

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-105067-14, page 391.

This proposed regulation, which cross-references a temporary regulation under Section 382 of the Code, modifies the effective date of earlier regulations under section 382 (TD 9638, published October 22, 2013) to prevent an adverse effect on certain corporations whose stock was or is owned by the Department of the Treasury and then is sold by Treasury to a public group.

Announcement 2014-28, page 391.

Guidance is provided to individuals who fail to meet the eligibility requirements of section 911(d)(1) of the Internal Revenue Code because adverse conditions in a foreign country preclude the individual from meeting those requirements. Rev. Proc. 2014-25 provides a current list of countries for tax year 2013 and the dates those countries are subject to the section 911(d)(4) waiver is provided. That list is incomplete. South Sudan and its departure date have been added.

Notice 2014-45, page 388.

This Notice supplements Notice 2014-44 providing guidance concerning section 901(m), particularly with regard to entity classification elections.

Rev. Proc. 2014-45, page 388.

This revenue procedure describes the circumstances in which the IRS will not treat a redemption of a money market fund share as part of a wash sale under section 1091 of the Internal Revenue Code.

T.D. 9685, page 379.

This temporary regulation under Section 382 modifies the effective date of earlier regulations under section 382 (TD 9638, published October 22, 2013) to prevent an adverse effect on certain corporations whose stock was or is owned by the Department of the Treasury and then is sold by Treasury to a public group.

ESTATE TAX

Rev. Rul. 2014-21, page 381.

Special Use Value; Farms; Interest Rates. The 2014 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

EXCISE TAX

Notice 2014-42, page 387.

This notice provides guidance on the branded prescription drug fee related to (1) the submission of Form 8947, Report of Branded Prescription Drug Information; (2) the time and manner for notifying covered entities of their preliminary fee calculation; (3) the time and manner for submitting error reports for the dispute resolution process; and (4) the time for notifying covered entities of their final fee calculation. Notice 2013-51, 2013-34 I.R.B. 153, which provides guidance for the 2014 fee year, is obsoleted as of October 1, 2014.

ADMINISTRATIVE

T.D. 9686, page 382.

These final regulations implement the amendments to section 6707 of the Internal Revenue Code by the American Jobs Creation Act of 2004. The regulations provide the rules relating to the assessment of penalties against material advisors who fail to timely file a true and complete return as required under section 6111(a).

Finding Lists begin on page ii.
Index for July through August 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 382.—Limitation on net operating loss carryforwards and certain built-in losses following ownership change

26 CFR 1.382–3T Definitions and rules relating to a 5-percent shareholder

TD 9685

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Segregation Rule Effective Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations under section 382 of the Internal Revenue Code (Code) that modify the effective date provision of recently published regulations. These regulations affect corporations whose stock is or was acquired by the Department of the Treasury (Treasury) pursuant to certain programs under the Emergency Economic Stabilization Act of 2008 (EESA). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Bulletin**. This document also modifies the existing regulations to provide a cross-reference to this temporary regulation.

DATES: *Effective Date*: These regulations are effective on July 31, 2014.

Applicability Date: For dates of applicability, see section 1.382–3T(j)(17).

FOR FURTHER INFORMATION

CONTACT: Stephen R. Cleary, (202) 317-5353 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 382

Section 382 of the Code provides that the taxable income of a loss corporation for a year following an ownership change may be offset by pre-change losses only to the extent of the section 382 limitation for such year. An ownership change occurs with respect to a corporation if it is a loss corporation on a testing date and, immediately after the close of the testing date, the percentage of stock of the corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of such corporation owned by such shareholders at any time during the testing period.

Pursuant to section 382(g)(4)(A), shareholders who own less than five percent of a loss corporation are aggregated and treated as a single 5-percent shareholder (a public group). In addition, new public groups may be created as a result of certain transactions under the segregation rules in the section 382 regulations. Any new public group is tracked separately from, and in addition to, the public group or groups that existed previously and is treated as a new 5-percent shareholder that increases its ownership interest in the loss corporation.

One particular segregation rule, which was imposed by § 1.382–2T(j)(3)(i) of the Temporary Income Tax Regulations until it was superseded, required segregation when an individual or entity that owned five percent or more of the loss corporation transferred an interest in the loss corporation to public shareholders. After the sale, stock owned by a public group that existed immediately before the sale was treated separately from the stock owned by the public group that acquired stock from the seller. This separate public group was treated as a new 5-percent shareholder. However, this rule was rendered inoperative by § 1.382–3(j)(13), part of a set of regulations published in TD 9638 [78 FR 62418] on October 22, 2013. Un-

der the new regulation, no new public group is created on the transfer of stock to the public shareholders; instead, the transferred stock is treated as acquired proportionately by the public groups existing at the time of the transfer.

Notice 2010–2 (2010–2 IRB 251 (December 16, 2009)) (see § 1.601.601(d)(2)(ii)(B) of this chapter), provides guidance regarding the application of section 382 of the Code and other provisions of law to corporations whose instruments are acquired and disposed of by the Treasury pursuant to EESA. Notice 2010–2 relates to instruments acquired by Treasury pursuant to the following EESA programs: (i) the Capital Purchase Program for publicly-traded issuers; (ii) the Capital Purchase Program for private issuers; (iii) the Capital Purchase Program for S corporations; (iv) the Targeted Investment Program; (v) the Asset Guarantee Program; (vi) the Systemically Significant Failing Institutions Program; (vii) the Automotive Industry Financing Program; and (viii) the Capital Assistance Program for publicly-traded issuers. (These programs are collectively referred to as “Programs” in that Notice and in this preamble.)

Under Section III(G) of Notice 2010–2, a “Covered Instrument” is an instrument that is acquired by Treasury in exchange for an instrument that was issued to Treasury under the Programs, or is acquired by Treasury in exchange for another Covered Instrument. For most purposes of that Notice, a Covered Instrument is treated as though it had been issued directly to Treasury under the Programs.

Section III(E) of Notice 2010–2 provides the following rule to govern the sale by Treasury of stock of a corporation to public shareholders:

Section 382 treatment of stock sold by Treasury to public shareholders.

If Treasury sells stock that was issued to it pursuant to the Programs (either directly or upon the exercise of a warrant) and the sale creates a public group (“New Public Group”), the New Public Group’s ownership in the issuing corporation shall not be considered to have in-

creased solely as a result of such a sale. A New Public Group's ownership shall be treated as having increased to the extent the New Public Group increases its ownership pursuant to any transaction other than a sale of stock by Treasury, including pursuant to a stock issuance described in section 1.382-3(j)(2) or a redemption (see § 1.382-2T(j)(2)(iii)(C)). Such stock is considered outstanding for purposes of determining the percentage of stock owned by other 5-percent shareholders on any testing date, and section 382 (and the regulations thereunder) shall otherwise apply to the New Public Group in the same manner as with respect to other public groups.

This rule was created to prevent a loss corporation from experiencing an owner shift when Treasury sells stock to public shareholders. By its terms, the rule relies on the assumption that the stock sale "creates a public group." As explained earlier in this preamble, § 1.382-2T(j)(3)(i), before it was superseded, required creation of a new public group when a 5-percent shareholder sold stock in a loss corporation to public shareholders. However, under § 1.382-3(j)(13) as now in effect, such a transfer does not create a new public group.

Explanation of Provision

The IRS and Treasury are concerned that the elimination of the segregation rule described earlier in this preamble may have unintentionally rendered inoperative the rule in Notice 2010-2 that protects a loss corporation from an owner shift when Treasury sells stock that it held pursuant to the Programs to public shareholders. To prevent this result, the temporary regulation modifies the effective date rule of TD 9638 to except from the changes to the segregation rules in that regulation the sale by the Treasury Department to public shareholders of any "Program Instrument" (an instrument issued pursuant to a Program or a Covered Instrument). As a result, a sale of stock by Treasury to the public will create a public group, and the rule of Section III(E) of Notice 2010-2 will continue to apply as intended. This provision will only affect the sale of a Program Instrument by the Treasury Department and will not affect the applica-

tion of the segregation rule changes in TD 9638 to any other transactions involving stock of the corporations that participated in the Programs.

Special Analyses

These regulations are necessary to provide corporations with immediate guidance regarding the continuing effect of Notice 2010-2 in light of the change to the segregation rules provided by TD 9638. Because of the need for immediate guidance, the IRS and the Treasury Department are issuing temporary regulations which are effective immediately.

It has also been determined that this temporary regulation 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. For the application of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the preamble of the cross-referenced notice of proposed rulemaking published 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 Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). 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 1.382-3T also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

Par. 2. Section 1.382-3 is amended by revising paragraph (j)(17) to read as follows:

§ 1.382-3 Definitions and rules relating to a 5-percent shareholder.

* * * * *

(j) * * *

(17) *Effective/applicability date*. [Reserved]. For further guidance, see § 1.382-3T(j)(17).

* * * * *

Par. 3. Section 1.382-3T is added to read as follows:

§ 1.382-3T Definitions and rules relating to a 5-percent shareholder (temporary).

(a) through (j)(16) [Reserved]. For further guidance see § 1.382-3(a) through (j)(16).

(17) *Effective/applicability date*. This paragraph (j) generally applies to issuances or deemed issuances of stock in taxable years beginning on or after November 4, 1992. However, paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and *Examples 5* through *13* of paragraph (j)(16) of this section apply to testing dates occurring on or after October 22, 2013, other than with respect to the sale of a Program Instrument by the Treasury Department. For purposes of this paragraph (j)(17), a Program Instrument is an instrument issued pursuant to a Program, as defined in Internal Revenue Service Notice 2010-2 (2010-2 IRB 251 (December 16, 2009)) (see § 601.601(a)(2)(ii)(B) of this chapter), or a Covered Instrument, as defined in that Notice. Taxpayers may apply paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and *Examples 5* through *13* of paragraph (j)(16) of this section in their entirety (other than with respect to a sale of a Program Instrument by the Treasury Department) to all testing dates that are included in a testing period beginning before and ending on or after October 22, 2013. However, the provisions described in the preceding sentence may not be applied to any date on or before the date of any ownership change that occurred before October 22, 2013, under the regulations in effect before October 22, 2013, and they may not be ap-

plied as described in the preceding sentence if such application would result in an ownership change occurring on a date before October 22, 2013, that did not occur under the regulations in effect before October 22, 2013. See § 1.382-3(j)(14)(ii) and (iii), as contained in 26 CFR part 1 revised as of April 1, 1994 for the application of paragraph (j)(10) to stock issued on the exercise of certain options exercised on or after November 4, 1992, and for an election to apply paragraphs (j)(1) through (12) retroactively to certain issuances and deemed issuances of stock occurring in taxable years prior to November 4, 1992.

(18) *Expiration date.* This section 1.382-3T expires on or before July 28, 2017.

John Dalrymple
*Deputy Commissioner for
Services and Enforcement.*

Approved July 18, 2014,

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

(Filed by the Office of the Federal Register on July 30, 2014, 8:45 a.m., and published in the issue of the Federal Register for July 31, 2014, 79 F.R. 44280)

Section 2032A.—Valuation of Certain Farm, Etc., Real Property

26 CFR 20.2032A-4: Method of valuing farm real property.

Rev. Rul. 2014-21

ISSUE

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in Table 1 of this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2014.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A-4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Territory are set forth in the accompanying Table of Farm Credit System Bank Territories (Table 2).

Rev. Rul. 81-170, 1981-1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2013 are in Rev. Rul. 2013-19, 2013-39 I.R.B. 240. For rate information for years prior to 2013, see Rev. Rul. 2012-26, 2012-39 I.R.B. 358, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 317-6859 (not a toll-free number).

REV. RUL. 2014-21 TABLE 1

TABLE OF INTEREST RATES (Year of Valuation 2014)

Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB.....	5.29
AgriBank, FCB	4.71
CoBank, ACB	4.31
Texas, FCB	4.82

REV. RUL. 2014-21 TABLE 2

TABLE OF FARM CREDIT SYSTEM BANK TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB.....	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB.....	Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.

Section 6707.—Failure to Furnish Information Regarding Reportable Transactions

26 CFR 1.6707–1: material advisor penalty for failure to furnish information regarding reportable transactions

TD 9686

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Material Advisor Penalty for Failure to Furnish Information Regarding Reportable Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assessment of penalties against material advisors who fail to timely file a true and complete return. The regulations implement amendments made by the American Jobs Creation Act of 2004. These regulations affect material advisors responsible for disclosing reportable transactions.

DATES: *Effective Date:* These regulations are effective on July 31, 2014.

Applicability Date: For dates of applicability, see § 301.6707–1(f).

FOR FURTHER INFORMATION CONTACT: James G. Hartford at (202) 317-6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6707. On December 22, 2008, a notice of proposed rulemaking (REG–160872–04) was published in the **Federal Register** (73 FR 78254) relating to the penalty under section 6707 of the Internal Revenue Code imposed on material advisors for

failure to furnish information regarding reportable transactions (the proposed regulations). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision with revisions as discussed in this preamble.

Section 6707 was originally added to the Code by section 141(b) of the Tax Reform Act of 1984, Public Law 98–369, 98 Stat. 494 (July 18, 1984). At that time, section 6707 imposed a penalty for failing to timely register a tax shelter or for filing false or incomplete information with respect to the tax shelter registration. Section 301.6707–1T of the temporary regulations implementing the penalty was published shortly after section 6707 became law.

The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. As amended by AJCA, section 6707 imposes a penalty on a material advisor required to file a return under section 6111(a) with respect to a reportable transaction who fails to timely file such a return or who files the return with false or incomplete information. Section 6707, as amended, is effective for returns due after October 22, 2004.

In 2007, the Treasury Department and the IRS issued Rev. Proc. 2007–21, 2007–1 CB 613 (February 26, 2007), (see § 601.601(d)(2)(ii)(b)), of this chapter, to provide procedures for requesting rescission of a penalty assessed under section 6707 for failure by a material advisor to disclose a reportable transaction and under section 6707A for failure by a taxpayer to disclose a reportable transaction. For each penalty, the revenue procedure provides the deadline by which a person must request rescission; the information the person must provide in the rescission request; where the person must submit the rescission request; and the rules governing requests for additional information from the person requesting rescission. In addition, the revenue procedure sets forth the factors that weigh in favor of and against granting rescission. For example, one factor described in the revenue procedure as weighing in favor of rescission of the section 6707 penalty is filing a Form 8918,

“Material Advisor Disclosure Statement,” after the due date but before the taxpayer files a Form 8886, “Reportable Transaction Disclosure Statement,” identifying the material advisor as an advisor with respect to the transaction or before the IRS contacts the material advisor concerning the reportable transaction.

On December 22, 2008, proposed regulations implementing the penalty under section 6707 were published. The proposed regulations set forth the rules for application of the penalty under section 6707, including examples and relevant definitions such as the definition of incomplete information, false information, and when a failure is intentional so that the higher penalty with respect to listed transactions will apply. The proposed regulations also adopted the factors described in Rev. Proc. 2007–21 that will be considered when determining whether a request for rescission of a section 6707 penalty with respect to a non-listed reportable transaction will be granted. In addition, the proposed regulations generally restated the existing authority of the Secretary to prescribe procedures for requesting rescission by revenue procedure or other guidance published in the Internal Revenue Bulletin. The proposed regulations did not address the procedures for requesting rescission in Rev. Proc. 2007–21, such as the deadline, the information provided, where to submit the request, and requests for additional information.

Explanation of Revisions

These regulations remove temporary regulations § 301.6707–1T (TD 7964), 49 FR 32712, which implement section 6707 as enacted in 1984. Amendments to section 6707 made by section 816 of AJCA render temporary regulations § 301.6707–1T obsolete.

The final regulations make several substantive changes to the proposed regulations. First, a new paragraph (iii) has been added under § 301.6707–1(a)(1)(B) regarding the penalty in the case of listed transactions. This new paragraph clarifies that only one section 6707 penalty will apply in the case of a transaction that is both a listed transaction and a reportable transaction other than a listed transaction, and that the penalty that applies in these cases is the higher penalty for listed transactions

under § 301.6707-1(a)(1)(B). Section 301.6707-1(a)(1) of the final regulations has also been clarified to provide that if there is a failure with respect to more than one reportable or listed transaction, a material advisor will be subject to a separate penalty for each transaction.

In addition, § 301.6707-1(a)(2), which describes gross income derived from a transaction for purposes of determining the penalty in the case of a listed transaction, has been clarified to provide that only fees from a listed transaction for which the advisor is a material advisor are taken into account for purposes of computing the penalty. A new example 4 has been added to illustrate this clarification.

Finally, § 301.6707-1(e) of the proposed regulations is modified to provide additional guidance on rescission of the penalty under section 6707. Under Rev. Proc. 2007-21 and § 301.6707-1(e)(3)(i) of the proposed regulations, filing a Form 8918, "Material Advisor Disclosure Statement," after the due date will be a factor weighing strongly in favor of rescission unless the form is filed after the taxpayer files a Form 8886, "Reportable Transaction Disclosure Statement," identifying the material advisor as an advisor with respect to the transaction or after the IRS contacts the material advisor concerning the reportable transaction. The final regulations modify this rule to also consider whether circumstances indicate that the material advisor delayed filing the Form 8918, recognizing that the mere filing of a Form 8886 before filing the Form 8918, alone, is not indicative of whether rescission is appropriate. Accordingly, the final regulations provide that if a material advisor unintentionally failed to file a Form 8918, but then files a properly completed form with the IRS, that filing will be a factor that weighs in favor of rescission of the section 6707 penalty if the facts suggest that the material advisor did not delay filing the form until after the IRS had taken steps to identify that person as a material advisor with respect to that particular transaction. The final regulations further provide that the late filing will not weigh in favor of rescission if the facts and circumstances suggest that the material advisor delayed filing the Form 8918 until after the material advisor's client filed its Form 8886 (or successor form)

disclosing the client's participation in the particular reportable transaction.

In addition, the final regulations clarify the language of the proposed regulations in a few other ways not intended to be substantive, including clarification of examples.

Effect on Other Documents

Sections 4.04, 4.05, and 4.06 of Revenue Procedure 2007-21, relating to the factors for rescission of the section 6707 penalty, are superseded as of July 31, 2014.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. The IRS has determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received on the proposed regulations.

Drafting Information

The principal author of these regulations is James G. Hartford of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6707-1 is added to read as follows:

§ 301.6707-1 Failure to furnish information regarding reportable transactions.

(a)(1) *In general.* A material advisor who is required to file a return under section 6111(a) of the Internal Revenue Code (Code) with respect to any reportable transaction who fails to file a timely return in accordance with § 301.6111-3(e) or who files a return with false or incomplete information with respect to the reportable transaction will be subject to a penalty. A material advisor who fails to file a timely return or who files a false or incomplete return with respect to more than one reportable transaction will be subject to a separate section 6707 penalty for each transaction.

(i) *Reportable transactions.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to any reportable transaction other than a listed transaction is \$50,000.

(ii) *Listed transactions.* (A) *In general.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to a listed transaction is the greater of \$200,000 or 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(B) *Intentional action or failure.* If the failure or action subject to the penalty is with respect to a listed transaction and is intentional, the penalty is the greater of \$200,000 or 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(C) *Transaction that is both a listed transaction and reportable transaction other than a listed transaction.* In the case of a penalty imposed under section 6707 with respect to a transaction that is both a listed transaction and a reportable transaction other than a listed transaction, the penalty under this paragraph (a)(1)(ii), and not the penalty under paragraph (a)(1)(i) of this section, will apply.

(2) *Gross income derived by the material advisor.* For purposes of calculating the amount of the penalty with respect to a listed transaction, the gross income derived by the material advisor will be determined in accordance with § 301.6111-3(b)(3)(ii) of this chapter. If a person is a material advisor with regard to more than one type of listed transaction, the gross income derived from each type of listed transaction will be considered separately and will not be aggregated to determine the amount of any section 6707 penalty for failing to make a proper return under section 6111(a). Further, only gross income derived from listed transactions for which the advisor is a material advisor under section 6111 is taken into account for purposes of computing the penalty.

(b) *Definitions*—(1) *Derive.* The term “derive” is defined in § 301.6111-3(c)(3).

(2) *False information.* For purposes of this section, the term “false information: means information provided on a Form 8918, “Material Advisor Disclosure Statement” (or successor form), filed with the Internal Revenue Service (IRS) that is untrue or incorrect when the Form 8918 (or successor form) was filed. False information does not include information provided on a Form 8918 (or successor form) filed with the IRS that is immaterial or that is untrue or incorrect due to a mistake or accident after the exercise of reasonable care.

(3) *Incomplete information.* For purposes of this section, the term “incomplete information” means a Form 8918 (or successor form) filed with the IRS that does not provide the information required under § 301.6111-3(d). A Form 8918 (or successor form) filed with the IRS will not be considered incomplete when the information not provided on the form is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. Whether information is imma-

terial will be determined based upon the facts and circumstances surrounding each failure to file or filing of an incomplete return. A material advisor who completes the form to the best of the material advisor’s ability and knowledge after the exercise of reasonable effort to obtain the information will not be considered to have filed incomplete information within the meaning of this section. A Form 8918 (or successor form) will be considered to provide incomplete information when it omits information required to be provided under § 301.6111-3(d) or contains a statement that the omitted information will be provided upon request.

(4) *Intentional.* For purposes of this section, the failure to timely file a return or the submission of a return with false or incomplete information is intentional if—

(i) The material advisor knew of the obligation to file a return and knowingly did not timely file a return with the IRS; or

(ii) The material advisor filed a return knowing that it was false or incomplete.

(5) *Listed transaction.* The term “listed transaction” is defined in section 6707A(c)(2) of the Code and § 1.6011-4(b)(2) of this chapter.

(6) *Material Advisor.* The term “material advisor” is defined in section 6111(b)(1) of the Code and § 301.6111-3(b).

(7) *Reportable transaction.* The term “reportable transaction” is defined in section 6707A(c)(1) of the Code and § 1.6011-4(b)(1) of this chapter.

(c) *Assessment of penalty*—(1) *Intentional failure determined based on all the facts and circumstances.* Whether a material advisor intentionally failed to timely file a return or intentionally filed a false or incomplete return will be determined based upon all the facts and circumstances surrounding the non-filing or filing of a false and/or incomplete return. The higher penalty under the flush language of section 6707(b)(2) will not apply to any material advisor whose failure to timely file or whose furnishing of false or incomplete information was unintentional. The failure to timely file a return, or filing a return with false or incomplete information, will be considered unintentional if the material advisor subsequently files a true and complete return prior to the earlier of the date that any taxpayer files a Form 8886, “Re-

portable Transaction Disclosure Statement” (or successor form) identifying the material advisor with respect to the reportable transaction in question, or the date the IRS contacts the material advisor concerning the reportable transaction.

(2) *Individual liability in the case of more than one material advisor.* If there is more than one material advisor who is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under section 6707 may be assessed against each material advisor who fails to timely file or files a return with false or incomplete information. The determination of whether the failure or action subject to the penalty is intentional will be made individually for each material advisor.

(3) *Designation agreements.* A material advisor who is required to file a return under section 6111 and who is a party to a designation agreement within the meaning of § 301.6111-3(f) is subject to a penalty under section 6707 if the designated material advisor fails to file a return timely or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to file a return timely, or files a return with false or incomplete information, the nondesignated material advisor who is a party to the designation agreement will not be treated as intentionally failing to file the return, or intentionally filing a return with false or incomplete information, unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to file a true and complete return timely.

(d) *Examples.* The rules of paragraphs (a) through (c) of this section are illustrated by the following examples:

Example 1. Advisor A becomes a material advisor as defined under section 6111(b)(1) and § 301.6111-3(b) in the fourth quarter of 2014 with respect to a reportable transaction other than a listed transaction, and Advisor B also becomes a material advisor in the same quarter with respect to the same reportable transaction. Advisors A and B fail to timely file the Form 8918 with respect to the reportable transaction. Under paragraph (a)(1)(ii) of this section, the penalty for failure by a material advisor to timely disclose a reportable transaction other than a listed transaction is \$50,000. Because the section 6707 penalty applies to each material advisor independently under paragraph (c)(2) of this section, Advisors A and B each are subject to a section 6707 penalty of \$50,000.

Example 2. Same as *Example 1*, except that Advisor B timely files the Form 8918. Advisors A and B did not enter into a designation agreement. Accordingly, paragraph (c)(3) of this section does not apply and only Advisor A is subject to a \$50,000 section 6707 penalty.

Example 3. Advisor C becomes a material advisor to Client X on January 5, 2015, with respect to a listed transaction. Advisor C derives \$400,000 in gross income from his advice to Client X because he expects to receive that amount from Client X, even though he has not yet received that amount. On January 5, 2016, Advisor C becomes a material advisor to Client Y with respect to the same type of listed transaction. Advisor C derives \$100,000 in gross income from his advice to Client Y because he expects to receive that amount from Client Y, even though he has not yet received that amount. At no time did Advisor C file a Form 8918 to disclose the listed transaction. For purposes of this example, assume that Advisor C's failure to file a Form 8918 was unintentional. Therefore, under paragraph (c)(2) of this section, Advisor C is subject to a section 6707 penalty based on the gross income derived from Client X and Client Y. Accordingly, Advisor C is subject to a penalty of \$250,000 (50 percent of \$500,000, the gross income derived from Clients X and Y).

Example 4. Same as *Example 3*, except that the gross income Advisor C expects to receive from his advice to Client Y (a C corporation) is \$20,000. Because the material advisor fee threshold is not satisfied with respect to Client Y, Advisor C is not a material advisor to Client Y with respect to the listed transaction. Advisor C is, however, a material advisor with respect to Client X with respect to the same listed transaction. Therefore, Advisor C is subject to a section 6707 penalty with respect to the failure to timely file a Form 8918 disclosing the listed transaction. Although Advisor C provided advice with respect to two transactions that are the same type of listed transaction, Advisor C was only a material advisor with respect to advice provided to Client X. Therefore, under paragraph (c)(2) of this section Advisor C is subject to a section 6707 penalty based only on the gross income derived from Client X. Accordingly, Advisor C is subject to a penalty of \$200,000 (50 percent of \$400,000, the gross income derived from Client X).

Example 5. Same as *Example 3*, except that Advisor C files a Form 8918 disclosing the listed transaction on November 16, 2015. Because Advisor C becomes a material advisor to Client X on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 (the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with regard to the reportable transaction). See § 301.6111-3(e). Therefore, Advisor C did not timely file the Form 8918. Advisor C is subject to a \$200,000 penalty under section 6707 for his unintentional failure because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to a listed transaction that was not disclosed only included \$400,000 of gross income for advice to Client X. By the time that Advisor C provides advice to Client Y on January 5, 2016, Advisor C has disclosed the listed transaction.

Example 6. Same as *Example 3*, except that Advisor C files the Form 8918 on February 16, 2016, disclosing the listed transaction. Because Advisor C first becomes a material advisor with respect to the listed transaction on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 regardless of the fact that Advisor C is also a material advisor to a second client, Client Y, with respect to the same listed transaction. This is because under the facts of *Example 3*, Advisor C "becomes" a material advisor on January 5, 2015. The date on which a material advisor "becomes" a material advisor is determinative of the due date for the Form 8918 under § 301.6111-3(e). Therefore, when Advisor C files the Form 8918 on February 16, 2016, the form is not timely filed under section 6111. Under paragraph (c)(2) of this section, Advisor C is subject to a penalty under section 6707 of \$250,000 (50 percent of \$500,000) because, as of the date that the Form 8918 was filed, the gross income that Advisor C received or expected to receive as a material advisor with respect to a listed transaction that was not disclosed included gross income for advice to both Client X (\$400,000) and Client Y (\$100,000).

Example 7. Advisor D becomes a material advisor as defined under section 6111(b)(1) and § 301.6111-3(b) in the first quarter of 2016 with respect to a reportable transaction other than a listed transaction. Advisor D does not file a Form 8918 by April 30, 2016. The transaction is then identified as a listed transaction in published guidance on July 7, 2016. Advisor D knew that he had a new obligation to file a Form 8918 by October 31, 2016, and intentionally fails to file the Form 8918. Advisor D is subject to only one penalty, in the amount of the greater of \$200,000, or 75 percent of the gross income he derived from the transaction, for intentionally failing to disclose the listed transaction in accordance with § 301.6111-3(d)(1) and (e).

Example 8. Same as *Example 7*, except that Advisor D filed a Form 8918 disclosing the listed transaction on October 15, 2016. As a result of that disclosure, Advisor D is not subject to the section 6707 penalty amount described in § 301.6707-1(a)(1)(ii). However, because Advisor D did not timely file a Form 8918 by April 30, 2016, the due date for the Form 8918 with respect to the reportable transaction for which Advisor D became a material advisor in the first quarter of 2016, Advisor D is subject to a section 6707 penalty of \$50,000 as described in § 301.6707-1(a)(1)(i). The disclosure of the listed transaction does not correct Advisor D's initial failure to disclose the reportable transaction by April 30, 2016.

(e) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707 penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction; and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a material advisor to request rescission of a section 6707 penalty by guidance published in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The material advisor, upon becoming aware of the failure to disclose a reportable transaction in accordance with section 6111 and the regulations thereunder, filed a complete and proper, albeit untimely, Form 8918 (or successor form). This factor weighs in favor of rescission if circumstances suggest that the material advisor did not delay in filing an untimely but properly completed Form 8918 (or successor form) until after the IRS had taken steps to identify the person as a material advisor with respect to the reportable transaction. For instance, this factor will weigh strongly in favor of rescission if the material advisor files the Form 8918 (or successor form) prior to the date the IRS contacts the material advisor concerning the reportable transaction. However, this factor will not weigh in favor of rescission if the facts and circumstances indicate that the material advisor delayed filing the Form 8918 (or successor form) until after a taxpayer files a Form 8886 (or successor form) identifying the material advisor with respect to the reportable transaction in question.

(ii) The material advisor's failure to disclose the reportable transaction properly was due to an unintentional mistake of fact that existed despite the material advisor's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The material advisor has an established history of properly disclosing other

reportable transactions and complying with other tax laws, including compliance with any requests made by the IRS under section 6112, if applicable.

(iv) The material advisor demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in guidance published in the Internal Revenue Bulletin for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good

faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The presence or absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission; rather the determination will be made in consideration of all of the factors and any other facts and circumstances.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to collectability of, or liability for, the penalties (except that the Commissioner (or

the Commissioner's delegate) may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after July 31, 2014.

§ 301.6707–1T [Removed]

Par. 3. Section 301.6707–1T is removed.

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

Approved June 26, 2014.

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

(Filed by the Office of the Federal Register on July 30, 2014, 8:45 a.m., and published in the issue of the Federal Register for July 31, 2014, 79 F.R. 44282)

Part III. Administrative, Procedural, and Miscellaneous

Branded Prescription Drug Fee; Procedural and Administrative Guidance

Notice 2014-42

This notice provides guidance on the branded prescription drug fee for each fee year related to (1) the submission of Form 8947, “Report of Branded Prescription Drug Information,” (2) the time and manner for notifying covered entities of their preliminary fee calculation, (3) the time and manner for submitting error reports for the dispute resolution process, and (4) the time for notifying covered entities of their final fee calculation.

Background

An annual fee on covered entities engaged in the business of manufacturing or importing branded prescription drugs is imposed by § 9008 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), as amended by § 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively the ACA).

The Branded Prescription Drug Fee Regulations in 26 C.F.R. Part 51, which were published on July 28, 2014, (TD 9684, 79 FR 43631) provide the method by which each covered entity’s annual fee is calculated. These regulations also define terms for the administration of the fee. As relevant for this notice, § 51.2(g) defines *fee year* as the calendar year in which the fee for a particular sales year must be paid and § 51.2(m) defines *sales year* as the second calendar year preceding the fee year.

Section 51.3 provides that annually, each covered entity may submit a completed Form 8947, “Report of Branded Prescription Drug Information,” in accordance with the instructions for the form. Generally, the form solicits information from covered entities on National Drug Codes, orphan drugs, designated entities, rebates, and other information specified by the form or its instructions. The form is to be filed by the date prescribed in guidance published in the Internal Revenue Bulletin.

Section 51.6 provides that for each sales year the Internal Revenue Service (IRS) will make a preliminary fee calculation for each covered entity and will notify each covered entity of this calculation by the date prescribed in guidance published in the Internal Revenue Bulletin. This notification will also include additional prescribed information. As used in this notice, “notice of preliminary fee calculation” includes the additional prescribed information.

Section 51.7 provides that upon receipt of its preliminary fee calculation, each covered entity will have an opportunity to dispute this calculation by submitting to the IRS an error report with prescribed information. Section 51.7(b) sets out the information that a covered entity must submit to support each asserted error. Section 51.7(c) provides that each covered entity must submit its error report(s) in the form and manner that is prescribed in guidance published in the Internal Revenue Bulletin. This guidance will also prescribe the date by which each covered entity must submit its report(s).

Section 51.8 provides that the IRS will send each covered entity its final fee calculation no later than August 31 of each fee year and also provides that covered entities must pay their fee by September 30 of the fee year.

Section 7503 of the Internal Revenue Code provides that if the last day for performing an act required under the authority of the internal revenue laws falls on a Saturday, Sunday, or legal holiday, the performance of the act is timely if the act is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Section 9008(f)(1) of the ACA and § 51.9(a) treat this annual fee as an excise tax for purposes of subtitle F of the Code. Therefore, § 7503 applies to acts required to be performed under § 9008. Accordingly, if a date prescribed in this notice falls on a Saturday, Sunday, or legal holiday, a covered entity’s performance of an act by this date is timely if the covered entity performs the act on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

Submission of Form 8947

For each fee year, a covered entity that chooses to submit Form 8947 reporting information for the sales year must file the form by November 1 of the preceding year. For example, for the 2015 fee year, a covered entity must submit its Form 8947 reporting information for the 2013 sales year by Monday, November 3, 2014 (after applying § 7503).

A covered entity may submit its Form 8947 by mail or using e-file. Before using e-file, a covered entity must first: (1) successfully register with IRS e-services; (2) successfully complete the e-file application; and (3) receive an e-file acceptance letter (5120C letter) that contains an Electronic Filing Identification Number (EFIN) and an Electronic Transmitter Identification Number (ETIN). A covered entity must also file Form 8453-R, Declaration and Signature for Electronic Filing of Forms 8947 and 8963. The IRS provides instructions regarding e-file on the dedicated ACA e-file webpage at <http://www.irs.gov/uac/e-file-Affordable-Care-Act-Information-Reports>. A covered entity may also contact the IRS e-Help Desk at 1-866-937-4130 (Monday through Friday from 6:30 am to 6:00 pm (CST)).

Time and manner for notifying covered entities of their preliminary fee calculation

The IRS will mail each covered entity a paper notice of its preliminary fee calculation by March 1 of each fee year. This mailing will include a National Drug Code attachment (NDC attachment) that lists the covered entity’s National Drug Codes and the sales data reported to the IRS by each government program pursuant to § 51.4.

A covered entity may request that the IRS send an electronic copy of the NDC attachment on a separate CD-ROM in Microsoft Excel format or other electronic format the IRS may designate in the future. The covered entity must submit a request by February 15 of each fee year by telephone, email, or fax as indicated in the *Contact Information* section of this notice. If a covered entity makes this request

timely, the IRS will mail the covered entity its notice of preliminary fee calculation and the NDC attachment on paper as well as send the electronic version of the NDC attachment by March 1 of each fee year.

Time and manner for submitting error reports for the dispute resolution process

A covered entity that chooses to submit an error report regarding its preliminary fee calculation must mail the error report by May 15 of each fee year.

When the IRS mails each covered entity a notice of its preliminary fee calculation by March 1 of each fee year, the IRS will also send each covered entity a template that the covered entity must use to prepare its error report. The IRS will send this template on a separate CD-ROM in Microsoft Excel format or other electronic format the IRS may designate in the future. All completed templates and the supporting documentation must be submitted on a CD-ROM in Microsoft Excel format or other electronic format designated by the IRS and sent to:

Department of the Treasury
Internal Revenue Service – Branded
Prescription Drug Fee
1973 N. Rulon White Boulevard, Mail
Stop 4916
Ogden, UT 84404

Notice of Final Fee Calculation

In accordance with § 51.8(a), the IRS will notify each covered entity of its final fee calculation by August 31 of each fee year. The IRS will mail a notice of final fee calculation and a final NDC attachment on paper. If, for purposes of the preliminary fee notification, a covered entity timely requested that the IRS send an electronic copy of the NDC attachment on a separate CD-ROM or other electronic format, the IRS will also send an electronic copy of the final NDC attachment on a separate CD-ROM or other electronic format. In accordance with § 51.8(c), each covered entity must pay this fee by September 30 of each fee year.

Contact Information

A covered entity may contact the IRS regarding the branded prescription drug fee by: (1) leaving a voice mail message in the BPD Mailbox at (908) 301-2118 (not a toll free call); (2) sending an email to *it.bpd.fee@irs.gov*; or (3) sending a fax toll free to (877) 797-0234.

Effective/Applicability Date

This Notice is effective on August 11, 2014, and applies on October 1, 2014 and thereafter.

Effect on Other Documents

Notice 2013–51, 2013–34 I.R.B. 153, which provides guidance for the 2014 fee year, is obsolete as of October 1, 2014.

Drafting Information

The principal author of this notice is Celia Gabrysh of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Celia Gabrysh at (202) 317-6855 (not a toll-free number).

Foreign tax credit guidance under section 901(m)

Notice 2014–45

On July 21, 2014, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) released Notice 2014–44, to be published in IRB 2014–32 on August 11, 2014, which describes regulations that the IRS and the Treasury Department will issue to address the application of section 901(m) to dispositions of assets following covered asset acquisitions. Notice 2014–44 states that those regulations will generally apply to dispositions that occur on or after, and any Unallocated Basis Difference (as that term is defined in Notice 2014–44) with respect to a relevant foreign asset as of, July 21, 2014.

In order to prevent abuse, the regulations described in Notice 2014–44 will also apply to determine the tax consequences under section 901(m) of an entity classification election made under

§ 301.7701–3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, including whether a disposition results from the election for purposes of section 901(m) and the treatment of any Unallocated Basis Difference that results from such an election.

DRAFTING INFORMATION

The principal author of this notice is Jeffrey L. Parry, of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Mr. Parry at (202) 317-6936 (not a toll-free number).

26 CFR § 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part 1, § 1091)

Rev. Proc. 2014–45

SECTION 1. PURPOSE

This revenue procedure describes the circumstances in which the Internal Revenue Service (Service) will not treat a redemption of shares in a money market fund (MMF) as part of a wash sale for purposes of section 1091 of the Internal Revenue Code. This revenue procedure responds to Securities and Exchange Commission (SEC) rules that change how certain MMF shares are priced. See Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 33–9616, Investment Advisers Act Release No. IA–3879, Investment Company Act Release No. IC–31166, Financial Reporting Codification No. FR–84 (SEC MMF Reform Rules). As described in section 2.03 of this revenue procedure, the Service previously published Notice 2013–48, 2013–31 I.R.B. 120, proposing a revenue procedure that would have excepted from the wash sale rules certain *de minimis* losses realized in redemptions of MMF shares. This revenue procedure includes revisions responding to comments received regarding that proposal.

SECTION 2. BACKGROUND

.01 Money Market Funds

(1) An MMF is a type of investment company registered under the Investment Company Act of 1940 (1940 Act) and regulated as an MMF under Rule 2a-7 under the 1940 Act (17 CFR § 270.2a-7). Unlike other types of mutual funds, MMFs have historically sought to keep stable (typically at \$1.00) the prices at which their shares are distributed, redeemed, and repurchased.

(2) To hold itself out to investors as an MMF, an investment company must meet the requirements specified in Rule 2a-7, which, among other things, establishes limitations as to the maturity, quality, diversification, and liquidity of an MMF's investments. Generally, an MMF must hold a diversified portfolio of short-term, low-risk, liquid securities. The securities that an MMF holds generally result in no more than minimal fluctuations in the MMF's net asset value per share (NAV).

(3) Until the SEC MMF Reform Rules change how certain MMFs price their shares, Rule 2a-7 permits any MMF meeting the other requirements of Rule 2a-7 to compute its price per share for purposes of distribution, redemption, and repurchase by using either or both of (a) the amortized cost method of valuation, and (b) the penny-rounding method of pricing. Under the amortized cost method, an MMF's NAV is determined by valuing the fund's portfolio securities at their acquisition cost, adjusted for amortization of premium or accretion of discount. Under the penny-rounding method, an MMF's NAV is rounded to the nearest one percent in computing the price per share for purposes of distribution, redemption, and repurchase. These methods have enabled MMFs to maintain constant share prices except in situations in which the "deviation [of the current net asset value per share calculated using available market quotations] from the money market fund's amortized cost price per share exceeds 1/2 of 1 per-

cent" (commonly called "breaking the buck"). 17 CFR § 270.2a-7(c)(8)(ii)(B).

(4) The perceived safety and simplicity of MMFs have led to their widespread use for cash management purposes. It is therefore common for investors to purchase and redeem MMF shares frequently. An MMF is often used as an account into which, or from which, cash is automatically deposited, or withdrawn, on a daily basis (commonly referred to as a sweep arrangement). MMFs generally declare dividends daily and distribute them monthly. MMF shareholders typically reinvest these distributions automatically in the MMF.

(5) In June 2013, the SEC proposed rules that would change how certain MMF shares are priced. *See* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 33-9408, Investment Advisors Act Release No. IA-3616, Investment Company Act Release No. IC-30551, 78 FR 36834 (June 19, 2013) (SEC MMF Reform Proposal). The SEC MMF Reform Rules adopt the general approach of the SEC MMF Reform Proposal, but include various modifications in response to comments and combine the two principal reform alternatives.¹ The SEC MMF Reform Rules generally bar the use of the amortized cost method of valuation and the use of the penny-rounding method of pricing, except by government MMFs and retail MMFs.² In the case of an MMF that is neither a government MMF nor a retail MMF, the SEC MMF Reform Rules require the MMF to value its portfolio securities using market-based factors and to "compute its price per share for purposes of distribution, redemption and repurchase by rounding the fund's current net asset value per share to a minimum of the fourth decimal place in the case of a fund with a \$1.0000 share price or an equivalent or more precise level of accuracy for money market funds with a different share price (e.g. \$10.000 per share, or \$100.00 per share)." *Id.* § 270.2a-7(c)(1)(ii). (This

method of computing the price per share is referred to hereafter as "basis point rounding.")³

(6) An MMF that uses market factors to value its securities and uses basis point rounding to price its shares for purposes of distribution, redemption, and repurchase (floating-NAV MMF) has a share price that is expected to change regularly, or "float." Floating-NAV MMFs therefore resemble in some respects other mutual funds that are not MMFs, but they remain subject to the risk-limiting conditions in Rule 2a-7 and are expected to continue to fulfill MMFs' unique role.

(7) Stable share prices simplify the taxation of transactions in MMF shares because a shareholder does not realize gain or loss when a share is redeemed for an amount equal to its basis. Shareholders typically will realize gain or loss, however, on redemptions of floating-NAV MMF shares. In certain circumstances, a loss realized on the redemption of an MMF share may implicate the wash sale rules of section 1091, as discussed in section 2.02 of this revenue procedure.

(8) The Treasury Department and the Service have proposed regulations to simplify the recognition of gain or loss on floating-NAV MMF shares. Shareholders of floating-NAV MMFs may rely on the proposed regulations before final regulations are issued. *See* § 1.446-7 of the proposed Income Tax Regulations. Under the permissible method of accounting described in those proposed regulations, aggregate gain or loss is determined for each computation period, and no gain or loss is determined for any particular redemption of a taxpayer's shares in a floating-NAV MMF. Without a determination of loss, a particular redemption does not implicate the wash sale rules. If a shareholder of a floating-NAV MMF, however, does not use this method of accounting, then that shareholder will typically experience frequent wash sales. This revenue procedure provides relief for such a shareholder.

¹These alternatives were Floating Net Asset Value and Standby Liquidity Fees and Gates. *See* SEC MMF Reform Proposal at 36849 and 36878. The proposal included a number of other possibilities, including a combination of these two.

²A government MMF is an MMF that "invests 99.5 percent or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully." SEC MMF Reform Rules, § 270.2a-7(a)(16). A retail MMF is an MMF that "has policies and procedures reasonably designed to limit all beneficial owners of the fund to natural persons." *Id.* § 270.2a-7(a)(25).

³The SEC has also amended Rule 2a-7 to require every MMF to disclose daily the fund's current NAV rounded to the nearest basis point, but government and retail MMFs are not required to use basis point rounding to distribute, redeem, and repurchase shares.

(9) Sections 6045, 6045A, and 6045B establish certain reporting requirements relating to securities. Each of those sections has an exception for an MMF (or shares in an MMF) that “computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.” §§ 1.6045-1(c)(3)(vi), 1.6045A-1(a)(1)(v), and 1.6045B-1(a)(5) of the Income Tax Regulations. The Treasury Department and the Service have proposed regulations to clarify that these exceptions apply to all MMFs, including floating-NAV MMFs. See § 1.6045-1(c)(3)(vi) of the proposed Income Tax Regulations.

.02 Wash Sale Rules

(1) Section 1091(a) disallows a loss realized by a taxpayer on a sale or other disposition of shares of stock or securities if, within a period beginning 30 days before and ending 30 days after the date of such sale or disposition, the taxpayer acquires (by purchase or by an exchange on which the entire amount of gain or loss is recognized by law), or enters into a contract or option to so acquire, substantially identical stock or securities (unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business).

(2) If a taxpayer acquired property and that acquisition resulted in the nondeductibility of a loss under section 1091(a), then under section 1091(d), the taxpayer’s basis in the property so acquired equals the basis of the stock or securities disposed of at a loss, increased or decreased to take into account any difference between the price at which the replacement property was acquired and the price at which the original stock or securities were disposed of.

(3) A shareholder that redeems shares in a floating-NAV MMF may realize a loss on the redemption. Moreover, be-

cause many MMF shareholders engage in frequent purchases of MMF shares (including purchases made as a result of sweep arrangements and reinvestments of monthly distributions), a shareholder that realizes a loss on a redemption of MMF shares will often acquire shares in that MMF within 30 days before or after the redemption.

(4) Redemptions of shares of MMFs, which are expected to have relatively stable values even when share prices float, do not give rise to the concern that section 1091 is meant to address. Moreover, given the expected volume of transactions in floating-NAV MMF shares, tracking wash sales of MMF shares will present shareholders of floating-NAV MMFs with significant practical challenges.

.03 Notice 2013-48

(1) The Service published Notice 2013-48 on July 29, 2013, in response to the SEC MMF Reform Proposal. The notice proposed a revenue procedure providing that the Service would not treat a loss realized upon a redemption of a floating-NAV MMF share as subject to the wash sale rules if the amount of the loss was not more than one half of one percent of the taxpayer’s basis in that share.

(2) The Service received comments indicating that the proposed revenue procedure would not significantly reduce the tax compliance burdens associated with applying the wash sale rules to floating-NAV MMFs, because shareholders would still have to track wash sales to determine whether the amount of the wash sale exceeds the 0.5% *de minimis* test. The commenters suggested that MMFs are not the type of investment with which the wash sale rules are concerned because investors do not have any expectation of capital appreciation. As a result, the commenters requested that floating-NAV MMFs be exempted entirely from the wash sale rules in section 1091.

(3) Because of the expectation that values of floating-NAV MMFs will be relatively stable and because of the adminis-

trative burdens associated with applying section 1091 to shares in floating-NAV MMFs, it is in the interest of sound tax administration for the Service not to treat a redemption of a floating-NAV MMF share as part of a wash sale under section 1091.

SECTION 3. SCOPE

This revenue procedure applies to a redemption of one or more shares in an investment company registered under the 1940 Act if—

.01 The investment company is regulated as an MMF under Rule 2a-7 and holds itself out to investors as an MMF; and

.02 At the time of the redemption, the investment company is a floating-NAV MMF.

SECTION 4. APPLICATION

If a redemption is within the scope of section 3 of this revenue procedure and results in a loss, the Service will not treat the redemption as part of a wash sale. Therefore, section 1091(a) will not disallow the deduction for the resulting loss in the year realized and section 1091(d) will not cause the basis of any property to be determined by reference to the basis of the redeemed shares.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for redemptions on or after the effective date of the SEC MMF Reform Rules (which is 60 days after August 14, 2014, the date that they were published in the Federal Register).

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jason Kurth of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Kurth at (202) 317-6842 (not a toll free number).

Part IV. Items of General Interest

This announcement updates the list of waiver countries for tax year 2013 provided in Rev. Proc. 2014-25.

Announcement 2014-28

This announcement updates the list of foreign countries for which the eligibility requirements of section 911(d)(1) are waived in Rev. Proc. 2014-25.

Rev. Proc. 2014-25, 2014-15 I.R.B. 927, provides guidance to any individual who fails to meet the eligibility requirements of section 911(d)(1) of the Internal Revenue Code because adverse conditions in a foreign country preclude the individual from meeting those requirements. Section 3.04 of Rev. Proc. 2014-25 provides a current list of foreign countries and the departure dates for those countries for which the eligibility requirements of section 911(d)(1) are waived. The list of foreign countries is incomplete. The following country and departure date is added:

	<i>Date of Departure</i>
<i>Country</i>	<i>On or after</i>
South Sudan	December 17, 2013

The principal author of this announcement is Kate Y. Hwa of the Office of Associate Chief Counsel (International). For further information regarding this announcement contact Kate Y. Hwa at (202) 317-6934 (not a toll-free number).

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations Segregation Rule Effective Date

REG-105067-14

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations that modify the effective date provision of recently published final regulations under Section 382 of the Internal Revenue Code. The temporary regulations affect corporations whose stock is or was acquired by the Department of the Treasury (Treasury) pursuant to certain programs under the Emergency Economic Stabilization Act of 2008 (EESA). The text of those temporary regulations published in this issue of the **Bulletin** also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be submitted by September 2, 2014.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-105067-14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-105067-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-105067-14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 317-5353; concerning submission of comments and requests for a public hearing, Oluwafumnilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend 26 CFR Part 1. The temporary regulations modify the effective date provision for TD 9638 [78 FR 62418], published on October 22, 2013,

which provided final regulations that altered the operation of certain of the public group segregation rules under section 382. The temporary regulations apply to stock acquired by Treasury pursuant to certain programs under EESA (Programs). In particular, the temporary regulations apply to the subsequent sale by Treasury of that stock. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, if the regulations apply to any small entities, the effect will not be to increase their tax liability, but to prevent a potential increase in tax liability that might otherwise occur. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic copies that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled,

notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting information

The principal author of these regulations is Stephen R. Cleary, Office of Associate Chief Counsel (Corporate). 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 1.382-3 also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

Par. 2. Section 1.382-3 is amended by revising paragraph (j)(17) to read as follows:

*§ 1.382-3 Definitions and Rules
Relating to a 5-percent Shareholder.*

* * * * *

(j) * * *

(17) *Effective/applicability date.* [The text of the proposed amendment to § 1.382-3(j)(17) is the same as the text of § 1.382-3T(j)(17) 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 July 30, 2014, 8:45 a.m., and published in the issue of the Federal Register for July 31, 2014, 79 F.R. 44324)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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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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