement plan unless the transfer is a recharacterization described in § 1.408A-5.

Section 1.401(a)(31)-1, Q&A-4, provides that a trustee of a plan may accomplish a direct rollover by providing a distributee with a check made payable to the trustee of another eligible retirement plan for the benefit of the distributee and instructing the distributee to deliver the check to the eligible retirement plan.

Section 1.401(a)(31)-1, Q&A-14, provides that if a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of § 401(a) or 403(a) to the receiving plan, as if it were a valid rollover contribution if two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator for the receiving plan must reasonably conclude that the contribution is a valid rollover contribution. Second, if the plan administrator for the receiving plan later determines that the contribution was an invalid rollover contribution, the plan administrator must distribute the amount of the invalid rollover contribution, plus any earnings attributable thereto, to the employee within a reasonable time after such determination.

Under § 1.401(a)(31)-1, Q&A-14(b)(1), an invalid rollover contribution is an amount

accepted by a plan as a rollover that is not an eligible rollover distribution from a qualified plan or an amount that does not satisfy the requirements of § 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or rollover contribution. Under § 1.401(a)(31)-1, Q&A-14(b)(2), a valid rollover contribution is a contribution that is accepted by a plan as a rollover within the meaning of § 1.402(c)-2, Q&A-1, or as a rollover contribution within the meaning of § 408(d)(3), and that satisfies the requirements of § 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

Section 1.402(c)-2, Q&A-3 and Q&A-4, provides a list of distributions that are not eligible rollover distributions for purposes of § 402(c).

Section 1.401(a)(31)-1, Q&A-14, provides a number of examples illustrating situations in which the administrator for a receiving plan may reasonably conclude that a distributing plan is a qualified plan and that a potential rollover contribution is a valid rollover contribution. The regulation notes that a distributing plan is not required to have a determination letter in order for the plan administrator for the receiving plan to reasonably conclude that a potential rollover contribution is a valid rollover contribution.

The Code has been amended a number of times since § 1.401(a)(31)-1, Q&A-14, and § 1.402(c)-2, Q&A-4, were first published. For example, the Code has been amended to provide that a rollover of a hardship distribution is not permitted, and that a rollover of an eligible rollover distribution from a § 403(a) plan, a § 403(b) plan, or an eligible governmental § 457(b) plan to an eligible retirement plan is permitted. Additionally, the requirement that a rollover of a distribution from an IRA to a qualified plan may only be made if the IRA is a "conduit IRA" (an IRA to which the only contributions consist of rollover contributions from one or more qualified plans) has been eliminated. However, the regulations under §§ 401(a)(31) and 402(c) have not been updated to reflect these changes.

The Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation jointly developed the

¹The transfer of funds from one IRA trustee to another without the IRA owner having direct control and use of such funds is not a distribution under § 408(d)(1). See Rev. Rul. 78-406, 1978-2 C.B. 157.

Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan to enable employee benefit plans to satisfy annual reporting requirements under Title I and Title IV of the Employee Retirement Income Security Act (ERISA) and under the Code. These forms are part of an overall reporting and disclosure framework that is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards.

A Form 5500 or Form 5500-SF is required to be filed for all pension benefit plans covered by Title I of ERISA, except as otherwise provided in regulations, the instructions to such forms, or other guidance issued by the Department of Labor. Pension benefit plans for which a Form 5500 or a Form 5500-SF is required to be filed include defined benefit plans, defined contribution plans, annuity arrangements under § 403(b)(1), custodial accounts established under § 403(b)(7) for regulated investment company stock, IRAs established by an employer under § 408(c), and church pension plans electing coverage under § 410(d). The plan administrator for the plan must enter codes representing applicable characteristics of the plan on Line 8a of Form 5500 or on Line 9a of Form 5500-SF. The 2012 Instructions for these forms contain a List of Plan Characteristic Codes to be used by the plan administrator in completing these lines. Code 3C is the code used by the plan administrator to indicate that the plan is not intended to be qualified under Code § 401, 403, or 408.

Certain pension benefit plans covered by Title I of ERISA are not required to file Form 5500 or Form 5500-SF. These include a SIMPLE IRA plan under § 408(p) and a simplified employee pension (SEP) under § 408(k) that conforms to an alternate method of compliance described in 29 CFR 2520.104-48 or 2520.104-49. Other types of plans do not file Form 5500 or Form 5500-SF because they are not covered by Title I of ERISA. These include a governmental plan, a church pension benefit plan not electing coverage under § 410(d), and an individual retirement account or individual retirement annuity not considered a pension plan under 29 CFR 2510.3-2(d). Although certain plans that cover only owners and their

spouses are not required to file Form 5500 or Form 5500-SF, the plan administrators for these plans may elect to file Form 5500-SF in lieu of the otherwise applicable Form 5500-EZ.

Effective January 1, 2010, all Form 5500 Annual Returns/Reports and Form 5500-SF Annual Returns/Reports (including any required schedules and attachments) must be completed and filed electronically using the EFAST2 system. All these filings, except those filed by plans electing to file Form 5500-SF in lieu of Form 5500-EZ, are available to the public in the EFAST2 database through the Department of Labor Web site www.efast.dol.gov.

In Situation 1, the plan administrator for Plan O did not enter code 3C on line 8a of the Form 5500 filed for Plan O. By completing the form in this manner, the plan administrator made a representation that Plan O is intended to be a plan qualified under § 401, 403, or 408. As a result of this filing, it is reasonable for the plan administrator for Plan M to conclude that Plan O is intended to be a qualified plan. The trustee for Plan O issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicates that the plan administrator for Plan O treated the distribution as an eligible rollover distribution to be directly rolled over. Accordingly, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution is an eligible rollover distribution from Plan O. Thus, for example, if the distribution had occurred during or after the year in which Employee A had attained age 70½, it would be reasonable for the plan administrator for Plan M to conclude that, in accordance with § 1.402(c)-2, Q&A-7, Plan O distributed the required minimum amount under § 401(a)(9) for the year, prior to making the direct rollover.

Based on the analysis of the prior paragraph, absent any evidence to the contrary, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution to Plan M of the distribution from Plan O is a valid rollover contribution.

In Situation 2, the trustee for IRA N issued a check payable to the trustee for Plan M for the benefit of Employee A, which indicates that the trustee for IRA N

treated the distribution as a rollover contribution paid directly to Plan M. Because the check stub indicates that the distributing account is titled "IRA of Employee A," the plan administrator for Plan M can reasonably conclude that the source of the funds is a traditional, non-inherited IRA. In addition, Employee A has certified that the distribution included no after-tax amounts and that she will not attain age 70½ by the end of the year of the transfer. Therefore, it is reasonable for the plan administrator for Plan M to conclude that the distribution from IRA N is a distribution that can be rolled over.

Based on the analysis of the prior paragraph, absent any evidence to the contrary, it is reasonable for the plan administrator for Plan M to conclude that the potential rollover contribution to Plan M of the distribution from IRA N is a valid rollover contribution. If Employee A had attained age 70½ or older by the end of the year in which the check was issued, the plan administrator for Plan M could not reasonably conclude that the potential rollover contribution was a valid rollover contribution absent additional information indicating that § 408(a)(6) or 408(b)(3) had been satisfied with respect to IRA N in the year in which the check was issued.

In Situations 1 and 2, the results would be the same if there had been no check stub identifying the source of the funds, as long as the check itself identified the source of the funds as Plan O or IRA N, respectively. Similarly, the results would be the same if the rollover had been accomplished through a wire transfer or other electronic means, provided that the plan administrator or trustee for the sending plan or IRA had communicated to the plan administrator for Plan M the same information regarding the source of the funds.

HOLDINGS

In Situation 1, absent any evidence to the contrary, the plan administrator for Plan M may reasonably conclude that the potential rollover contribution by Employee A from Plan O to Plan M is a valid rollover contribution.

In Situation 2, absent any evidence to the contrary, the plan administrator for Plan M may reasonably conclude that the potential rollover contribution by Em-

ployee A from IRA N to Plan M is a valid rollover contribution.

In Situations 1 and 2, if it is later determined that the amount rolled over is an invalid rollover contribution, the amount rolled over plus any attributable earnings

must be distributed to Employee A within a reasonable time after such determination.

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Herrmann of the Employee Plans,

Tax Exempt and Government Entities Division. Ms. Herrmann may be reached by e-mail at RetirementPlanQuestions@irs.gov.

Part III. Administrative, Procedural, and Miscellaneous

Application of the *Windsor* Decision and Rev. Rul. 2013–17 to Qualified Retirement Plans

Notice 2014–19

SECTION 1. PURPOSE

The purpose of this notice is to provide guidance on the application (including the retroactive application) of the decision in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), and the holdings of Rev. Rul. 2013–17, 2013–38 I.R.B. 201 (Sept. 16, 2013), to retirement plans qualified under section 401(a) of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

01. Qualified Retirement Plan Rules Relating to Married Participants

Several Code sections provide special rules with respect to married participants in qualified retirement plans, including, but not limited to, the following:

- Under section 401(a)(11), certain qualified retirement plans must provide a qualified joint and survivor annuity (QJSA) upon retirement to married participants (and generally must provide a qualified preretirement survivor annuity (QPSA) to the surviving spouse of a married participant who dies before retirement). If a plan is subject to these rules, the QJSA (or QPSA) may be waived by a married participant only with spousal consent pursuant to section 417. If such a plan permits loans to participants, then section 417(a)(4) requires a plan to obtain the consent of the spouse of a married participant before making a loan to the participant.
- Under section 401(a)(11)(B)(iii), certain qualified defined contribution retirement plans are exempt from the QJSA and QPSA requirements provided that a married participant's benefit is payable in full, on the death of the participant, to the participant's surviving spouse, unless the surviving

spouse consents to the designation of a different beneficiary.

- Under the required minimum distribution rules of section 401(a)(9) and the rollover rules of section 402(c), additional alternatives are provided for surviving spouses that are not available to non-spousal beneficiaries.
- Under section 1563(e)(5), generally a spouse is treated as owning shares owned by the other spouse for purposes of determining whether corporations are members of a controlled group under section 414(b).
- Under section 318(a)(1), generally a spouse is treated as owning shares owned by the other spouse for purposes of determining whether an employee is a key employee under section 416(i)(1), including whether an employee is considered a 5% owner.
- Under section 409(n), an employee stock ownership plan (ESOP) that acquires certain employer securities generally must prohibit the allocation or accrual of those securities for the benefit of certain individuals, including the spouse of the seller and the spouse of any individual who owns 25% or more of the securities.
- Under section 409(p), no portion of the assets of an ESOP attributable to employer securities consisting of S corporation stock may accrue during a nonallocation year for the benefit of any disqualified person or certain family members of the disqualified person (including the spouse) in certain circumstances.
- Under section 401(a)(13)(B), the anti-alienation rules do not apply to the creation, assignment, or recognition of an alternate payee's right to receive all or a portion of the benefits payable to a participant under a plan pursuant to a qualified domestic relations order (QDRO) described in section 414(p), and, under section 402(e)(1), an alternate payee who is a spouse or former spouse of the participant is treated as the distributee of a distribution under a QDRO.

02. Defense of Marriage Act

Until the decision of the Supreme Court in *Windsor* found it unconstitutional, section 3 of the Defense of Marriage Act (DOMA) prohibited the recognition of same-sex spouses for purposes of Federal tax law. Specifically, 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. As a result, same-sex spouses were not recognized for purposes of the Code with respect to qualified retirement plans.

03. Effect of the *Windsor* Decision and Rev. Rul. 2013–17

In the *Windsor* decision, the Supreme Court held on June 26, 2013 that section 3 of DOMA is unconstitutional because it violates Fifth Amendment principles. Subsequent to the *Windsor* decision, Rev. Rul. 2013–17 held the following:

(1) For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person 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 Internal Revenue Service (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. The holdings of Rev. Rul. 2013–17 apply for all Federal tax purposes, including for purposes of the Federal tax rules that apply to qualified retirement plans under section 401(a). The ruling provides that the holdings will be applied prospectively as of September 16, 2013. The ruling also provides that taxpayers may rely on the holdings retroactively with respect to any employee benefit plan or arrangement (or any benefit provided thereunder) for limited purposes with respect to certain employer-provided health coverage and fringe benefits that are specified in the ruling. The ruling further states that:

The Service intends to issue further guidance on the retroactive application of the Supreme Court’s opinion in *Windsor* to other employee benefits and employee benefit plans and arrangements. Such guidance will take into account the potential consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The Service anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify.

04. Authority under Section 7805(b)(8)

Under section 7805(b)(8), the Commissioner is authorized to prescribe the extent, if any, to which any judicial decision, or any administrative determination other than by regulation, relating to the internal revenue laws is to be applied without retroactive effect.

05. Remedial Amendment Period under Section 401(b)

Section 401(b) provides a period during which a plan may be amended retroactively to comply with the Code’s qualification requirements. The deadline for amending a plan is generally the time pre-

scribed by law for filing the return of the employer for its taxable year in which the amendment was adopted or such later time as the Secretary may designate.

Rev. Proc. 2007–44, 2007–28 I.R.B. 54, provides rules regarding the timing of amendments made to qualified retirement plans. Section 5.05 of Rev. Proc. 2007–44 provides that when there are changes to the plan qualification requirements that affect provisions of the written plan document, the adoption of an interim amendment generally is required by the later of the end of the plan year in which the change is first effective or the due date of the employer’s tax return for the tax year that includes the date the change is first effective.

SECTION 3. QUESTIONS AND ANSWERS

GENERAL RULES

Q–1. How does the *Windsor* decision affect the application of the Federal tax rules to qualified retirement plans?

A–1. In the *Windsor* decision, the Supreme Court held that section 3 of DOMA (which applied for purposes of determining an individual’s marital status under Federal law) is unconstitutional. In the absence of section 3 of DOMA, any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. For example, a participant in a plan subject to the rules of section 401(a)(11) who is married to a same-sex spouse cannot waive a QJSA without obtaining spousal consent pursuant to section 417.

Q–2. As of what date are qualified retirement plans required to be operated in a manner that reflects the outcome of *Windsor* and the guidance in Rev. Rul. 2013–17?

A–2. Qualified retirement plan operations must reflect the outcome of *Windsor* as of June 26, 2013. A retirement plan will not be treated as failing to meet the requirements of section 401(a) merely because it did not recognize the same-sex spouse of a participant as a spouse before June 26, 2013. For Federal tax purposes, effective as of September 16, 2013, Rev. Rul. 2013–17 (i) adopts a general rule recognizing a marriage of same-sex indi-

viduals that is validly entered into in a state whose laws authorize the marriage of two individuals of the same sex, even if the individuals are domiciled in a state that does not recognize the validity of same-sex marriages, and (ii) provides that individuals (whether part of an opposite-sex or same-sex couple) 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 are not treated as married. Accordingly, a retirement plan will not be treated as failing to meet the requirements of section 401(a) merely because the plan, prior to September 16, 2013, recognized the same-sex spouse of a participant only if the participant was domiciled in a state that recognized same-sex marriages. See Q&A–8 for the deadline to adopt plan amendments pursuant to this notice.

Q–3. May a qualified retirement plan be amended to reflect the outcome of *Windsor* as of a date earlier than June 26, 2013, and, if so, may the amendment reflect the outcome of *Windsor* for only certain purposes?

A–3. A qualified retirement plan will not lose its qualified status due to an amendment to reflect the outcome of *Windsor* for some or all purposes as of a date prior to June 26, 2013, if the amendment complies with applicable qualification requirements (such as section 401(a)(4)). Recognizing same-sex spouses for all purposes under a plan prior to June 26, 2013, however, may trigger requirements that are difficult to implement retroactively (such as the ownership attribution rules) and may create unintended consequences. Provided that applicable qualification requirements are otherwise satisfied, a plan sponsor’s choice of a date before June 26, 2013, and the purposes for which the plan amendments recognize same-sex spouses before June 26, 2013, do not affect the qualified status of the plan. For example, for the period before June 26, 2013, a plan sponsor may choose to amend its plan to reflect the outcome of *Windsor* solely with respect to the QJSA and QPSA requirements of section 401(a)(11) and, for those purposes, solely with respect to participants with annuity starting dates or dates of death on or after a specified date.

PLAN AMENDMENTS

Q-4. For purposes of satisfying the Federal tax rules relating to qualified retirement plans, must a qualified retirement plan be amended to reflect the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice?

A-4. Whether a plan must be amended to reflect the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice depends on the terms of the specific plan, as described in Q&A-5 through Q&A-7 of this notice.

Q-5. Must a plan sponsor amend a qualified retirement plan if its terms with respect to the requirements of section 401(a) define a marital relationship by reference to section 3 of DOMA or if the plan's terms are otherwise inconsistent with the outcome of *Windsor* or the guidance in Rev. Rul. 2013-17 or this notice?

A-5. If a plan's terms with respect to the requirements of section 401(a) define a marital relationship by reference to section 3 of DOMA or are otherwise inconsistent with the outcome of *Windsor* or the guidance in Rev. Rul. 2013-17 or this notice, then an amendment to the plan that reflects the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice is required by the date specified in Q&A-8 of this notice.

Q-6. If a qualified retirement plan's terms are not inconsistent with the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice (for example, the term "spouse," "legally married spouse" or "spouse under Federal law" is used in the plan without any distinction between a same-sex spouse and an opposite-sex spouse), must the plan be amended to reflect the change in meaning or interpretation of those terms to include same-sex spouses?

A-6. If a plan's terms are not inconsistent with the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice, an amendment generally would not be required. If no amendment to such a plan is made, the plan nonetheless must be operated in accordance with the provisions of Q&A-2 of this notice. (Though not required, a clarifying amendment may be useful for purposes of plan administration.)

Q-7. If a plan sponsor chooses to apply the rules with respect to married partici-

pants in qualified retirement plans in a manner that reflects the outcome of *Windsor* for a period before June 26, 2013, is an amendment to the plan required?

A-7. Yes, if a plan sponsor chooses to apply the rules in a manner that reflects the outcome of *Windsor* for a period before June 26, 2013, an amendment to the plan that specifies the date as of which, and the purposes for which, the rules are applied in this manner is required. The deadline for this amendment is the date specified in Q&A-8 of this notice.

Q-8. What is the deadline to adopt a plan amendment pursuant to this notice?

A-8. The deadline to adopt a plan amendment pursuant to this notice is the later of (i) the otherwise applicable deadline under section 5.05 of Rev. Proc. 2007-44, or its successor, or (ii) December 31, 2014. Moreover, in the case of a governmental plan, any amendment made pursuant to this notice need not be adopted before the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014.

Q-9. Is an amendment to a single-employer defined benefit plan that implements the outcome of *Windsor* and the guidance in Rev. Rul. 2013-17 and this notice subject to the requirements of section 436(c)?

A-9. In general, under section 436(c), an amendment to a single-employer defined benefit plan that increases the liabilities of the plan cannot take effect unless the plan's adjusted funding target attainment percentage is sufficient or the employer makes the additional contribution specified under section 436(c)(2). However, this notice provides a special rule pursuant to § 1.436-1(c)(4)(iii). Under this special rule, a plan amendment that is described in Q&A-5 of this notice and that takes effect on June 26, 2013, is not treated as an amendment to which section 436(c) applies. In contrast, a plan amendment that is described in Q&A-7 of this notice is an amendment to which section 436(c) applies.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2013-17 is amplified by providing further guidance on the effect of the *Windsor* decision with respect to qual-

ified retirement plans under section 401(a).

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division, and Jeremy Lamb of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Carrington at RetirementPlanQuestions@irs.gov or Mr. Lamb at (202) 317-6700 (not a toll-free number).

Nonconventional Source Fuel Credit, 2013 Section 45K Inflation Adjustment Factor and Section 45K Reference Price

Notice 2014-25

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2013. The inflation adjustment factor is used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2013 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2013 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the taxable year. For calendar year 2013, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of

\$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines “inflation adjustment factor” for a calendar year as a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines “reference price” to mean with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term “barrel-of-oil equivalent” with re-

spect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the reference to the GNP implicit price deflator for calendar year 1979 is replaced with the GNP implicit price deflator for calendar year 2004 for purposes of § 45K(d)(2)(B). Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP

implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phaseout of the credit under § 45K(b)(1) does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2013 is \$96.13.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2013 is 1.1975. The nonconventional source fuel credit is \$3.59 per barrel-of-oil equivalent ($\$3.00 \times 1.1975$).

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Tiegerman on (202) 317-6853 (not a toll-free number).

Part IV. Items of General Interest

Announcement 2014–16

Issuance of Opinion and Advisory Letters for Pre-approved Defined Contribution Plans for the Second Six-Year Cycle, Deadline for Employer Adoption, and Opening of Determination Letter Program for Pre-approved Plan Adopters

The Service will soon issue opinion and advisory letters for pre-approved (i.e., master and prototype (M&P) and volume submitter (VS)) defined contribution plans that were restated for changes in plan qualification requirements listed in Notice 2010–90, 2010–52 I.R.B. 909 (2010 Cumulative List) and that were filed with the Service during their second submission period under the remedial amendment cycle under Rev. Proc. 2007–44, 2007–2 C.B. 54. The Service expects to issue the letters on March 31, 2014, or, in some cases, as soon as possible thereafter. Employers using these pre-approved plan documents to restate a plan for the plan qualification requirements on the 2010 Cumulative List will be required to adopt the plan document by April 30, 2016. Starting May 1, 2014 and ending April 30, 2016, the Service will accept applications for individual determination letters from employers under the second six-year remedial amendment cycle for defined contribution pre-approved plans.

Background

Revenue Procedure 2011–49, 2011–44 I.R.B. 608, and Rev. Proc. 2007–44 (both as amended) describe a staggered remedial amendment system for plans that are qualified under § 401(a) of the Internal Revenue Code, with five-year amendment/approval cycles for individually designed plans and six-year cycles for pre-approved plans. The submission period for the second six-year cycle for pre-approved defined contribution plans was February 1, 2011, through January 31, 2012, which was extended to April 2, 2012, by Announcement 2012–3, 2012–4

I.R.B. 335. Revenue Procedures 2011–49 and 2007–44 require pre-approved sponsors and practitioners to restate their pre-approved defined contribution plans for the qualification requirements included on the 2010 Cumulative List and apply for new opinion or advisory letters during this submission period.

Section 16.03 of Rev. Proc. 2007–44 provides that when the review process for a cycle of pre-approved plans has neared completion, the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This date is intended to give adopting employers a window of approximately two years in which to adopt plans, and if necessary, to apply for an individual determination letter.

Deadline for Employer Adoption of Pre-approved Defined Contribution M&P and VS Plans

The end of a pre-approved defined contribution plan's remedial amendment cycle with respect to the changes in plan qualification requirements on the 2010 Cumulative List is April 30, 2016. An adopting employer whose defined contribution plan is eligible for the six-year remedial amendment cycle under section 17 of Rev. Proc. 2007–44 and who adopts, by April 30 2016, an M&P or VS defined contribution plan that was approved based on the 2010 Cumulative List, will be considered to have adopted the plan within the employer's six-year remedial amendment cycle.

Opening of Individual Determination Letter Program for Pre-approved Defined Contribution Plans

An adopting employer of an M&P plan (whether standardized or nonstandardized) may not apply for a determination letter for the plan on Form 5307. An adopting employer of a VS plan may apply for a determination letter for the plan on Form 5307 only if the employer has modified the terms of the approved plan and the modifications are not so extensive as to cause the plan to be treated as an individually designed plan. If an adopting employer of a VS plan has made limited

modifications to the pre-approved defined contribution specimen plan that received a letter based on the 2010 Cumulative List for the second six year cycle, the employer may apply for an individual determination letter on Form 5307 beginning May 1, 2014 and ending April 30, 2016. Additional information regarding determination letter applications for pre-approved plans, including requirements for applications filed on Form 5300 and 5307, may be found in sections 8 and 9 of Rev. Proc. 2014–6, 2014–1 I.R.B. 198.

Announcement 2014–18

Net Investment Income Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9644) that were published in the **Federal Register** on Monday, December 2, 2013 (78 FR 72394). The final regulations provide guidance on the general application of the Net Investment Income Tax and the computation of Net Investment Income.

DATES: This correction is effective April 1, 2014 and applicable December 2, 2013.

FOR FURTHER INFORMATION CONTACT: Adrienne M. Mikolashek, at (202) 317-6852 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9644) that are the subject of this correction is under section 1411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9644) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9644), that are the subject of FR Doc. 2013–28410, are corrected as follows:

1. On page 72399, first column, in the preamble, ninth line of the first full paragraph, the language “provides that the section 1411 is applied” is corrected to read “provides that section 1411 is applied”.

2. On page 72405, second column, in the preamble, twelfth line from the top of the page, the language “1411(c)(1)(A)(i). See part 5.b.ii.a of this” is corrected to read “1411(c)(1)(A)(i). See part 5.b.ii.a. of this”.

3. On page 72405, second column, in the preamble, fifteenth line from the top of the page, the language “purpose of section 1411” is corrected to read “purposes of section 1411”.

4. On page 72406, first column, in the preamble, sixteenth line from the top of the page, the language “1411(c)(1)(a)(iii)” is corrected to read “1411(c)(1)(A)(iii)”.

5. On page 72406, third column, in the preamble, fourth line from the bottom of the page, the language “Described in Section 1411(C)(1)(b)” is corrected to read “Described in Section 1411(c)(1)(B)”.

6. On page 72407, first column, in the preamble, fifteenth line from the bottom of the page, the language “trades or business, rents, and royalties,” is corrected to read “trades or businesses, rents, and royalties”.

7. On page 72409, first column, in the preamble, twelfth line of the first full paragraph, the language “reasonable methods may lead to” is corrected to read “reasonable methods may lead”.

8. On page 72411, second column, in the preamble, twentieth line of the first full paragraph, the language “considered passive activity. However,” is corrected to read “considered a passive activity. However”.

9. On page 72412, second column, in the preamble, seventh and the eighth lines of the first full paragraph, the language “participates in rental real estate activities for more than 500 hours per” is corrected to read “participates in a rental real estate activity for more than 500 hours per”.

10. On page 72412, second column, in the preamble, thirteenth and fourteenth lines of the second full paragraph, the language “taxpayer has participated in rental real estate activities for more than

500 hours” is corrected to read “taxpayer has participated in a rental real estate activity for more than 500 hours”.

11. On page 72415, first column, in the preamble, ninth line from the top of the page, the language “469(e)(1)(A) by § 1.469–2T(f)(10). In the” is corrected to read “469(e)(1)(A) by § 1.469–2(f)(10). In the”.

12. On page 72415, first column, in the preamble, eighteenth line from the bottom of the page, the language “covered by § 1.469–2T(f)(10) and” is corrected to read “covered by § 1.469–2(f)(10) and”.

13. On page 72420, second column, in the preamble, third line of the first full paragraph, the language “election under § 1.1411–10(g) election” is corrected to read “election under § 1.1411–10(g)”.

Martin V. Franks,
*Chief, Publications and
Regulations Branch*

*Legal Processing Division Associate Chief
Counsel (Procedure and Administration)*

(Filed by the Office of the Federal Register on March 31, 2014, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2014, 79 F.R. 18161)

Announcement 2014–19

Net Investment Income Tax; Correction

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9644) that were published in the **Federal Register** on Monday, December 2, 2013 (78 FR 72394). The final regulations provide guidance on the general application of the Net Investment Income Tax and the computation of Net Investment Income.

DATES: This correction is effective April 1, 2014 and applicable December 2, 2013.

FOR FURTHER INFORMATION

CONTACT: Adrienne M. Mikolashek, at (202) 317-6852 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9644) that are the subject of this correction is under section 1411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9644) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1— INCOME TAXES

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

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

Par. 2. Section 1.469–11 is amended by revising the first sentence of paragraph (b)(3)(iv)(C)(1) and the last sentence of paragraph (b)(3)(iv)(C)(3) *Example 4*. to read as follows:

§ 1.469–11 Effective date and transition rules.

* * * * *

(b) * * *

(3) * * *

(iv) * * *

(C) * * * (1) * * * An individual,

estate, or trust also may regroup activities, in the manner described in paragraph (b)(3)(iv)(A) of this section, on an amended return only if the changes reported on such amended return cause the taxpayer to meet the Eligibility Criteria for the first time beginning in the taxable year for which the amended return is applicable and that the taxable year is not closed by the period of limitations on assessments under section 6501. * * *

* * * * *

(3) * * *

Example 4. * * * Third, Y may file an original or an amended return to regroup in a manner different from groupings in effect prior to Year 1 and different from the Year 1 groupings (for example, Y could choose to group Activity C and D into a single

activity, thus causing Y to have two groups; Group A–B and Group C–D).

* * * * *

Par. 3. Section 1.1411–0 is amended by revising the entries in the table of contents for § 1.1411–3 (c)(2)(ii) and (iii) to read as follows:

§ 1.1411–0 Table of contents of provisions applicable to section 1411.

* * * * *

§ 1.1411–3 Application to Estates and Trusts.

* * * * *

- (c) * * *
- (2) * * *
- (ii) Step two.
- (iii) Step three.

* * * * *

Par. 4. Section 1.1411–2 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 1.1411–2 Application to individuals.

* * * * *

(b) * * *

(2) *Example.* During Year 1 (a year in which section 1411 is in effect), A, an unmarried United States citizen, has modified adjusted gross income (as defined in paragraph (c) of this section) of \$190,000, which includes \$50,000 of net investment income. * * *

* * * * *

Par. 5. Section 1.1411–3 is amended by revising the second sentence of paragraph (c)(3)(ii)(A) and the first sentence of paragraph (c)(3)(iii)(B) to read as follows:

§ 1.1411–3 Application to estates and trusts.

* * * * *

(c) * * *

(3) * * *

(ii) * * * (A) * * * The undistributed net investment income for the S portion is \$27,600 and is determined as follows:

* * * * *

(iii) * * *

(B) The adjusted gross income for the ESBT is \$40,000 and is determined as follows: * * *

* * * * *

Par. 6. Section 1.1411–4 is amended as follows:

1. The first sentence of paragraph (d)(4)(i)(C) *Example 2.* (i) is revised.

2. The language “deduction” in the last sentence of paragraph (f)(2)(v) *Example 1.* (iv) is removed and “deductions” is added in its place.

3. The language “A” in the third sentence of paragraph (f)(2)(v) *Example 2.* (iii) is removed and “A’s” is added in its place.

4. Paragraph (f)(3)(iii) is revised.

5. The language “§ 1.171–2T(a)(4)(i)(C)” in paragraph (f)(3)(vii) is removed and “§ 1.171–2(a)(4)(i)(C)” is added in its place.

6. The second sentence of paragraph (f)(4)(ii) *Example 1.* (iii) is revised.

7. The language “one or more” in paragraph (g)(7)(i) introductory text is removed and “a” is added in its place.

8. The language “activities” in paragraph (g)(7)(i) introductory text is removed and “activity” is added in its place.

9. Paragraph (h)(2) introductory text is revised.

10. The language “.2” in paragraph (h)(5) *Example 1.* (ii) is removed and added in its place “0.2”.

The revisions read as follows:

§ 1.1411–4 Definition of net investment income .

* * * * *

(d) * * *

(4) * * *

(i) * * *

(C) * * *

Example 2. * * * (i) PRS, a partnership for Federal income tax purposes, operates an automobile dealership. * * *

* * * * *

(f) * * *

(3) * * *

(iii) *Taxes described in section 164(a)(3).* State, local, and foreign income, war profits, and excess profit taxes described in section 164(a)(3) that are allocable to net investment income pursuant to paragraph (g)(1) of this section. Except to the extent specifically expected from section 275(a)(4), foreign income, war profits, and excess profit taxes are not allowed as deductions under section 164(a)(3) in determining net investment income if the taxpayer claims the benefit of the foreign tax credit under section 901 with respect to the same taxable year. For rules applicable to refunds of taxes de-

scribed in this paragraph, see paragraph (g)(2) of this section.

* * * * *

(4) * * *

(ii) * * *

Example 1. * * *

(iii) * * * Pursuant to paragraph (d) of this section, A takes into account the \$60,000 at ordinary loss from PRS and the \$50,000 of long term capital gain in the computation of A’s net gain. * * *

* * * * *

(h) * * *

(2) *Applicable portion of a net operating loss.* In any taxable year beginning after December 31, 2012, in which a taxpayer incurs a net operating loss, the applicable portion of such loss is the lesser of:

* * * * *

Par. 7. Section 1.1411–5 is amended by revising paragraph (b)(2)(i) and (b)(2)(iii) to read as follows:

§ 1.1411–5 Trades or businesses to which tax applies.

* * * * *

(b) * * *

(2) * * * (i) *Income and gain recharacterization.* To the extent that any income or gain from a trade or business is recharacterized as “not from a passive activity” by reason of § 1.469–2T(f)(2), § 1.469–2(f)(5), or § 1.469–2(f)(6), such trade or business does not constitute a passive activity within the meaning of paragraph (b)(1)(ii) of this section solely with respect to such recharacterized income or gain.

* * * * *

(iii) *Exception for certain portfolio recharacterizations.* To the extent that any income or gain from a trade or business is recharacterized as “not from a passive activity” and is further characterized as portfolio income under § 1.469–2 (f)(10) or § 1.469–2(c)(2)(iii)(F), then such trade or business constitutes a passive activity within the meaning of paragraph (b)(1)(ii) of this section solely with respect to such recharacterized income or gain.

* * * * *

Par. 8. Section 1.1411–10 is amended as follows:

1. Revise paragraph (c)(5)(i)(B).

2. In paragraph (h) *Example 2.* (ii)(A), revise the first sentence.

The revisions read as follows:

§ 1.1411-10 Controlled foreign corporations and passive foreign investment companies.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(B) Decreasing the amount of investment income determined for chapter 1 purposes under section 163(d)(4)(B) by the amount included in gross income for chapter 1 purposes under section 951(a) or section 1293(a) that is attributable to a CFC or QEF with respect to which an election under paragraph (g) of this section is not in effect; and

* * * * *

(h) * * *

Example 2. * * *

(ii) * * * (A) In 2016, A does not include the \$15,000 section 951(a)(1)(A) income inclusion in A's net investment income under section 1411(c)(1)(A)(i) and § 1.1411-1(a)(1)(i). * * *

* * * * *

Martin V. Franks,
*Chief, Publications and
Regulations Branch
Legal Processing Division Associate Chief
Counsel (Procedure and Administration)*

(Filed by the Office of the Federal Register on March 31, 2014, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2014, 79 F.R. 18161)

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.

Numerical Finding List¹

Bulletins 2014–1 through 2014–17

Announcements

2014-1, 2014-2 I.R.B. 393
2014-2, 2014-4 I.R.B. 448
2014-4, 2014-7 I.R.B. 523
2014-05, 2014-6 I.R.B. 507
2014-06, 2014-6 I.R.B. 508
2014-07, 2014-6 I.R.B. 508
2014-08, 2014-6 I.R.B. 508
2014-09, 2014-6 I.R.B. 508
2014-10, 2014-6 I.R.B. 508
2014-11, 2014-6 I.R.B. 508
2014-12, 2014-6 I.R.B. 509
2014-13, 2014-10 I.R.B. 620
2014-14, 2014-16 I.R.B. 948
2014-15, 2014-16 I.R.B. 973
2014-16, 2014-17 I.R.B. 983
2014-18, 2014-17 I.R.B. 983
2014-19, 2014-17 I.R.B. 984

Notices

2014-1, 2014-2 I.R.B. 270
2014-2, 2014-3 I.R.B. 407
2014-3, 2014-3 I.R.B. 408
2014-4, 2014-2 I.R.B. 274
2014-5, 2014-2 I.R.B. 276
2014-6, 2014-2 I.R.B. 279
2014-7, 2014-4 I.R.B. 445
2014-8, 2014-5 I.R.B. 452
2014-9, 2014-5 I.R.B. 455
2014-10, 2014-9 I.R.B. 605
2014-11, 2014-13 I.R.B. 880
2014-12, 2014-9 I.R.B. 606
2014-13, 2014-10 I.R.B. 616
2014-14, 2014-13 I.R.B. 881
2014-15, 2014-12 I.R.B. 661
2014-16, 2014-14 I.R.B. 920
2014-17, 2014-13 I.R.B. 881
2014-18, 2014-15 I.R.B. 926
2014-19, 2014-17 I.R.B. 979
2014-20, 2014-16 I.R.B. 937
2014-21, 2014-16 I.R.B. 938
2014-22, 2014-16 I.R.B. 940
2014-23, 2014-16 I.R.B. 942
2014-24, 2014-16 I.R.B. 942
2014-25, 2014-17 I.R.B. 981

Proposed Regulations

REG-154890-03, 2014-6 I.R.B. 504
REG-159420-04, 2014-2 I.R.B. 374
REG-144468-05, 2014-6 I.R.B. 474
REG-163195-05, 2014-15 I.R.B. 930
REG-119305-11, 2014-8 I.R.B. 524
REG-140974-11, 2014-3 I.R.B. 438
REG-121534-12, 2014-6 I.R.B. 473

Proposed Regulations—Continued

REG-122706-12, 2014-11 I.R.B. 647
REG-134361-12, 2014-13 I.R.B. 895
REG-136984-12, 2014-2 I.R.B. 378
REG-113350-13, 2014-3 I.R.B. 440
REG-130967-13, 2014-13 I.R.B. 884
REG-141036-13, 2014-7 I.R.B. 516
REG-143172-13, 2014-2 I.R.B. 383
REG-108641-14, 2014-15 I.R.B. 928

Revenue Procedures

2014-1, 2014-1 I.R.B. 1
2014-2, 2014-1 I.R.B. 90
2014-3, 2014-1 I.R.B. 111
2014-4, 2014-1 I.R.B. 125
2014-5, 2014-1 I.R.B. 169
2014-6, 2014-1 I.R.B. 198
2014-7, 2014-1 I.R.B. 238
2014-8, 2014-1 I.R.B. 242
2014-9, 2014-2 I.R.B. 281
2014-10, 2014-2 I.R.B. 293
2014-11, 2014-3 I.R.B. 411
2014-12, 2014-3 I.R.B. 415
2014-13, 2014-3 I.R.B. 419
2014-14, 2014-2 I.R.B. 295
2014-15, 2014-5 I.R.B. 456
2014-16, 2014-9 I.R.B. 606
2014-17, 2014-12 I.R.B. 661
2014-18, 2014-7 I.R.B. 513
2014-19, 2014-10 I.R.B. 619
2014-20, 2014-9 I.R.B. 614
2014-21, 2014-11 I.R.B. 641
2014-22, 2014-11 I.R.B. 646
2014-23, 2014-12 I.R.B. 685
2014-24, 2014-13 I.R.B. 879
2014-25, 2014-15 I.R.B. 927
2014-28, 2014-16 I.R.B. 944

Revenue Rulings

2014-1, 2014-2 I.R.B. 263
2014-2, 2014-2 I.R.B. 255
2014-3, 2014-2 I.R.B. 259
2014-4, 2014-5 I.R.B. 449
2014-6, 2014-7 I.R.B. 510
2014-8, 2014-11 I.R.B. 624
2014-9, 2014-17 I.R.B. 975
2014-10, 2014-14 I.R.B. 906
2014-11, 2014-14 I.R.B. 906
2014-12, 2014-15 I.R.B. 923

Treasury Decisions

9649, 2014-2 I.R.B. 265
9650, 2014-3 I.R.B. 394
9651, 2014-4 I.R.B. 441
9652, 2014-12 I.R.B. 655
9653, 2014-6 I.R.B. 460
9654, 2014-6 I.R.B. 461

Treasury Decisions—Continued

9655, 2014-9 I.R.B. 541
9656, 2014-11 I.R.B. 626
9657, 2014-13 I.R.B. 687
9658, 2014-13 I.R.B. 748
9659, 2014-12 I.R.B. 653
9660, 2014-13 I.R.B. 842
9661, 2014-13 I.R.B. 855
9662, 2014-16 I.R.B. 933

¹A 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.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2014–1 through 2014–17

Announcements:

2007-44

Modified by
Ann. 2014-4, 2014-7 I.R.B. 523

2011-49

Modified by
Ann. 2014-4, 2014-7 I.R.B. 523

Notices:

2003-37

Obsoleted by
REG-163195-05 2014-15 I.R.B. 930

2006-109

Modified by
Notice 2014-4, 2014-2 I.R.B. 274

2007-59

Obsoleted by
REG-163195-05 2014-15 I.R.B. 930

2009-78

Superseded by
T.D. 9654 2014-6 I.R.B. 461

2013-1

Superseded by
Notice 2014-22, 2014-16 I.R.B. 940

2013-1

Modified by
Notice 2014-22, 2014-16 I.R.B. 940

2013-13

Obsoleted by
REG-163195-05 2014-15 I.R.B. 930

2013-17

Amplified by
Notice 2014-1, 2014-2 I.R.B. 270

Revenue Procedures:

2003-49

Modified and superseded by
Rev. Proc. 2014-14, 2014-2 I.R.B. 295

2004-42

Obsoleted by
REG-163195-05 2014-15 I.R.B. 930

2004-43

Obsoleted by
REG-163195-05 2014-15 I.R.B. 930

Revenue Procedures—Continued:

2011-4

Modified by
Rev. Proc. 2014-17, 2014-12 I.R.B. 661

2011-14

Modified by
Rev. Proc. 2014-16, 2014-9 I.R.B. 606

2011-14

Clarified by
Rev. Proc. 2014-16, 2014-9 I.R.B. 606

2011-14

Modified by
Rev. Proc. 2014-17, 2014-12 I.R.B. 661

2011-44

Modified and Superseded by
Rev. Proc. 2014-11, 2014-3 I.R.B. 411

2011-49

Modified by
Rev. Proc. 2014-6, 2014-1 I.R.B. 198

2012-14

Modified by
Rev. Proc. 2014-17, 2014-12 I.R.B. 661

2012-19

Modified by
Rev. Proc. 2014-16, 2014-9 I.R.B. 606

2012-19

Superseded by
Rev. Proc. 2014-16, 2014-9 I.R.B. 606

2012-20

Modified by
Rev. Proc. 2014-17, 2014-12 I.R.B. 661

2012-20

Superseded by
Rev. Proc. 2014-17, 2014-12 I.R.B. 661

2013-1

Superseded by
Rev. Proc. 2014-1, 2014-1 I.R.B. 1

2013-2

Superseded by
Rev. Proc. 2014-2, 2014-1 I.R.B. 90

2013-3

Superseded by
Rev. Proc. 2014-3, 2014-1 I.R.B. 111

2013-4

Superseded by
Rev. Proc. 2014-4, 2014-1 I.R.B. 125

Revenue Procedures—Continued:

2013-5

Superseded by
Rev. Proc. 2014-5, 2014-1 I.R.B. 169

2013-6

Superseded by
Rev. Proc. 2014-6, 2014-1 I.R.B. 198

2013-7

Superseded by
Rev. Proc. 2014-7, 2014-1 I.R.B. 238

2013-8

Superseded by
Rev. Proc. 2014-8, 2014-1 I.R.B. 242

2013-9

Superseded by
Rev. Proc. 2014-9, 2014-2 I.R.B. 281

2013-10

Superseded by
Rev. Proc. 2014-10, 2014-2 I.R.B. 293

2013-22

Modified by
Rev. Proc. 2014-28, 2014-16 I.R.B. 944

2013-24

Obsoleted by
Rev. Proc. 2014-23, 2014-12 I.R.B. 685

2013-27

Obsoleted by
Rev. Proc. 2014-23, 2014-12 I.R.B. 685

2013-32

Superseded in part by
Rev. Proc. 2014-1, 2014-1 I.R.B. 1, and
Rev. Proc. 2014-3, 2014-1 I.R.B. 111

2014-1

Amplified by
Rev. Proc. 2014-18, 2014-7 I.R.B. 513

2014-1 I.R.B. 111

Amplified by
Rev. Proc. 2014-24, 2014-13 I.R.B. 879

2014-3

Amplified by
Rev. Proc. 2014-18, 2014-7 I.R.B. 513

2014-3 I.R.B. 111

Amplified by
Rev. Proc. 2014-24, 2014-13 I.R.B. 879

2014-4

Modified by
Rev. Proc. 2014-19, 2014-10 I.R.B. 619

¹A 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.

Proposed Regulations:**209054-87**

A portion withdrawn by
REG-113350-13 2014-3 I.R.B. 440

Revenue Rulings:**2005-48 (2005-2 CB 259)**

Obsoleted by
T.D. 9659 2014-12 I.R.B. 653

2013-17

Amplified by
Notice 2014-19, 2014-17 I.R.B. 979

2013-17

Amplified by
Notice 2014-25, 2014-17 I.R.B. 981

Treasury Decision:**9644**

Correction by
Ann. 2014-18, 2014-17 I.R.B. 983

9644

Correction by
Ann. 2014-19, 2014-17 I.R.B. 984

INDEX

Internal Revenue Bulletins 2014–1 through 2014–17

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

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

ADMINISTRATIVE

Consolidated returns; failure to properly include subsidiary (RP 24) 13, 879

Extension of time to file estate tax return to elect portability of a deceased spousal unused exclusion amount under section 2010(c)(5)(A). (RP 18) 7, 513

Method change procedures for dispositions of tangible depreciable property (RP 17) 12, 661

Maximum Vehicle Values for which the special valuation rules of regulations section 1.61–21(d) and (e) may be used (Notice 11) 13, 880

Minimum essential coverage, information reporting (TD 9660) 13, 842

Regulations:

26 CFR 1.6055–1 added. 26 CFR 1.6055–2 added. 26 CFR 1.6081–8 amended. 26 CFR 301.6011–2 amended. 26 CFR 301.6721–1 amended. 26 CFR 1.6011–8 amended. 26 CFR 301.6722–1 amended; minimum essential coverage, information reporting 13, 842

Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases (Notice 22) 16, 940

Virtual Currency (Notice 21) 16, 938

EMPLOYEE PLANS

Definition of a substantial risk of forfeiture (TD 9659) 12, 653

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Excepted benefits (REG–143172–13) 2, 383

Final rules to implement the 90-day waiting period limitation (TD 9656) 11, 626

EMPLOYEE PLANS—Cont.

Letter rulings:

And determination letters:

Areas which will not be issued from Associate Chief Counsel and Division counsel (TE/GE) (RP 3) 1, 111

Exemption application determination letter rulings under sections 501 and 521 (RP 9) 1, 281

And general information letters; procedures (RP 4) 1, 125

User fees, request for letter rulings (RP 8) 1, 242

Letter rulings and general information letters (RP 4) 1, 125

Letter rulings or determination letters (RP 1) 1, 1

Proposed rules to clarify length of reasonable and bona fide employment-based orientation period, consistent with the 90-day waiting period limitation (REG–122706–12) 11, 647

Qualification, determination letters (RP 6) 1, 198

Qualified plans:

Application of the Windsor Decision and Rev. Rul. 2013–17 (Notice 19) 17, 979

Discrimination (Notice 5) 2, 276

Opinion letters (Ann 4) 7, 523

Opinion letters (Ann 16) 17, 983

Determination Letters (RP 19) 10, 619

Qualified retirement plans covered compensation, permitted disparity (RR 3) 2, 259

Qualified retirement plans

Rollovers (RR 9) 17, 975

Regulations:

26 CFR 54.9815–2708, amended; REG–122706–12) 11, 647

Removal of the Qualified Payment Card Agent Program (REG–163195–05) 15, 930

Request for Information Regarding Provider Non-Discrimination (REG–108641–14) 15, 928

Rulings and determination letters, user fees (RP 8) 1, 242

Technical advice memorandum or TAM (RP 2) 1, 90

Technical advice procedures (RP 5) 1, 169

Full funding limitations, weighted average interest rates, segment rates for:

January 2014 (Notice 8) 5, 452

Weighted average interest rates

Segment rates for February 2014 (Notice 13) 10, 616

Segment rates for March 2014 (Notice 16) 14, 920

EMPLOYMENT TAX

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Employment tax liability of agents authorized under section 3504 (TD 9649) 2, 265

Employment tax obligations of a third party that enters into a service agreement with an employer to take on the employer's employment tax responsibilities (TD 9662) 16, 933

Regulations:

26 CFR 31–3504–2, added; employment tax obligations of a third party that enters into a service agreement with an employer to take on the employer's employment tax responsibilities (TD 9662) 16, 933

Letter rulings or determination letters (RP 1) 1, 1

EMPLOYMENT TAX—Cont.

Regulations:

26 CFR 1.83-3 is revised; definition of a substantial risk of forfeiture (TD 9659) 12, 653

26 CFR 54.9815-2708, amended; REG-122706-12) 11, 647

26 CFR 54.9801-1, thru-6, amended; 26 CFR 54.9802-1, amended; 26 CFR 54.9815-2708, added; 26 CFR

54.9831-1, amended (TD 9656) 12, 626

Technical Advice Memorandum (TAM) (RP 2) 1, 90

Virtual Currency (Notice 21) 16, 938

ESTATE TAX

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Extension of time to file estate tax return to elect portability of a deceased spousal unused exclusion amount under section 2010(c)(5)(A) (RP 18) 7, 513

Letter rulings or determination letters (RP 1) 1, 1

Technical Advice Memorandum (TAM) (RP 2) 1, 90

EXCISE TAX

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Final rules to implement the 90-day waiting period limitation (TD 9656) 11, 626

Information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans (TD 9661) 13, 855

Regulations:

301.6056-1, -2, added; Information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans (TD 9661) 13, 855

Interim guidance regarding supporting organizations (Notice 4) 2, 274

Letter rulings or determination letters (RP 1) 1, 1

Notice for ACA Section 9010 Health Insurance Providers Fee and expatriate plans (Notice 24) 16, 942

Proposed rules to clarify length of reasonable and bona fide employment-based orientation period, consistent with the 90-day waiting period limitation (REG-122706-12) 11, 647

Regulations:

26 CFR 54.9815-2708, amended; REG-122706-12) 11, 647

26 CFR 54.9801-1, thru-6, amended; 26 CFR 54.9802-1, amended; 26 CFR 54.9815-2708, added; 26 CFR 54.9831-1, amended (TD 9656) 12, 626

Technical Advice Memorandum (TAM) (RP 2) 1, 90

EXEMPT ORGANIZATIONS

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Form 990 Revenue Procedure update to revoke Revenue Procedure 79-6 (RP 22) 11, 646

Interim guidance regarding supporting organizations (Notice 4) 2, 274

EXEMPT ORGANIZATIONS—Cont.

Letter rulings:

And determination letters:

Areas which will not be issued from Associate Chief Counsel and Division counsel (TE/GE) (RP 3) 1, 111

Exemption application determination letter rulings under sections 501 and 521 (RP 9) 1, 281

And general information letters; procedures (RP 4) 1, 125

User fees, request for letter rulings (RP 8) 1, 242

Letter rulings (RP 10) 2, 293; (RP 9) 2, 281

Letter rulings or determination letters (RP 1) 1, 1

Proposed procedures for charitable hospitals to correct and disclose failures to meet section 501(r) (Notice 3) 3, 408

Reliance on proposed regulations for tax-exempt hospitals (Notice 2) 3, 407

Rulings and determination letters, user fees (RP 8) 1, 242

Technical Advice Memorandum (TAM) (RP 2) 1, 90

Technical advice procedures (RP 5) 1, 169

INCOME TAX

Adequate disclosure revenue procedure (RP 15) 5, 456

Advance Pricing and Mutual Agreement Program (Ann 14) 16, 948

Allocation of section 47 credits by a partnership to its partners (RP 12) 3, 415

Allocation of section 752 recourse liabilities among related parties (REG-136984-12) 2, 378

Amount of the life insurance reserves taken into account under § 807 of the Internal Revenue Code for variable contracts (RR 7) 9, 539

Areas in which rulings will not be issued; Associate Chief Counsel (International) (RP 7) 1, 238

Basis in assets of tax exempt trusts (REG-154890-03) 6, 504

Bond premium carryforward (TD 9653) 6, 460

Cafeteria plans, FSA reimbursements, and HSA contribution limits for same-sex spouses (Notice 1) 2, 270

2014 Census Count (Notice 12) 9, 606

Contribution of built-in lost property to a partnership; mandatory basis adjustments in the event of a substantial built-in loss or substantial basis reduction; modification of basis allocation rules (REG-144468-05) 6, 474

Current refunding of Recovery Zone facility bonds (Notice 9) 5, 455

Declaratory judgment suits (Ann 5) 6, 507; (Ann 6) 6, 507; (Ann 7) 6, 508; (Ann 8) 6, 508; (Ann 9) 6, 508; (Ann 10) 6, 508; (Ann 12) 6, 509

Definition of a substantial risk of forfeiture (TD 9659) 12, 653

Definitions applicable to U.S. persons owning interests in passive foreign investment companies (REG-113350-13) 3, 440

Depreciation deduction, limitations on certain automobiles (RP 21) 11, 641

Determination of ownership in a passive foreign investment company; annual filing requirements for shareholders of passive foreign investment companies; filing requirements for constructive owners in certain foreign corporations (REG-140974-11) 3, 438; (TD 9650) 3, 394

INCOME TAX—Cont.

Determining stock ownership for purposes of whether an entity is a surrogate foreign corporation (TD 9654) 6, 461; (REG-121534-12) 6, 473

Discharge of indebtedness secured by real property (RP 20) 9, 614

Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries (Ann 13) 10, 620

Domestic areas in which the Service will not issue letter rulings or determination letters (RP 3) 1, 111

Equity-linked instruments and dividend equivalents (Notice 14) 13, 881

FATCA financial institution registration update (Ann 1) 2, 393

Final FFI agreement for participating FFI and reporting Model 2 FFI (RP 13) 3, 419

Foreign Earned Income Exclusion (RP 25) 15, 927

2014–2015 Guidance Priority List- Solicitation Notice (Notice 18) 15, 926

Guidance regarding reinstatement following auto revocation of tax-exempt status under section 6033(j) (RP 11) 3, 411

Income tax treatment of per capita payments made from funds held in trust by the Secretary of the Interior (Notice 17) 13, 881

Information reporting by foreign financial institutions and withholding on payments to foreign financial institutions and other foreign entities (REG-130967-13) 13, 884

Regulation:
26 CFR 1.1471-0, amended; 26 CFR 1.1471-1, amended; 26 CFR 1.147-2, amended; 26 CFR 1.1471-3, amended; 26 CFR 1.1471-4, amended; 26 CFR 1.1471-5, amended; 26 CFR 1.1471-6, amended; 26 CFR 1.1472-1, amended; 26 CFR 1.1473-1, amended; 26 CFR 1474-1, amended; 26 CFR 1.1474-6, amended. (Reg-130967-13) 13, 884

Information reporting by foreign financial institutions and withholding on payments to foreign financial institutions and other foreign entities (TD 9657) 13, 687

Regulations:
26 CFR 1.1471-0, amended; 26 CFR 1.1471-1, amended; 26 CFR 1.147-2, amended; 26 CFR 1.1471-3, amended; 26 CFR 1.1471-4, amended; 26 CFR 1.1471-5, amended; 26 CFR 1.1471-6, amended; 26 CFR 1.1472-1, amended; 26 CFR 1.1473-1, amended; 26 CFR 1474-1, amended; 26 CFR 1.1474-6, amended. (TD 9657) 13, 687

Interest:
Investment:
Federal short-term, mid-term, and long-term rates for:
January 2014 (RR 1) 2, 263
February 2014 (RR 6) 7, 510
March 2014 (RR 8) 11, 624
April 2014 (RR 12) 15, 923

Intra-group gross receipts (REG-159420-04) 2, 374

Insurance tax, insurance companies, interest rate tables (RR 4) 5, 449

Letter rulings or determination letters (RP 1) 1, 1

Low-Income Housing Credit (Notice 15) 12, 661

Maximum Vehicle Values for which the special valuation rules of regulations section 1.61-21(d) and (e) may be used (Notice 11) 13, 880

INCOME TAX—Cont.

Method change procedures for dispositions of tangible depreciable property (RP 17) 12, 661

Minimum essential coverage, information reporting (TD 9660) 13, 842

Regulations:
26 CFR 1.6055-1 added. 26 CFR 1.6055-2 added. 26 CFR 1.6081-8 amended. 26 CFR 301.6011-2 amended. 26 CFR 301.6721-1 amended. 26 CFR 1.6011-8 amended. 26 CFR 301.6722-1 amended. (TD 9660) 13, 842

Net investment income tax; TD 9644 Correction (Ann 2014-18) 17, 983

Net investment income tax; TD 9644 Correction (Ann 2014-19) 17, 984

Postponement of deadline for § 165(i) election for losses attributable to September 2013 major flooding in Colorado (Notice) (Notice 20) 16, 937

Principal residence, treatment of National Mortgage Settlement payments (RR 2) 2, 255

Qualified census tracts (RP 14) 2, 295

Refundable Credit For Coverage Under a Qualified Health Plan, Definition and Rules Relating to Applicable Taxpayer (Notice 23) 16, 942

Regarding disguised sales, generally (REG-119305-11) 8, 524

Regulations:
26 CFR 1.83-3 is revised; definition of a substantial risk of forfeiture (TD 9659) 12, 653
26 CFR 1.263A-0, thru-3, amended; 1.471-3 amended; sales-base royalties and vendor allowances (TD 9652) 12, 655

Removal of the Qualified Payment Card Agent Program (REG-163195-05) 15, 930

Regulations:
26 CFR 301.6724-1(c)(6), amended; 26 CFR 31.3406(g)-1(f), 26 CFR 301.6724-1(e)(1)(vi)(H), and 26 CFR 301.6724-1(f)(5)(vii), removed; removal of the qualified payment card agent program (REG-163195-05) 15, 930

Revocations, exempt organization (Ann 11) 6, 508

Sales-bases royalties and vendor allowances (TD 9652) 12, 655

2013 Section 45K Inflation Adjustment Factor – Nonconventional Fuel source Credit (Notice 25) 17, 981

Shared responsibility for employers regarding health coverage (TD 9655) 9, 541

Shared responsibility payment for not maintaining minimum essential coverage (REG-141036-13) 7, 516

Standard Industry Fare Level (SIFL) (RR 10) 14, 906

Tangible property regulations method change guidance (RP 16) 9, 606

Technical Advice Memorandum (TAM) (RP 2) 1, 90

Transition relief for the tax credit for employee health insurance expenses of certain small employers (Notice 6) 2, 279

Transition relief under section 5000A for certain individuals without minimum essential coverage (Notice 10) 9, 605

Underpayment and overpayments, quarter beginning: April 1, 2014 (RR 11) 14, 906

Virtual Currency (Notice 21) 16, 938

INCOME TAX—Cont.

Withholding of tax on certain U.S. source income paid to foreign persons and revision of information reporting and backup withholding regulations (REG-134361-12) 13, 895

Proposed Regulations:

26 CFR 1.871-14, amended; 26 CFR 1.1441-1, amended; 26 CFR 1.1441-3, amended; 26 CFR 1.1441-5, amended; 26 CFR 1.441-6, amended; 26 CFR 1.1441.7, amended; 26 CFR 1.1461-1, amended; 26 CFR 1.1461-2, amended; 26 CFR 1.6041-1, amended; 26 CFR 1.6041-4, amended; 26 CFR 1.6042-2, amended; 26 CFR 1.6042-3, amended; 26 CFR 1.6045-1, amended; 26 CFR 1.6049-4, amended; 26 CFR 1.6049-5, amended; 26 CFR 31.3406(g)-1, amended; 26 CFR 31.3406(h)-2, amended; 26 CFR 301.6402-3, amended; Withholding of tax on certain U.S. source income paid to foreign persons and revision of information reporting and backup withholding regulations (REG-134361-12) 13, 895

Withholding of tax on certain U.S. source income paid to foreign persons and revision of information reporting and backup withholding regulations (TD 9658) 13, 748

Regulations:

26 CFR 1.871-14, amended; 26 CFR 1.1441-1, amended; 26 CFR 1.1441-3, amended; 26 CFR 1.1441-5, amended; 26 CFR 1.441-6, amended; 26 CFR 1.1441.7, amended; 26 CFR 1.1461-1, amended; 26 CFR 1.1461-2, amended; 26 CFR 1.6041-1, amended; 26 CFR 1.6041-4, amended; 26 CFR 1.6042-2, amended; 26 CFR 1.6042-3, amended; 26 CFR 1.6045-1, amended; 26 CFR 1.6049-4, amended; 26 CFR 1.6049-5, amended; 26 CFR 31.3406(g)-1, amended; 26 CFR 31.3406(h)-2, amended; 26 CFR 301.6402-3, amended; Withholding of tax on certain U.S. source income paid to foreign persons and revision of information reporting and backup withholding regulations (TD 9658) 13, 748

SELF-EMPLOYMENT TAX

Virtual Currency (Notice 21) 16, 938

SPECIAL ANNOUNCEMENT

Advance Pricing and Mutual Agreement Program (Ann 14) 16, 948

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