

## 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

#### **REG-114942-14, page 1117.**

These proposed regulations remove a provision of filing Form 5472, "Information Return of a 25% Foreign-Owned U. S. Corporation of a Foreign Corporation Engaged in a U. S. Trade of Business", when the filer's income tax return will be late. Form 5472 will always be required to be filed with the filer's income tax return, by the due date (including extensions) of that return.

#### **REG-133495-13, page 1116.**

The proposed regulations allow a taxpayer to make an alternative simplified credit election for a tax year on an amended return.

#### **Announcement 2014-26, page 1119.**

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

#### **Rev. Proc. 2014-35, page 1110.**

This revenue procedure provides safe harbors for applying the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

#### **Notice 2014-39, page 1109.**

This notice provides that the Section 1603 Payment resulting from sequestration does not affect the amount of the Section 1603 Award or the basis of the specified energy property taken into account for purposes of determining the Section 1603 Award. Consequently, taxpayers may not partition the basis of

property for which they receive a Section 1603 Award and claim a tax credit under section 45 or 48 of the Code on any part of the basis of the same property. Additionally, this notice provides that under section 48(d)(3)(B), taxpayers must reduce the basis of the specified energy property by 50 percent of the amount of the actual Section 1603 Payment.

#### **T.D. 9666, page 1105.**

The final and temporary regulations allow a taxpayer to make an alternative simplified credit election for a tax year on an amended return.

#### **T.D. 9667, page 1107.**

These regulations on filing Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation of a Foreign Corporation Engaged in a U. S. Trade or Business" are substantially identical to 2011 temporary regulations (76 FR 333997, TD 9529, 2011-30 IRB 57).

### EMPLOYEE PLANS

#### **Rev. Rul. 2014-18, page 1104.**

This ruling provides that a nonstatutory stock option or a stock appreciation right (each, a stock right) granted by a nonqualified entity for purposes of section 457A is treated as exempt from section 457A, provided that the stock right is exempt from section 409A, and further provided that the stock appreciation right at all times by its terms must be settled, and is settled, in service recipient stock for purposes of section 409A. Notice 2009-8 amplified.

### ADMINISTRATIVE

#### **Rev. Proc. 2014-35, page 1110.**

This revenue procedure provides safe harbors for applying the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members.

Finding Lists begin on page ii.  
Index for July through June 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 457A.— Nonqualified Deferred Compensation from Certain Tax Indifferent Parties

(Also: Section 409A; 1.409A-1: Stock Rights)

### Rev. Rul. 2014-18

#### ISSUE

Whether a nonstatutory stock option or a stock-settled stock appreciation right with respect to common stock of a nonqualified entity is a nonqualified deferred compensation plan subject to taxation under section 457A of the Internal Revenue Code (Code).

#### FACTS

Service Recipient is a foreign corporation and a nonqualified entity for purposes of section 457A(b). Service Provider is a limited liability company organized under state law and treated as a partnership for U.S. income tax purposes. Income of Service Provider is allocated to persons subject to U.S. income tax. Service Provider provides services to Service Recipient. Service Recipient and Service Provider are not at any time treated as a single employer under section 414(b) or (c).

As incentive compensation for Service Provider, Service Recipient grants a nonstatutory stock option and a stock appreciation right (in each case, a stock right) to Service Provider, each with respect to a fixed number of common shares of Service Recipient, which qualify as service recipient stock (as defined under Treas. Reg. § 1.409A-1(b)(5)(iii)). Each stock right has an exercise price per share that is not less than the fair market value of a common share of Service Recipient on the date of grant, determined pursuant to Treas. Reg. § 1.409A-1(b)(5)(iv). The stock rights do not include any feature for the deferral of compensation (as defined under Treas. Reg. § 1.409A-1(b)(5)(i)(D)) and otherwise comply with the requirements of Treas. Reg. § 1.409A-1(b)(5)(i)(A) or (B), as applicable. The terms of the stock appreciation right at all

times provide that it must be settled in service recipient stock, and the stock appreciation right is settled in service recipient stock. Service Provider has the same redemption rights with respect to common shares acquired upon exercise of the stock rights as other shareholders have with respect to their common shares of Service Recipient.

#### LAW AND ANALYSIS

Section 457A(a) provides that any compensation that is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

Section 457A(b) provides that the term “nonqualified entity” means (1) any foreign corporation unless substantially all of its income is (A) effectively connected with the conduct of a trade or business in the United States, or (B) subject to a comprehensive foreign income tax, and (2) any partnership unless substantially all of its income is allocated to persons other than (A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and (B) organizations which are exempt from tax under the Code.

Section 457A(d)(3)(A) provides that the term “nonqualified deferred compensation plan” has the meaning given such term under section 409A(d), “except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.” Section 409A(d) provides that the term “nonqualified deferred compensation plan” means any plan that provides for the deferral of compensation other than certain enumerated exceptions.

Section 1.409A-1(b)(5)(i)(A) provides that a nonstatutory stock option to purchase a fixed number of shares of service recipient stock does not provide for the deferral of compensation for purposes of section 409A if the exercise price is not less than the fair market value of the underlying stock on the date the stock option

is granted, the stock option does not include any feature for the deferral of compensation, and the other requirements of § 1.409A-1(b)(5)(i)(A) are met. Section 1.409A-1(b)(5)(i)(B) provides that “a right to compensation based on the appreciation in value of a specified number of shares of service recipient stock occurring between the date of grant and the date of exercise of such right (a stock appreciation right)” does not provide for the deferral of compensation for purposes of section 409A if the exercise price is not less than the fair market value of the underlying stock on the date the right is granted, the right does not include any feature for the deferral of compensation, and the other requirements of § 1.409A-1(b)(5)(i)(B) are met.

A stock right that meets the requirements of either § 1.409A-1(b)(5)(i)(A) or (B) and is therefore exempt from section 409A is therefore also exempt from section 457A, unless it constitutes, as set forth under section 457A(d)(3)(A), “a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.” Section 457A was added to the Code by section 801(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. No. 110-343 (Div. C), 122 Stat. 3929 (2008) (TEAMTRA), more than one year after the issuance of final Treasury Regulations under section 409A. The language quoted above from section 457A(d)(3)(A) is substantially the same as the language set forth under § 1.409A-1(b)(5)(i)(B) describing a stock appreciation right exempt from section 409A. The House Committee Report on TEAMTRA confirms that the quoted language is specifically intended to refer to a stock appreciation right and that a nonstatutory stock option that meets the requirements of § 1.409A-1(b)(5)(i)(A) is intended to be exempt from section 457A:

Under the provision, nonqualified deferred compensation includes any arrangement under which compensation is based on the increase in value of a specified number of equity units of the service recipient.

Thus, stock appreciation rights (SARs) are treated as nonqualified deferred compensation under the provision, regardless of the exercise price of the SAR. It is not intended that the term nonqualified deferred compensation plan include an arrangement taxable under section 83 providing for the grant of an option on employer stock with an exercise price that is not less than the fair market value of the underlying stock on the date of grant if such arrangement does not include a deferral feature other than the feature that the option holder has the right to exercise the option in the future.

*H.R. Rep. No. 110-658, at 195 (2008).*

Although stock appreciation rights are generally subject to section 457A, a stock appreciation right that at all times by its terms must be settled, and is settled, in service recipient stock is functionally identical in all material respects to a nonstatutory stock option to purchase service recipient stock with a net exercise feature, and the stock transfer under such an arrangement, like the stock transfer pursuant to the exercise of a nonstatutory stock option, is taxable under section 83.

Accordingly, a nonstatutory stock option exempt from section 409A is exempt from section 457A. In addition, a stock appreciation right exempt from section 409A that at all times by its terms must be settled, and is settled, in service recipient stock is exempt from section 457A. A stock appreciation right that may be or is settled other than in service recipient stock is not exempt from section 457A, regardless of whether the stock appreciation right is a nonqualified deferred compensation plan for purposes of section 409A.

Applying these principles, neither stock right with respect to common shares of Service Recipient granted to Service Provider is a nonqualified deferred compensation plan for purposes of section 457A(a) because each is either a nonstatutory stock option that meets the requirements of § 1.409A-1(b)(5)(i)(A) or a stock appreciation right that meets the requirements of § 1.409A-1(b)(5)(i)(B) and at all times by its terms must be settled, and is settled, in service recipient stock. The stock rights granted to Service Pro-

vider are accordingly exempt from section 457A.

#### HOLDING

Neither the nonstatutory stock option nor the stock-settled stock appreciation right granted to Service Provider with respect to common shares of Service Recipient is a nonqualified deferred compensation plan subject to taxation under section 457A.

#### EFFECT ON OTHER GUIDANCE

Notice 2009-8, 2009-4 I.R.B. 347, Interim Guidance under Section 457A, is amplified.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory Burns of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue ruling, contact Gregory Burns at (202) 317-5600 (not a toll-free call).

### TD 9666

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

### Alternative Simplified Credit Election

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the election of the alternative simplified credit. The final and temporary regulations will affect certain taxpayers claiming the credit. The text of these temporary regulations also serves as the text of the proposed regulations (REG-133495-13) published in the Proposed Rules section in this issue of the **Bulletin**.

DATES: *Effective Date:* These regulations are effective on June 3, 2014.

*Applicability Date:* For dates of applicability, see § 1.41-9T(d).

FOR FURTHER INFORMATION  
CONTACT: David Selig (202) 317-4137  
(not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document amends 26 CFR part 1 to provide rules relating to the election of the alternative simplified credit (ASC) under section 41(c)(5) of the Internal Revenue Code (Code).

Section 41(a) provides an incremental tax credit for increasing research activities (research credit) based on a percentage of a taxpayer's qualified research expenses (QREs) above a base amount. A taxpayer can apply the rules and credit rate percentages under section 41(a)(1) to calculate the credit (commonly referred to as the regular credit) or a taxpayer can make an election to apply the ASC rules and credit rate percentages under section 41(c)(5) to calculate the credit. Section 41(c)(5)(C) provides that an ASC election under section 41(c)(5) applies to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

On June 10, 2011, the Treasury Department and the IRS published final regulations (TD 9528) in the **Federal Register** (76 FR 33994) relating to the election and calculation of the ASC. Section 1.41-9(b)(2) provides that a taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the ASC election, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. Section 1.41-9(b)(2) also provides that a taxpayer may not make an election under section 41(c)(5) on an amended return and that an extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100-3.

##### Explanation of Provisions

Following the publication of TD 9528, the Treasury Department and the IRS received requests to amend the regulations

to allow taxpayers to make an ASC election on an amended return. The requests explained that the burden of substantiating expenditures and costs for the base period under the regular credit can be costly, time-consuming, and difficult, and suggested that taxpayers often need additional time to determine whether to claim the regular credit or the ASC.

In response to these requests, this Treasury Decision provides final and temporary regulations. The final regulations remove the rule in § 1.41-9(b)(2) that prohibits a taxpayer from making an ASC election for a tax year on an amended return. In its place, these temporary regulations provide a rule that allows a taxpayer to make an ASC election for a tax year on an amended return. However, permitting changes from the regular credit to the ASC on amended returns could result in more than one audit of a taxpayer's research credit for a tax year. Accordingly, the temporary regulations provide that a taxpayer that previously claimed, on an original or amended return, a section 41 credit for a tax year may not make an ASC election for that tax year on an amended return. In addition, the temporary regulations provide that a taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that year previously claimed the research credit using a method other than the ASC on an original or amended return for that tax year. As with all claims under section 41, taxpayers must maintain sufficient books and records to substantiate the credit on the amended returns.

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

These regulations apply to elections with respect to taxable years ending on or after June 3, 2014. In addition, a taxpayer may rely on § 1.41-9T(b)(2) to make an election under section 41(c)(5) for a tax year ending prior to June 3, 2014, if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year.

These regulations expire on June 2, 2017.

#### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act, refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rule-making published in the Proposed Rules section in this issue of the **Bulletin**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### **Drafting Information**

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

#### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1—INCOME TAXES**

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

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

Section 1.41-9T also issued under 26 U.S.C. 41(c)(5)(C). \* \* \*

#### *§ 1.41-9 Alternative simplified credit.*

Par. 2. Section 1.41-9 is amended by revising paragraph (b)(2) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]. For further guidance, see § 1.41-9T(b)(2).

\* \* \* \* \*

Par. 3. Section 1.41-9T is added to read as follows:

#### *§ 1.41-9T Alternative simplified credit (temporary).*

(a) through (b)(1) [Reserved]. For further guidance, see § 1.41-9(a) through (b)(1).

(2) *Time and manner of election.* A taxpayer makes an election under section 41(c)(5) by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. A taxpayer may make an election under section 41(c)(5) for a tax year on an amended return, but only if the taxpayer has not previously claimed the section 41 credit on its original return or an amended return for that tax year. An extension of time to make an election under section 41(c)(5) will not be granted under § 301.9100-3 of this chapter. A taxpayer that is a member of a controlled group in a tax year may not make an election under section 41(c)(5) for that tax year on an amended return if any member of the controlled group for that tax year previously claimed the research credit using a method other than the ASC on an original or amended return for that tax year. See paragraph (b)(4) of this section for additional rules concerning controlled groups. See also 1.41-6(b)(1) requiring that all members of the controlled group use the same method of computation.

(b)(3) through (c) [Reserved]. For further guidance, see § 1.41-9(b)(3) through (c).

(d) *Effective/applicability date.* Paragraph (b)(2) of this section applies to elections with respect to taxable years ending on or after June 3, 2014. In addition, a taxpayer may rely on paragraph (b)(2) of this section to make an election under section 41(c)(5) for a tax year ending prior to June 3, 2014, if the taxpayer makes the election before the period of limitations for assessment of tax has expired for that year. Otherwise, for elections with respect to taxable years ending before June 3, 2014, see § 1.41-9(b)(2) as contained in 26 CFR part 1, revised April 1, 2014.

(e) *Expiration date.* This section expires on June 2, 2017.

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

Approved: May 2, 2014

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

(Filed by the Office of the Federal Register on June 2, 2014, 8:45 a.m., and published in the issue of the Federal Register for June 3, 2014, 79 F.R. 31863)

## TD 9667

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

### Requirements for Taxpayers Filing Form 5472

AGENCY: Internal Revenue Service (IRS),  
Treasury.

ACTION: Final regulations and removal  
of temporary regulations.

SUMMARY: This document contains final regulations on Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business." The final regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. Contemporaneously, new proposed regulations are being issued that would remove a current provision for timely filing of Form 5472 separately from an income tax return that is untimely filed. As a result, the proposed regulations would require Form 5472 to be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return.

DATES: *Effective Date:* These regulations are effective on June 6, 2014.

*Applicability Date:* For dates of applicability, see §§ 1.6038A-1(n) and 1.6038A-2(h).

#### FOR FURTHER INFORMATION

CONTACT: Anand Desai, (202) 317-6939 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION

##### Background

On June 10, 2011, the IRS and the Treasury Department published temporary regulations and a notice of proposed rulemaking by cross-reference to the temporary regulations in the **Federal Register** (76 FR 33997, TD 9529, 2011-30 IRB 57; REG-101352-11, 76 FR 34019) (2011 regulations) under sections 6038A and 6038C of the Internal Revenue Code (Code). The 2011 regulations amended final regulations under § 1.6038A-2 to provide that duplicate filing of Form 5472 generally would no longer be required regardless of whether the filer files a paper or an electronic income tax return. As a result, the regulations' only remaining provision for filing a Form 5472 separately from the filer's income tax return applies to cases in which the filer's income tax return is not timely filed.

No comments were received on the 2011 regulations, and no public hearing was requested or held. Accordingly, this Treasury decision adopts the 2011 regulations without substantive change as final regulations and removes the corresponding temporary regulations.

However, contemporaneous with these final regulations, the IRS and the Treasury Department are proposing the removal of § 1.6038A-2(e), which provides for a filer to timely file a Form 5472 separately from the filer's income tax return if the income tax return is untimely filed. As a result, the proposed regulations would require that Form 5472 be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return. For further information, see the proposed regulations (REG-114942-14, 79 F.R. 32687, 2014-26 I.R.B. 1117) set forth in this issue of the **Bulletin**.

#### Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting information

The principal author of these regulations is Anand Desai, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

#### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

##### Part 1—INCOME TAXES

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

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

Par. 2. Section 1.6038A-1 is amended by revising paragraph (n)(2) to read as follows:

*§ 1.6038A-1 General requirements and definitions.*

\* \* \* \* \*

(n) \* \* \*

(2) *Section 1.6038A-2.* Section 1.6038A-2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, § 1.6038A-2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in

§ 1.864-4(c)(5)(i) applies for taxable years beginning after December 10, 1990. Section 1.6038A-2(d) and (e) apply for taxable years ending on or after June 10, 2011. For taxable years ending before June 10, 2011, see § 1.6038A-2(d) and (e) as contained in 26 CFR part 1 revised as of April 1, 2011.

\* \* \* \* \*

**§ 1.6038A-1T [Removed]**

Par. 3. Section 1.6038A-1T is removed.

Par. 4. Section 1.6038A-2 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 1.6038A-2 Requirement of return.**

\* \* \* \* \*

(d) *Time for filing returns.* A Form 5472 required under this section must be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return.

(e) *Untimely filed return.* If the reporting corporation's income tax return is untimely filed, Form 5472 nonetheless must be timely filed. When the reporting corporation's income tax return is ultimately filed, a copy of Form 5472 must be attached.

\* \* \* \* \*

**§ 1.6038A-2T [Removed]**

Par. 5. Section 1.6038A-2T is removed.

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

Approved: May 21, 2014

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

(Filed by the Office of the Federal Register on June 5, 2014, 8:45 a.m., and published in the issue of the Federal Register for June 6, 2014, 79 F.R. 32644)

# Part III. Administrative, Procedural, and Miscellaneous

## Section 1603 Sequestration and Its Effect on the Investment Tax Credit and the Production Tax Credit

### Notice 2014–39

#### SECTION 1: PURPOSE

This notice clarifies for taxpayers the tax effect of sequestration as it relates to a grant awarded under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), Division B of Pub. L. 111–5, 123 Stat. 115 (2009), as amended by (i) section 707 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111–312, 124 Stat. 3296 (2010), and (ii) section 407(c)(2) and (d)(3) of the American Taxpayer Relief Act of 2012 (ATRA), Pub. L. 112–240, 126 Stat. 2313 (2013) (hereinafter in this notice, Section 1603 as amended is referred to as Section 1603 of ARRTA or Section 1603).

#### SECTION 2: BACKGROUND

.01 *In general.* The Internal Revenue Code of 1986 (Code) provides certain incentives for renewable energy generation, including a production tax credit under section 45 (PTC) and an investment tax credit under section 48 (ITC). ARRTA modified section 48 to allow taxpayers to claim an ITC in lieu of a PTC with respect to certain property. ARRTA also created a new grant program (Section 1603 Program) allowing applicants to elect to receive a cash grant from the Treasury Department (Treasury) in lieu of tax credits.

.02 *PTC: Section 45 of the Code.* Section 45 of the Code provides a PTC for the production and sale of electricity from certain renewable energy resources.

.03 *ITC: Section 48 of the Code.* Section 48 of the Code provides an ITC for certain energy property. Generally, under section 48(a)(1), the ITC for any taxable year is the energy percentage of the basis of each energy property, as defined in section 48(a)(3), placed in service during such taxable year. Section 48(a)(5) of the Code allows a taxpayer to elect to treat

certain qualified facilities (that qualify for the PTC) as energy property (eligible for the ITC). In general, a taxpayer may elect in the case of any qualified property that is part of a qualified investment credit facility that such property be treated as energy property for purposes of section 48.

.04 *Section 1603 of ARRTA.* Section 1603 of ARRTA establishes the Section 1603 Program. Generally, under Section 1603(a), the Secretary of the Treasury will provide grants to eligible persons who place in service specified energy property and apply for such payments. Grants are awarded under Section 1603 to reimburse eligible applicants for a portion of the expense of such property.

Under Section 1603(b)(1) of ARRTA, the amount of the grant under Section 1603(a) with respect to any specified energy property is the applicable percentage of the basis of such property. For purposes of Section 1603(b)(1), the term “applicable percentage” means 30 percent in the case of property described in Section 1603(d)(1) through (4), and 10 percent in the case of any other property (as described in Section 1603(d)(5) through (8)).

.05 *Interaction of Section 1603 of ARRTA with the ITC and the PTC.* Section 48(d)(1) of the Code provides that in the case of any property with respect to which the Secretary makes a grant under Section 1603 of ARRTA, no credit shall be determined under section 48 or 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year. Section 48(d)(3) provides that any such grant is not includible in the gross income of the taxpayer, but must be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property must be reduced under section 50(c) in the same manner as a credit allowed under section 48(a).

.06 *Sequestration.* The Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), Pub. L. 99–177, 99 Stat. 1037 (1985), as amended, requires sequestration of discretionary appropriations and direct spending. Specifically, the Budget Control Act of 2011 (BCA), Pub. L. 112–25, 125 Stat. 240 (2011), amended

the BBEDCA by reinstating discretionary spending limits for 2012–2021. The limits are enforced by a sequestration of non-exempt discretionary budget authority that is ordered at the end of the current session of Congress if enacted appropriations exceed the limits. Under the BCA, sequestration was to begin on January 2, 2013. The ATRA postponed the BCA sequester until March 1, 2013. The applicable statutes exempt certain programs from sequestration; all programs not covered by an exemption are subject to sequestration. The Section 1603 program is not exempted.

#### SECTION 3: EFFECT OF THE SEQUESTER ON SECTION 1603 AWARDS

For purposes of this notice, the grant awarded under Section 1603 of ARRTA (the Section 1603 Award) is the amount that Treasury determines to be the applicable percentage of the property’s basis as evidenced by the letter from Treasury’s Office of Fiscal Assistant Secretary (the Section 1603 Award Letter). The Section 1603 Award is effective the date of the Section 1603 Award Letter. The Section 1603 Award Letter provides the amount of the payment issued under Section 1603 of ARRTA for specified energy property in lieu of tax credits (the Section 1603 Payment), which generally is equal to the amount of the Section 1603 Award. However, pursuant to the requirements of BBEDCA (as amended), Section 1603 Awards are subject to sequestration, which may cause a Section 1603 Payment to differ from the corresponding Section 1603 Award. Under the provisions of BBEDCA (as amended), a Section 1603 Award made to a Section 1603 applicant on or after March 1, 2013, and on or before September 30, 2013, is subject to a sequestration rate of 8.7 percent, and a Section 1603 Award made to a Section 1603 applicant on or after October 1, 2013, and on or before September 30, 2014, is subject to a sequestration rate of 7.2 percent, irrespective of when the application was received by Treasury. Thereafter, the sequestration rate is subject to change.

## SECTION 4: EFFECT OF REDUCED SECTION 1603 PAYMENT

.01 *In General.* The Section 1603 Payment resulting from sequestration during the affected time period does not affect the amount of the Section 1603 Award or the basis of the specified energy property taken into account for purposes of determining the Section 1603 Award. Under section 48(d)(1) of the Code, a taxpayer may not claim a credit under section 45 or 48 with respect to such property for the taxable year in which such Section 1603 Award is made or any subsequent taxable year. Consequently, a taxpayer may not partition the basis of property for which it receives a Section 1603 Award and claim a tax credit under section 45 or 48 with respect to any part of the basis of the same property.<sup>1</sup> However, under section 48(d)(3)(B), a taxpayer must reduce the basis of the specified energy property by 50 percent of the amount of the actual Section 1603 Payment.

### .02 *Example.*

On August 1, 2012, a taxpayer submits an application to Treasury under Section 1603 of ARRTA for specified energy property (Property) that has a basis of \$100 million. On May 1, 2013, Treasury grants the taxpayer a Section 1603 Award as evidenced by a Section 1603 Award Letter. Because Property has a basis of \$100 million, the Section 1603 Award is \$30 million. However, due to the sequestration rate of 8.7 percent, the taxpayer receives a Section 1603 Payment of \$27,390,000. This reduced payment does not affect the amount of the \$30 million Section 1603 Award. The taxpayer may not claim a credit under section 45 or 48 on any part of the basis of Property. The taxpayer must reduce the basis of Property by 50 percent of the amount of the Section 1603 Payment, or \$13,695,000.

## SECTION 5: EFFECTIVE/APPLICABILITY DATE

This notice applies to Section 1603 Awards issued on or after March 1, 2013, which is the beginning date of the sequestration as described in section 2.06 of this notice, and Section 1603 Payments made pursuant to those awards.

## SECTION 6: DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Martha M. Garcia of the Office of Associate

Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Garcia on (202) 317-6853 (not a toll-free number).

26 CFR 601.601: Rules and regulations.  
(Also Part I, § 61.)

## Rev. Proc. 2014-35

### SECTION 1. PURPOSE

This revenue procedure describes principles of the general welfare exclusion and provides safe harbors under which the Internal Revenue Service (Service) will conclusively presume that the individual need requirement of the general welfare exclusion is met for benefits provided under Indian tribal governmental programs described in sections 5.02 or 5.03 of this revenue procedure, and will not assert that benefits provided under programs described in section 5.03 of this revenue procedure represent compensation for services. Consequently, under this revenue procedure, the Service will not assert that members of an Indian tribe, as defined in section 4.03 of this revenue procedure, or qualified nonmembers, as defined in section 4.05 of this revenue procedure, must include the value of their benefits described in section 5.02 or 5.03 of this revenue procedure in gross income under § 61 of the Internal Revenue Code (Code) or that the benefits are subject to the information reporting requirements of § 6041.

This revenue procedure provides certainty that the value of the benefits described will be excluded from gross income under the general welfare exclusion. However, this revenue procedure does not limit the applicability to Indian tribes of any existing or future guidance holding that benefits are excluded from gross income under the general welfare exclusion.

### SECTION 2. BACKGROUND

.01 *Gross income.* Under § 61(a), except as otherwise provided in subtitle A, gross income means all income from whatever source derived. Under § 61,

Congress intends to tax all gains or unde-niable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

Section 1.61-1(a) of the Income Tax Regulations provides that gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, or other property or in-kind benefits, as well as in cash.

Indians are citizens subject to the payment of income taxes. *Squire v. Capoe-man*, 351 U.S. 1, 6 (1956), 1956-1 C.B. 605, 607.

.02 *General welfare exclusion.* Payments made to or on behalf of individuals or other persons under governmental programs are included within the broad definition of gross income under § 61 unless an exclusion applies. See Notice 2003-18, 2003-1 C.B. 699; Rev. Rul. 79-356, 1979-2 C.B. 28. The Service has consistently concluded, however, that certain payments made to or on behalf of individuals by governmental units under governmentally provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income (general welfare exclusion). See, for example, Rev. Rul. 98-19, 1998-1 C.B. 840 (relocation payment authorized by the Housing and Community Development Act and made by a local jurisdiction to an individual moving from a flood-damaged residence to another residence is not includible in the individual's gross income); Rev. Rul. 74-205, 1974-1 C.B. 20 (replacement housing payments to aid individuals displaced from their homes in acquiring decent, safe, and sanitary dwellings of modest standards are not includible in gross income).

To qualify under the general welfare exclusion, the payments must (1) be made pursuant to a governmental program, (2) be for the promotion of the general welfare (that is, based on need), and (3) not represent compensation for services. Rev. Rul. 2005-46, 2005-2 C.B. 120; Rev. Rul. 82-106, 1982-1 C.B. 16; Rev. Rul.

<sup>1</sup>The Terms and Conditions document that each Section 1603 Program applicant signs under penalties of perjury includes the following provision (section 4): "The applicant will not claim a tax credit under section 45 or section 48 of the IRC with respect to the property described in the application."

75–246, 1975–1 C.B. 24. Thus, the general welfare exclusion applies if “the grant [is] received under a program requiring the individual recipient to establish need. Grants received under social welfare programs that [do] not require recipients to establish individual need” do not qualify under the general welfare exclusion. *Bailey v. Commissioner*, 88 T.C. 1293, 1300 (1987), acq., 1989–2 C.B. 1 (internal citations omitted).

To substantiate that a payment qualifies for the general welfare exclusion, governmental payors and payment recipients must maintain accurate books or records. These payors and recipients must keep these books or records at all times available for inspection by authorized internal revenue agents or employees, and must maintain them as long as their contents are material in the administration of any internal revenue law. See § 1.6001–1.

Whether a payment qualifies under the general welfare exclusion is determined under the federal income tax laws (including provisions not in the Code), not under the laws of state, local, sovereign tribal, or foreign governments, or other federal laws. Thus, an incentive payment that a United States citizen received from the City of Berlin, Germany under a program to encourage spending and consumption was not excludable from the recipient’s gross income simply because it was paid pursuant to a program of a sovereign government when the program did not meet the requirements of the general welfare exclusion under U.S. tax law. *Foley v. Commissioner*, 87 T.C. 605 (1986).

If the activity engaged in is basically the performance of services, the payments are compensation for services rendered and are includible in the gross income of the recipient. Rev. Rul. 75–246. Thus, Rev. Rul. 74–413, 1974–2 C.B. 333, concludes that payments to participants in a state program that provided short-term employment in disaster relief activities for unemployed individuals, but no training or retraining to help the participants obtain better employment opportunities, are compensation includible in gross income under § 61.

In the context of job training programs, however, the Service has held that payments that primarily provide job-training skills to unemployed and underemployed

individuals to enhance their employability are not compensation for services and, therefore, are excluded from the gross income of recipients under the general welfare exclusion. For example, Rev. Rul. 68–38, 1968–1 C.B. 446, concludes that payments to participants in a program sponsored by an Indian tribal council to train underemployed and unemployed residents of an Indian reservation in construction skills to enhance employability are excluded from the participants’ gross income under the general welfare exclusion because the basic purpose of the program is training.

Payments under training programs that include reasonable and limited allowances for meals, travel, transportation, subsistence, emergency, and other purposes also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75–246 (*Situation 1*). Allowances on the basis of need to cover certain expenses incident to the training (such as payments for auto insurance or to make the trainee’s presence possible, or expenditures for work clothing, without which the trainee could not engage in the work training experience) also are excluded from gross income under the general welfare exclusion. Rev. Rul. 75–246 (*Situation 3*).

Benefits qualify under the general welfare exclusion only if they are not lavish or extravagant. Whether a benefit is lavish or extravagant depends on the facts and circumstances. For example, replacement housing payments to help displaced individuals and families acquire dwellings of modest standards qualify for exclusion from gross income under the general welfare exclusion. Rev. Rul. 74–205. Assistance to help disaster victims meet necessary expenses or serious needs in the categories of medical or dental, housing, personal property, transportation, and funeral expenses qualifies for exclusion from gross income under the general welfare exclusion, but assistance for nonessential, luxurious, or decorative items does not qualify. Rev. Rul. 76–144, 1976–1 C.B. 17. Payments to compensate individuals for unreimbursed reasonable and necessary personal, living, and family expenses they incur due to a disaster or emergency situation also are excluded from gross income under the general wel-

fare exclusion. Notice 2002–76, 2002–2 C.B. 917 (Q&As 1 and 2).

In general, payments to businesses do not qualify under the general welfare exclusion because the payments are not based on individual or family need. See Rev. Rul. 2005–46; Notice 2003–18. Rev. Rul. 77–77, 1977–1 C.B. 11, however, provides that nonreimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the general welfare exclusion.

.03 *Application of the general welfare exclusion to programs of Indian tribal governments.* Indian tribal governments have a unique legal status. They have inherent sovereignty and a government-to-government relationship with the United States. Indian tribes have developed a broad range of programs to address their unique social, cultural, and economic issues. In developing these programs, Indian tribes give significant consideration to individual need as well as the needs of the entire community.

The general welfare exclusion applies to payments by Indian tribal governments no less favorably than it applies to payments by federal, state, local, or foreign governments. Payments by Indian tribal governments qualify for the general welfare exclusion if the payments are (1) made pursuant to a governmental program of the tribe; (2) for the promotion of general welfare (that is, based on individual or family need); and (3) not compensation for services. Rev. Rul. 2005–46; Notice 2003–18; Rev. Rul. 75–246; Rev. Rul. 82–106. In addition, programs of Indian tribal governments to help establish Indian-owned economic enterprises on or near a reservation and based on need qualify under the general welfare exclusion regardless of whether the programs receive any federal funding. *Compare* Rev. Rul. 77–77.

Payments under Indian tribal governmental programs meeting these requirements qualify for the general welfare exclusion whether the revenues that the Indian tribal government uses to fund the programs derive from levies, taxes, service fees, revenues from tribally-owned businesses, or other sources. For example,

general welfare programs may be funded from casino revenues. However, per capita payments to tribal members of tribal gaming revenues that are subject to the Indian Gaming Regulatory Act are gross income under § 61, are subject to the information reporting and withholding requirements of §§ 6041 and 3402(r), and are not excludable from gross income under the general welfare exclusion or this revenue procedure. See 25 U.S.C. §§ 2701–2721 and 25 C.F.R. Part 290.

Because and in recognition of the unique circumstances of Indian tribes and tribal governments described above, this revenue procedure conclusively presumes that the individual need criterion of the general welfare exclusion is met for payments made under certain programs of such governments, as set forth in section 5 of this revenue procedure, and the Service will not assert that benefits provided under programs described in section 5.03 of this revenue procedure represent compensation for services.

*.04 Benefits that are not addressed by this revenue procedure.* This revenue procedure does not address benefits under Indian tribal governmental programs that do not fall within the definition of gross income under § 61. For example, an Indian tribal government may provide benefits in the form of public libraries or recreational facilities that are available for the general public use of members of the tribe. Like other taxpayers, members of Indian tribes do not include the value of these benefits in income regardless of whether the requirements of the general welfare exclusion are met because these benefits are not gross income under § 61.

In addition, this revenue procedure does not address certain benefits that members of an Indian tribe may exclude from income under a specific provision of the Code or other federal statute. For example, § 139D provides that gross income does not include the value of medical care (as used in § 213) an Indian tribe (as defined in § 45A(c)(6)) provides to a member of the tribe or the member's spouse or dependents. Thus, a payment that an Indian tribe makes to an Indian medicine man to use traditional practices for the purpose of treating a tribal member's disease may be excludable from the tribal member's gross income under

§ 139D. See *Tso v. Commissioner*, T.C. Memo 1980–399. Similarly, this revenue procedure does not address how § 108(f), which provides an exclusion from income for the discharge of certain student loan indebtedness, applies to members of an Indian tribe.

*.05 Procedural history.* Representatives of the Service and Treasury Department consulted with tribal leaders and members of Indian tribes concerning the application of the general welfare exclusion to programs of Indian tribal governments. In Notice 2011–94, 2011–49 I.R.B. 834, the Service invited comments concerning the application of the general welfare exclusion to Indian tribal government programs that provide benefits to tribal members. The Service received over 85 comments from Indian tribal governments and other individuals and groups describing various Indian tribal government programs for tribal members and how the general welfare exclusion should apply to those programs. In response to those comments, the Service issued Notice 2012–75, 2012–51 I.R.B. 715, which proposed a revenue procedure that would provide safe harbors under which the Service would conclusively presume that (i) the individual need requirement of the general welfare exclusion would be met for specific benefits provided under described Indian tribal governmental programs, and (ii) certain benefits an Indian tribal government provides under other described programs are not compensation for services. In response to Notice 2012–75, the Service received over 40 comments from Indian tribal governments and other individuals and groups. The more than 120 comments and consultations were very helpful in preparing this revenue procedure.

*.06 Changes from Notice 2012–75.* In response to comments from Indian tribal governments and other individuals and groups, this revenue procedure makes the following changes from the revenue procedure proposed in Notice 2012–75:

(1) Section 3 expands the scope of the revenue procedure from members of Indian tribes, their spouses, and dependents to members of Indian tribes and qualified nonmembers, as well as Indian tribal governments.

(2) Section 4.04 clarifies that for purposes of this revenue procedure the term “pay” means “pay or reimburse in whole or in part.” Conforming changes are made throughout this revenue procedure.

(3) Section 4.05 adds and defines the term “qualified nonmember” to expand the scope of individuals in section 3 who may qualify to receive benefits described in this revenue procedure.

(4) Sections 4.07 and 4.08 add and define the terms “service area” and “service unit area” to expand the geographic areas for transportation programs described in section 5.02(2)(d)(i).

(5) Section 5.01(1) clarifies that a tribal government may provide a benefit described in this revenue procedure directly or indirectly, by payment or reimbursement, and in cash or property.

(6) Section 5.02(1)(c) clarifies that a benefit will be considered available to any tribal member or qualified nonmember who satisfies the program guidelines even if the program guidelines limit the benefit to an identified group of these individuals (for example, veterans) and although as a practical matter the benefit is not available to all tribal members, qualified nonmembers, or an identified group because of budgetary restraints.

(7) Section 5.02(1)(f) clarifies that the determination of whether a benefit is not lavish or extravagant depends on the facts and circumstances.

(8) Section 5.02(2) clarifies that the benefits listed in the parenthetical language in section 5.02(2) are illustrative only rather than an exhaustive list, and that a benefit that meets all other requirements may qualify for exclusion from gross income under this revenue procedure even though the benefit is not expressly described in the parenthetical language. Several sections clarify that the exclusion is not limited to the benefits described: 5.02(2)(a)(iii), 5.02(2)(b)(i), 5.02(2)(b)(ii), 5.02(2)(b)(iv)(A) and (C), 5.02(2)(c)(iv), 5.02(2)(d)(iii), 5.02(2)(d)(iv), 5.02(2)(e)(iii), and 5.03.

(9) Section 5.02(2)(a) adds that housing programs relating to principal residences also may relate to ancillary structures that are not used in any trade or business or for investment purposes.

(10) Section 5.02(2)(a)(i) adds housing programs that pay down payments, clari-

fies that rent payments include security deposits, and deletes the reference to “on or near a reservation.”

(11) Section 5.02(2)(a)(ii) clarifies that habitability of housing includes safety issues (including but not limited to mold remediation).

(12) Section 5.02(2)(a)(iv) clarifies that utility bills include basic communications services, such as phone, internet, and cable.

(13) Section 5.02(2)(b)(i) clarifies that the benefits may be used in both school activities and extracurricular activities.

(14) Section 5.02(2)(b)(ii) expands tuition payments to include payments to attend a school (including a preschool or online school), removes the requirement that a college or university must be accredited and clarifies that room and board may be off campus and that the housing allowances may be provided to a domestic partner.

(15) Redesignated section 5.02(2)(b)(iii) adds programs for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education.

(16) Redesignated section 5.02(2)(b)(iv)(C) changes “necessary clothing” to “appropriate clothing.”

(17) Section 5.02(2)(c) clarifies that the term disabled individuals means individuals who are physically or mentally disabled as defined under applicable law, including tribal government disability codes.

(18) Section 5.02(2)(c)(i) clarifies that meals for elder and disabled individuals may be provided at a community center or similar facility.

(19) Former section 5.02(2)(c)(iv) is deleted because travel expenses for doctor appointments or other medical care are excluded from income under § 139D.

(20) Former section 5.02(2)(c)(v) is deleted because expenses for educational, social, or cultural programs are covered in new section 5.02(2)(e)(v).

(21) Section 5.02(2)(d)(i) expands transportation programs to include transportation costs such as rental cars, substantiated mileage (see, for example, procedures described in Rev. Proc. 2010–51, 2010–51 I.R.B. 883), and fares for bus, taxi, and public transportation; and to in-

clude transportation to or from a service area or service unit area as well as to or from an Indian reservation. In addition, the section clarifies that the facilities are those that provide essential services to the public (such as grocery stores or medical facilities).

(22) Section 5.02(2)(d)(ii) replaces “spouse or dependent” with “qualified nonmember.”

(23) Section 5.02(2)(d)(v) clarifies that the assistance is for transportation emergencies, expands the assistance to all transportation costs, removes the limitation that the individual must be stranded off the Indian reservation, and adds the example of being stranded away from home as a situation to which this transportation assistance program might apply.

(24) Section 5.02(2)(d)(vi) adds that programs to provide or reimburse the cost of nonprescription drugs include traditional Indian tribal medicines.

(25) Section 5.02(2)(e)(i) expands the benefits to include payment for all expenses (including admission fees, transportation, food, and lodging) for individuals participating in as well as attending certain tribal activities, and clarifies that the activities include religious activities.

(26) Section 5.02(2)(e)(ii) expands the benefit to all expenses (including admission fees, transportation, food, and lodging) to visit sites, including other Indian reservations, that are culturally or historically significant for the tribe.

(27) Section 5.02(2)(e)(iv) adds other bereavement events and subsequent honoring events.

(28) New section 5.02(2)(e)(v) adds programs that pay transportation costs and admission fees to attend educational, social, and cultural programs supported by the tribe or another tribe, thus extending this benefit, which had been limited under the proposed revenue procedure to tribal elders and disabled individuals, to all tribal members and qualified nonmembers.

(29) Section 5.03 clarifies the following: (i) the items of cultural significance must not be lavish or extravagant under the facts and circumstances; (ii) nominal cash honoraria may be provided to religious or spiritual leaders as well as religious or spiritual officials; (iii) the cultural, religious, and social events include

but are not limited to the listed events and subsequent honoring events; and (iv) the conclusive presumption that individual need is met also applies to religious or spiritual leaders receiving these benefits.

### SECTION 3. SCOPE

This revenue procedure applies to Indian tribal governments, members of Indian tribes, and qualified nonmembers.

### SECTION 4. DEFINITIONS

The following definitions apply for purposes of this revenue procedure.

.01 *Indian tribal government.* The term “Indian tribal government” has the same meaning as in § 7701(a)(40) but for purposes of this revenue procedure includes agencies or instrumentalities of the Indian tribal government.

.02 *Indian tribe.* The term “Indian tribe” has the same meaning as in § 45A(c)(6).

.03 *Member of an Indian tribe.* The term “member of an Indian tribe” has the same meaning as in 25 C.F.R. § 290.2.

.04 *Pay.* The term “pay” means pay or reimburse in whole or in part.

.05 *Qualified nonmember.* The term “qualified nonmember” means a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of an Indian tribe.

.06 *Reservation.* The term “reservation” or “Indian reservation” has the same meaning as in § 168(j).

.07 *Service area.* The term “service area” has the same meaning as in 25 C.F.R. § 20.100.

.08 *Service unit area.* The term “service unit area” means an area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. § 136.21(l).

### SECTION 5. APPLICATION

.01 *Application of general welfare exclusion to Indian tribal government programs.* If section 5.01(1) or 5.01(2) of this revenue procedure applies, the Service will not assert that members of an Indian tribe or qualified nonmembers must include the value of the applicable benefits in gross income under § 61 or that the

benefits are subject to the information reporting requirements of § 6041.

(1) If an Indian tribal government provides a benefit (directly or indirectly, by payment or reimbursement, or in cash or in property) meeting the criteria specified in section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure, the Service will conclusively presume that individual need is met for each tribal member or qualified nonmember receiving the benefit.

(2) If an Indian tribal government provides a benefit meeting the criteria specified in section 5.03, the Service will conclusively presume that individual need is met for each tribal member or qualified nonmember receiving the benefit and that the benefit does not represent compensation for services.

*.02 Benefits provided by a tribe for which individual need is presumed.* Section 5.01(1) of this revenue procedure applies to benefits meeting the general criteria of section 5.02(1) of this revenue procedure and described in section 5.02(2) of this revenue procedure.

(1) *General criteria.* To qualify for exclusion under this revenue procedure, a benefit described in section 5.02(2) of this revenue procedure must meet the following requirements—

(a) The benefit is provided pursuant to a specific Indian tribal government program;

(b) The program has written guidelines specifying how individuals may qualify for the benefit;

(c) The benefit is available to any tribal member, qualified nonmember, or identified group of tribal members or qualified nonmembers (for example, veterans) who satisfy the program guidelines, subject to budgetary restraints;

(d) The distribution of benefits from the program does not discriminate in favor of members of the governing body of the tribe;

(e) The benefit is not compensation for services; and

(f) The benefit is not lavish or extravagant under the facts and circumstances.

(2) *Specific benefits.* Benefits provided under the following programs are benefits described in this section 5.02(2). The benefits listed in the parenthetical language in section 5.02(2) are illustrative only rather

than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income under this revenue procedure even though the benefit is not expressly described in the parenthetical language in this section 5.02(2), provided that it meets all other requirements of this revenue procedure.

(a) *Housing programs.* Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that—

(i) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;

(ii) Enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), or heating or cooling issues;

(iii) Provide basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and

(iv) Pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable).

(b) *Educational programs.* Programs to—

(i) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;

(ii) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;

(iii) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and

(iv) Provide job counseling and programs for which the primary objective is

job placement or training, including but not limited to allowances for—

(A) Expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food);

(B) Tutoring; and

(C) Appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training).

(c) *Elder and disabled programs.* Programs for individuals who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to tribal government disability codes) that provide—

(i) Meals through home-delivered meals programs or at a community center or similar facility;

(ii) Home care such as assistance with preparing meals or doing chores, or day care outside the home;

(iii) Local transportation assistance;

(iv) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(d) *Other qualifying assistance programs.* Programs to—

(i) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);

(ii) Pay for the cost of transportation, temporary meals, and lodging of a tribal member or qualified nonmember while the individual is receiving medical care away from home;

(iii) Provide assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;

(iv) Pay costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster);

(v) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of

transportation costs, a hotel room, and meals; and

(vi) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

(e) *Cultural and religious programs.* Programs to—

(i) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances;

(ii) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the tribe, including but not limited to other Indian reservations;

(iii) Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music, and dances);

(iv) Pay funeral and burial expenses and expenses of hosting or attending

wakes, funerals, burials, other bereavement events, and subsequent honoring events; and

(v) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the tribe or another tribe.

.03 *Benefits provided by a tribe that are presumed not to be compensation for services.* Except as provided in this section 5.03, section 5.01 of this revenue procedure does not apply to benefits that are compensation for services. However, section 5.01(2) of this revenue procedure applies to benefits provided under an Indian tribal governmental program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, or nominal cash honoraria provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and

subsequent honoring events). The Service will conclusively presume that individual need is met for the religious or spiritual officials or leaders receiving these benefits and that the benefits do not represent compensation for services.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for benefits provided on or after December 6, 2012. Taxpayers may apply this revenue procedure in taxable years for which the period of limitation on refund or credit under § 6511 has not expired.

## DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, please contact Mr. Iskow at (202) 317-4718 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking by Cross-reference to Temporary Regulations Alternative Simplified Credit Election

#### REG-133495-13

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the election of the alternative simplified credit. The proposed regulations will affect certain taxpayers claiming the credit. In the Rules and Regulations section of this issue of the **Bulletin**, the IRS is issuing temporary regulations concerning the election of the alternative simplified credit. The text of those regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by September 2, 2014.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-133495-13), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-133495-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-133495-13).

#### FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, David Selig, (202) 317-4137; concerning submission of comments and request for hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION

##### Background

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR Part 1) relating to section 41. The temporary regulations provide guidance concerning the election of the alternative simplified credit (ASC) under section 41(c)(5). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an ASC election on an amended return pursuant to these regulations, the economic impact of any collection burden on these entities relating to this election is minimal because the regulations will result in a benefit to taxpayers by providing additional time for taxpayer to calculate and elect the ASC. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

##### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are

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

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

##### Drafting Information

The principal author of these proposed regulations is David Selig, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

##### Proposed Amendments to the Regulations

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

##### Part 1—INCOME TAXES

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

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

Section 1.41-9 also issued under 26 U.S.C. 41(c)(5)(C). \* \* \*

Par. 2. Section 1.41-9 is amended by revising paragraph (b)(2) to read as follows:

##### § 1.41-9 Alternative simplified credit.

\* \* \* \* \*

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

(2) [The text of proposed § 1.41-9(b)(2) is the same as the text of § 1.41-9T(b)(2) published elsewhere in this issue of the **Bulletin**.]

\* \* \* \* \*

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on June 2, 2014, 8:45 a.m., and published in the issue of the Federal Register for June 3, 2014, 79 F.R. 31892)

# Notice of Proposed Rulemaking Filing of Form 5472

## REG-114942-14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the manner of filing Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business." The proposed regulations would remove a current provision for timely filing of Form 5472 separately from an income tax return that is untimely filed. As a result, Form 5472 would be required to be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return. The proposed regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. Regulations finalizing the temporary provisions of TD 9529 (76 FR 33997, 2011-30 IRB 57), also about requirements for taxpayers filing Form 5472, are published in the same issue of the **Bulletin** as these proposed regulations (79 F.R. 32644, TD 9667, 2014-26 I.R.B. 1107).

DATES: Written or electronic comments and requests for a public hearing must be received by August 4, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114942-14), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-114942-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-114942-14).

## FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Anand Desai at (202) 317-6939; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

## SUPPLEMENTARY INFORMATION

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6038A and 6038C of the Internal Revenue Code (Code).

Section 6038A generally requires information reporting by a 25-percent foreign-owned domestic corporation with respect to certain transactions between such a corporation and certain related parties. Similarly, section 6038C generally requires a foreign corporation engaged in a trade or business within the United States at any time during the taxable year to report the information described in section 6038A with respect to certain transactions between such corporation and certain related parties.

On June 19, 1991, the IRS and the Treasury Department published in the **Federal Register** (56 FR 28056) final regulations (TD 8353, 1991-2 CB 402) under section 6038A (1991 final regulations). The 1991 final regulations contained guidance under a number of provisions including §§ 1.6038A-1 and 1.6038A-2 regarding information reporting requirements under sections 6038A and 6038C and § 1.6038A-4 regarding the imposition of penalties for failure to satisfy reporting requirements. Section 1.6038A-1(c)(1) defines a reporting corporation as (i) a domestic corporation that is 25-percent foreign-owned; (ii) a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States; or (iii) after November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A-2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related

party with which the reporting corporation has had any reportable transaction during the taxable year. Section 1.6038A-2(d) of the 1991 regulations required a reporting corporation to file Form 5472 with its income tax return for the taxable year by the due date (including extensions) of that return. Section 1.6038A-2(d) of the 1991 final regulations also required a reporting corporation to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, PA (duplicate filing requirement). Section 1.6038A-2(e) of the 1991 final regulations provided that if a reporting corporation's income tax return is not timely filed, Form 5472 nonetheless was required to be filed (with a duplicate to the Internal Revenue Service Center in Philadelphia, PA) at the service center where the return is due (untimely filed return provision).

On February 9, 2004, the IRS and the Treasury Department published in the **Federal Register** (69 FR 5931) final regulations and temporary regulations (2004 temporary regulations) (TD 9113, 2004-1 CB 524) under section 6038A regarding the duplicate filing requirement. The text of the 2004 temporary regulations also served as the text of proposed regulations (REG-167217-03, 2004-1 CB 540) set forth in the proposed rules section of the same issue of the **Federal Register** (69 FR 5940-01) (2004 proposed regulations). The 2004 temporary regulations provided that the duplicate filing requirement of § 1.6038A-2(d) is satisfied if Form 5472 is timely filed electronically (electronic filing provision). The 2004 temporary regulations did not add a conforming electronic filing provision to § 1.6038A-2(e) (containing the untimely filed return provision) because the electronic filing of Form 5472 other than as an attachment to an electronically filed income tax return was not technically possible when the 2004 temporary regulations were published. On September 15, 2004, the IRS and the Treasury Department published in the **Federal Register** (69 FR 55499-02) final regulations (TD 9161, 2004-2 CB 704) that adopted the 2004 proposed regulations without change. TD 9161 also removed the text of the 2004 temporary regulations.

As a result of advances in electronic processing and data collection in the IRS,

the duplicate filing requirement contained in § 1.6038A-2(d) was no longer necessary. Accordingly, on June 10, 2011, temporary regulations (TD 9529, 2011-30 IRB 57) (2011 temporary regulations) under sections 6038A and 6038C were published in the **Federal Register** (76 FR 33997). On the same day, a notice of proposed rulemaking (REG-101352-11, 2011-30 IRB 75) (2011 proposed regulations) was published by cross-reference to the 2011 temporary regulations in the **Federal Register** (76 FR 34019). The 2011 temporary regulations provided that duplicate filing of Form 5472 will no longer be required regardless of whether the reporting corporation files a paper or an electronic income tax return. The 2011 temporary regulations implemented this change by removing the duplicate filing requirement and the electronic filing provision. As a result, the only remaining provision in the regulation for filing Form 5472 separately from the filer's income tax return is the untimely filed return provision contained in § 1.6038A-2T(e) of the 2011 temporary regulations (which are being finalized contemporaneous with the proposal of these regulations).

Section 1.6038A-4(a) provides that if a reporting corporation fails to furnish the information described in § 1.6038A-2 within the time and manner prescribed in § 1.6038A-2(d) and (e), an initial penalty of \$10,000 (with possible additional penalties for continued failure) shall be assessed for each taxable year and for each related party with respect to which the failure occurs (subject to reasonable cause).

A Treasury decision is being published in this issue of the **Bulletin** that adopts the 2011 proposed regulations without substantive change as final regulations and removes the corresponding 2011 temporary regulations. These proposed regulations propose new changes to the final regulations under §§ 1.6038A-2 and 1.6038A-4.

## Explanation of Provisions

### A. In General

As explained in the Background section, the only remaining provision for filing a Form 5472 separately from the filer's income tax return is the untimely filed

return provision contained in § 1.6038A-2(e) of the final regulations. With the benefit of experience, the IRS and the Treasury Department believe that the untimely filed return provision is not conducive to efficient tax administration. More specifically, the method for filing a Form 5472 should not differ from the method (and penalties) applicable to U.S. persons that have similar international reporting obligations, for example, the requirement to file (i) Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," in the case of U.S. persons that control certain foreign corporations, and (ii) Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships," in the case of U.S. persons that control certain foreign partnerships. Those forms must be filed with the filer's income tax return for the taxable year by the due date (including extensions) of the return, and there is no provision equivalent to the untimely filed return provision under § 1.6038A-2T(e) of the 2011 temporary regulations that would require or permit separate filing of those forms. See §§ 1.6038-2(i) and 1.6038-3(i)(1). Accordingly, it is proposed that the untimely filed return provision contained in § 1.6038A-2(e) be removed.

Corresponding amendments are proposed to § 1.6038A-4 to update a cross-reference and delete an obsolete reference to prior internal organization of the IRS, and to § 1.6038A-1(n)(2) and (3) with respect to proposed effective dates of §§ 1.6038A-2 and 1.6038A-4.

### B. Proposed Effective/Applicability Date

These regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. See § 1.6038A-1(n)(2) and (3).

### Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Ad-

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

## Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of these proposed regulations. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting information

The principal author of these proposed regulations is Anand Desai, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

## Proposed Amendments to the Regulations

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

### Part 1—INCOME TAXES

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

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

Par. 2. Section 1.6038A-1 is amended by revising the third sentence of, and adding a new fourth sentence to, paragraph (n)(2), and adding a third sentence to paragraph (n)(3), to read as follows:

§ 1.6038A-1 General requirements and definitions.

\* \* \* \* \*

(n) \* \* \*

(2) Section 1.6038A-2. \* \* \* Section 1.6038A-2(d) applies for taxable years ending on or after June 10, 2011. For taxable years ending on or after June 10, 2011, but before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see § 1.6038A-2(e) as contained in 26 CFR part 1 revised as of April 1, 2014. \* \* \*

(3) Section 1.6038A-4. \* \* \* For taxable years ending before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see § 1.6038A-4(a)(1) as contained in 26 CFR part 1 revised as of April 1, 2014.

\* \* \* \* \*

§ 1.6038A-2(e) [Removed].

Par. 3. Section 1.6038A-2 is amended by removing paragraph (e).

Par. 4. Section 1.6038A-4 is amended by revising paragraph (a)(1) to read as follows:

§ 1.6038A-4 Monetary penalty.

(a) \* \* \*

(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A-2 within the time and manner prescribed in § 1.6038A-2(d), fails to maintain or cause another to maintain records as required by § 1.6038A-3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in § 1.6038A-3(f), a penalty of \$10,000 shall be assessed for each taxable year with respect to which such failure occurs. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in § 1.6038A-2(b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

\* \* \* \* \*

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on June 5, 2014, 8:45 a.m., and published in the issue of the Federal Register for June 6, 2014, 79 F.R. 32687)

## Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

### Announcement 2014-26

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

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

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4).

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

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

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

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

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

Disciplinary sanctions are described in these terms:

**Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed, and Disqualified after hearing**—An administrative law judge (ALJ) either 1) granted the government's summary judgment motion or 2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations; and 3) issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

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

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent

to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status).

**Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in**

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

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individ-

uals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for indefinite suspension.

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

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>Arizona</b>				
Scottsdale	Limb, Joseph S.	Appraiser	Disqualified by consent for violations under 31 C.F.R. § 10.22(a)(1–3) (2007) (failed to exercise due diligence in preparation of documents, failed to exercise due diligence in determining the correctness of written representation made to the Department of Treasury, and failed to exercise due diligence in determining the correctness of written representations made to clients with reference to matters administered by the IRS).	Indefinite from March 31, 2014
<b>California</b>				
Chula Vista	Thomsen, Neil A.	Enrolled Agent	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82 (conviction under 18 U.S.C. § 1341, mail fraud, 18 U.S.C. § 287, false, fictitious and fraudulent claims, 42 U.S.C. § 408(a)(8), fraudulent use of a social security number of another person, 18 U.S.C. § 1028(A), aggravated identity theft, and 18 U.S.C. § 1546(a), fraud and misuse of visas, permits and other documents)	Indefinite from May 8, 2014
San Diego	Turner, Michael I.	Unenrolled Return Preparer	Disbarment by consent pursuant to order of permanent injunction in the U.S. District Court for the Southern District of California acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns or amended returns (or other related tax forms or document) for any person or entity other than preparing his own personal tax return(s)	Disbarment for a minimum of 5 years from April 29, 2014

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>California (Continued)</b>				
Rohnert Park	Yee, Elbert D.	Enrolled Agent	Disbarment by ALJ default decision for violation of § 10.51 (failure to file timely Federal tax returns for 2007–2011, and failure to respond to OPR’s request for information)	Disbarment for a minimum of 5 years from March 30, 2014
<b>District of Columbia</b>				
	Roberson, Jr., James O.	Attorney		Reinstated to practice before the IRS, April 22, 2014
<b>Illinois</b>				
Carbondale	Manis, Ronald E.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82 (conviction under 26 U.S.C § 7203, failure to timely file a Federal income tax return)	Indefinite from April 7, 2014
<b>Louisiana</b>				
Gretna	Fradella, Frank T.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82 (suspension of attorney license)	Indefinite from May 5, 2014
Mandeville	Tulli, Anthony	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82 (conviction under 18 U.S.C § 1341, mail fraud, 18 U.S.C. § 1343 & 18 U.S.C. § 2, wire fraud; aiding and abetting, 26 U.S.C. § 7202, willful failure to collect and pay over a tax, and, 18 U.S.C. § 1001, making false statements to the IRS; and revocation of CPA License)	Indefinite from January 6, 2014
<b>Massachusetts</b>				
Chatham	Edgar, Charles M.	Attorney/CPA	Disbarred by decision of IRS Appellate Authority (revocation of CPA license and on two different occasions in May 2011 submitted false power of attorney (Form 2848) (31 C.F.R §§ 10.51(a)(10), and 10.51(a)(4)))	Disbarment for a minimum of 5 years from April 18, 2014
<b>North Carolina</b>				
Moyock	Drake, Donald	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82 (suspension of CPA license)	Indefinite from May 8, 2014
<b>Pennsylvania</b>				
Scranton	Muracco, Dominick J.	Enrolled Agent	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82 (conviction under 26 U.S.C § 7201, tax evasion)	Indefinite from May 5, 2014
<b>Texas</b>				
San Augustine	Dawson, Robin G.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82 (revocation of CPA license)	Indefinite from April 16, 2014

# 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.  
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T.I.R.—Technical Information Release.  
TP—Taxpayer.  
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U.S.C.—United States Code.  
X—Corporation.  
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#### Key to Abbreviations:

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

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