

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

Notice 2014-69, page 903.

Group Health Plans that Fail to Cover In-Patient Hospitalization Services. The IRS, the Treasury Department, and the Department of Health and Human Services plan to publish proposed regulations providing that employer-sponsored health plans that fail to provide substantial coverage for in-patient hospitalization or physician services do not provide minimum value within the meaning of Code § 36B. Employers offering these plans should exercise caution in relying on the Minimum Value Calculator for any portion of a taxable year after publication of final regulations to demonstrate that the plans provide minimum value.

T.D. 9700, page 897.

Final regulations clarify the regulations under section 312 regarding the allocation of earnings and profits in tax-free transfers from one corporation to another and modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets.

T.D. 9702, page 899.

These final regulations provide clarification regarding the determination of the basis of stock or securities in certain reorganizations where no stock or securities of the issuing corporation is issued and distributed in the transaction. These final regulations clarify that only a shareholder that owns actual shares in the issuing corporation in such a reorganization can designate the actual share of stock of the issuing corporation to which the basis, if any, of the stock or securities surrendered will attach.

EMPLOYEE PLANS

Announcement 2014-32, page 907.

This announcement is a follow-up to Announcement 2014-15, 2014-16 I.R.B. 973, addressing the application to Individual Retirement Accounts and Individual Retirement Annuities (collectively, "IRAs") of the one-rollover-per-year limitation of § 408(d)(3)(B) of the Internal Revenue Code.

Notice 2014-70, page 905.

This notice sets forth certain cost-of-living adjustments effective January 1, 2015, applicable to the dollar limitations on benefits and contributions under qualified retirement plans. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made pursuant to adjustment procedures which are similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act. This notice also contains cost-of-living adjustments for several pension-related amounts in restating the data in IR-2014-99 issued October 23, 2014.

Finding Lists begin on page ii.
Index for July through November 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 312.—Effect on earnings and profits

Section 381.—Carryovers in certain corporate acquisitions

26 CFR 1.312–11: *Effect on earnings and profits of certain other tax-free exchanges, tax-free distributions, and tax-free transfers from one corporation to another.*

26 CFR 1.381(a)–1: *General rule relating to carryovers in certain corporate acquisitions.*

26 CFR 1.381(c)(2)–1: *Earnings and profits.*

T.D. 9700

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Allocation of Earnings and Profits in Tax-Free Transfers from One Corporation to Another; Acquiring Corporation for Purposes of Section 381

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 312 of the Internal Revenue Code (Code) that clarify the regulations under section 312 regarding the allocation of earnings and profits in tax-free transfers from one corporation to another. These regulations affect corporations involved in these transfers and their shareholders. This document also contains final regulations under section 381 of the Code that modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. These regulations affect corporations that acquire the assets of other corporations in corporate reorganizations.

DATES: *Effective Date:* These regulations are effective on November 10, 2014.

Applicability Date: These regulations apply to transactions occurring on or after November 10, 2014.

FOR FURTHER INFORMATION CONTACT: Stephanie D. Floyd at (202) 317-6848 or Isaac W. Zimbalist at (202) 317-6847 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 312 and section 381 of the Code. On April 16, 2012, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–141268–11) in the **Federal Register** (77 FR 22515) containing proposed regulations under section 312 (proposed section 312 regulations) to clarify § 1.312–11 regarding the allocation of earnings and profits in nonrecognition transfers of property from one corporation to another. The proposed section 312 regulations provided that, in a transfer described in section 381(a) (section 381 transaction), the acquiring corporation, as defined in § 1.381(a)–1(b)(2), would succeed to the earnings and profits of the distributor or transferor corporation. For example, in a reorganization under section 368(a)(1) by reason of section 368(a)(2)(C), if the transferee corporation that directly acquires a transferor corporation's assets transferred some, but not all, of the acquired assets to a controlled subsidiary, the transferee corporation (the acquiring corporation under § 1.381(a)–1(b)(2)) would succeed to the transferor corporation's earnings and profits. However, if the transferee corporation instead transferred all of the acquired assets to a controlled subsidiary, then the controlled subsidiary (the acquiring corporation under § 1.381(a)–1(b)(2)) would succeed to the transferor corporation's earnings and profits.

Comments responding to the proposed section 312 regulations were received, but no public hearing was re-

quested or held. In response to the comments received on the proposed section 312 regulations, on May 7, 2014, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–131239–13) in the **Federal Register** (79 FR 26190) containing proposed regulations under section 381 (proposed section 381 regulations) to modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. As discussed in the preamble to the proposed section 381 regulations, commenters generally welcomed the apparent certainty provided by the proposed section 312 regulations regarding the location of the transferor corporation's earnings and profits. However, commenters suggested that this certainty was illusory because the existing definition of "acquiring corporation" under § 1.381(a)–1(b)(2) focused on whether the direct transferee corporation in a reorganization further transferred *all* of the assets it received in the section 381 transaction. Thus, commenters suggested that the existing regulations under section 381 should be revised to limit the degree of electivity regarding the identity of the acquiring corporation, as well as the uncertainty regarding whether *all* of the assets transferred in the section 381 transaction were further transferred to a single controlled corporation.

The proposed section 381 regulations provided greater certainty regarding the identity of the acquiring corporation by providing that, in a transaction described in section 381(a)(2), the term *acquiring corporation* means the corporation that directly acquired the assets transferred by the transferor corporation, even if the direct transferee corporation ultimately retained none of the assets so transferred. As discussed in the preamble to the proposed section 381 regulations, the IRS and the Treasury Department believe that this rule is appropriate with respect to determining the location of the earnings and profits (as well as other tax attributes) of a transferor corporation because it generally maintains

such earnings and profits at the corporation closest to the transferor corporation's former shareholders in a manner that minimizes electivity and administrative burden. No comments were received in response to the proposed section 381 regulations, and no public hearing was requested or held.

Explanation of Provisions

The proposed section 381 regulations are adopted without substantive change by this Treasury decision. Because the proposed section 312 regulations merely cross-reference the section 381 regulations, this Treasury decision also adopts the proposed section 312 regulations without substantive change.

However, these final regulations make a clarifying, non-substantive change to the proposed section 312 regulations. The proposed section 312 regulations provided that “[e]xcept as provided in § 1.312–10, in all other cases in which property is transferred from one corporation to another and no gain or loss is recognized (or is recognized only to the extent of the property received other than that permitted to be received without the recognition of gain), no allocation of the earnings and profits of the transferor is made to the transferee.” These final regulations remove the language “and no gain or loss is recognized (or is recognized only to the extent of the property received other than that permitted to be received without the recognition of gain).” The IRS and the Treasury Department believe this language may inappropriately imply that allocation of earnings and profits may be permitted in cases in which gain not expressly described is recognized on the transfer of property between corporations (for example, gain required to be recognized under section 367 or 1001). This clarifying, non-substantive change confirms that except as provided in § 1.312–10, in all other cases in which property is transferred from one corporation to another, no allocation of earnings and profits is made.

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 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 these 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 Code, the notices of proposed rulemaking that preceded these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.312–11 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1.312–11 Effect on earnings and profits of certain other tax-free exchanges, tax-free distributions, and tax-free transfers from one corporation to another.

(a) In a transfer described in section 381(a), the acquiring corporation, as defined in § 1.381(a)–1(b)(2), and only that corporation, succeeds to the earnings and profits of the distributor or transferor corporation (within the meaning of § 1.381(a)–1(a)). Except as provided in

§ 1.312–10, in all other cases in which property is transferred from one corporation to another, no allocation of the earnings and profits of the transferor is made to the transferee.

* * * * *

(e) *Effective/applicability date.* Paragraph (a) of this section applies to transactions occurring on or after November 10, 2014.

Par. 3. Section 1.381(a)–1 is amended by:

a. Removing the third, fourth, and fifth sentences of paragraph (b)(2)(i) and adding one sentence in their place.

b. Removing from the last sentence of paragraph (b)(2)(ii) *Example 2* “Y” and adding “X” in its place.

c. Redesignating paragraph (b)(3)(i) as paragraph (b)(3).

d. Removing paragraph (b)(3)(ii).

e. Adding a sentence at the end of paragraph (e).

The additions read as follows:

§ 1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(2) * * * (i) * * * In a transaction to which section 381(a)(2) applies, the acquiring corporation is the corporation that, pursuant to the plan of reorganization, directly acquires the assets transferred by the transferor corporation, even if that corporation ultimately retains none of the assets so transferred.

* * * * *

(e) * * * The last sentence of paragraph (b)(2)(i) of this section and *Example 2* of paragraph (b)(2)(ii) of this section apply to transactions occurring on or after November 10, 2014.

§ 1.381(c)(2)–1 [Amended]

Par. 4. Section 1.381(c)(2)–1 is amended by removing paragraph (d).

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

Approved: October 17, 2014

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

(Filed by the Office of the Federal Register on November 7, 2014, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2014, 79 F.R. 66616)

Section 358.—Basis to distributees

26 CFR 1.358–2: Allocation of basis among nonrecognition property.

T.D. 9702

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Allocation of Basis in All Cash D Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding the determination of the basis of stock or securities in certain reorganizations where no stock or securities of the issuing corporation is issued and distributed in the transaction. These final regulations clarify that only a shareholder that owns actual shares in the issuing corporation in such a reorganization can designate the actual share of stock of the issuing corporation to which the basis, if any, of the stock or securities surrendered will attach. These regulations affect corporations engaging in such transactions and their shareholders.

DATE: *Effective Date*: These regulations are effective on November 12, 2014.

FOR FURTHER INFORMATION
CONTACT: Michael R. Gould, (202) 317-5363, or Kevin M. Jacobs, (202) 317-5024 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. Introduction

This Treasury Decision contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under section 358(a) of the Internal Revenue Code (Code). In the case of certain reorganizations under section 368, section 358(a) and the regulations thereunder provide, in part, rules for determining a taxpayer's basis in stock or securities of an issuing corporation received without the recognition of gain or loss (permitted property), as well as rules relating to the basis of other property received in the reorganization. These final regulations clarify the rules under section 358(a) regarding the allocation of stock basis in a transaction that qualifies as a reorganization under section 368(a)(1)(D) (D reorganization) in which no permitted property is actually issued (All Cash D reorganization).

2. D Reorganizations Generally

Section 368(a)(1)(D) provides, in part, that a reorganization includes a transfer by a corporation (transferor corporation) of all or a part of its assets to another corporation (issuing corporation) if, immediately after the transfer, the transferor corporation or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the issuing corporation, but only if, in pursuance of the plan, stock or securities of the issuing corporation are distributed under section 354, 355, or 356.

Under section 354(a)(1), a shareholder or security holder of the transferor corporation generally recognizes no gain or loss if the shareholder or security holder exchanges stock or securities of the transferor corporation, in pursuance of the plan of reorganization, solely for permitted property. Section 354(b)(1) provides that section 354(a)(1) is inapplicable to a D reorganization unless the issuing corporation acquires substantially all of the assets of the transferor corporation, and the stock, securities, and other properties received by the transferor corporation, as

well as the other properties of the transferor corporation, are distributed in pursuance of the plan of reorganization. Further, section 356 provides, in part, that if section 354 would apply to an exchange but for the fact that property other than permitted property is also received, the recipient recognizes gain, but not in excess of the amount of money and fair market value of such other property.

3. All Cash D Reorganizations

On December 18, 2009, the IRS and the Treasury Department published final regulations (TD 9475) in the **Federal Register** (74 FR 67053) (2009 regulations) providing that the distribution requirement of section 368(a)(1)(D) and 354(b)(1)(B) is satisfied in the case of an All Cash D reorganization even though there is no actual distribution of permitted property by the transferor corporation, provided the same person(s) own, directly or indirectly, all of the stock of the transferor and issuing corporations in identical proportions. See § 1.368–2(l)(2)(i). In such cases, assuming a value-for-value exchange between the transferor and issuing corporations, the issuing corporation is deemed to issue a nominal share of its stock in addition to the actual consideration exchanged for the transferor corporation's assets. If the issuing corporation provides the transferor corporation with no consideration or consideration having a value less than the transferor corporation's assets (bargain exchange), the issuing corporation is treated as issuing shares of its stock having a value necessary to result in a value-for-value exchange. The rules of § 1.368–2(l) further provide that all stock treated as issued, or deemed issued, by the issuing corporation to the transferor corporation is then deemed distributed by the transferor corporation to its shareholders and, if appropriate, further transferred through chains of ownership to the extent necessary to reflect the actual ownership of the transferor and issuing corporations.

The 2009 regulations also amended the regulations under § 1.358–2(a)(2)(iii). Prior to being amended by the 2009 regulations, these regulations provided a two-step rule under section 358 for allocating the basis of stock or securities of a trans-

feror corporation surrendered as a result of a bargain exchange by a shareholder or security holder (bargain exchange basis rule). First, a shareholder or security holder was generally treated as receiving the consideration actually received in the transaction and an amount of stock of the issuing corporation having a value equal to the difference in value between the stock or securities surrendered in the transaction and the consideration actually received. Second, the shareholder or security holder was treated as surrendering all of its stock and securities that it actually owned and was treated as owning of the issuing corporation in a reorganization under section 368(a)(1)(E) in exchange for the shares of stock and securities of the issuing corporation actually held immediately after the transaction.

The 2009 regulations added a new sentence after the bargain exchange basis rule that permitted a shareholder that was deemed to have received a nominal share of issuing corporation stock under § 1.368-2(l) to, after adjusting the basis of the nominal share under the rules of §§ 1.358-1 and 1.358-2, designate a share of the issuing corporation's stock to which the basis, if any, of the nominal share would attach (nominal share basis designation rule).

4. Temporary Regulations

On November 21, 2011, the IRS and the Treasury Department published temporary regulations (TD 9558) in the **Federal Register** (76 FR 71878) to amend § 1.358-2(a)(2)(iii) of the 2009 regulations in response to an inappropriate interpretation of those rules. Certain taxpayers had taken the position that a shareholder of a transferor corporation who did not own any actual shares of an issuing corporation's stock immediately after the section 354 or section 356 exchange in a value-for-value All Cash D reorganization was permitted to designate another person's share of the issuing corporation's stock as the share to which the nominal share's basis could attach. For example, assume that corporation P owns all of the stock of corporations S1 and S2, and that S1 owns all of the stock of corporation S3. If S3 (the transferor corporation) transfers to S2 all of its assets (sub-

ject to liabilities) having a value of \$100x in exchange for \$100x of cash, S2 (the issuing corporation) would be deemed to issue a nominal share of its stock to S3 under § 1.368-2(l)(2), provided the transaction otherwise qualified as a D reorganization. S3 would then be deemed to distribute the nominal S2 share to S1 in the section 356 exchange. Because S1 received a nominal S2 share but did not actually own any S2 stock, § 1.368-2(l)(2) would require that the nominal S2 share be treated as distributed by S1 to P to reflect the actual ownership of S2 and P's basis in the nominal share would be its fair market value under section 301(d). In an attempt to avoid this result under similar circumstances, certain taxpayers took the position that S1 was permitted to, after allocating the basis of its S3 stock to the nominal S2 share under the rules of §§ 1.358-1 and 1.358-2, designate a share of S2 stock that was actually held by P to which S1's basis in the nominal S2 share would attach. These taxpayers further took the position that such designation and allocation could occur immediately before the nominal S2 share was deemed (under § 1.368-2(l)) to be further transferred through the chain of ownership to reflect the actual ownership of S3 and S2.

Under this interpretation, any built-in loss in the shares of transferor corporation stock (which the 2009 regulations allocated to the nominal share of issuing corporation stock) would be preserved even if a direct shareholder of the transferor corporation did not directly own stock of the issuing corporation. Taxpayers could thus avoid losing the built-in loss in the nominal share, which may have occurred as a result of the deemed transfer(s) of the nominal share through the chains of ownership to the actual shareholder(s) of the issuing corporation. In addition, the actual shareholder could then sell the share of the issuing corporation's stock to which the nominal share's basis was allocated and recognize a loss or a reduced amount of gain.

The IRS and the Treasury Department did not intend for the nominal share basis designation rule of the 2009 regulations to allow such an inappropriate allocation of basis and do not believe the 2009 regulations have ever supported such an alloca-

tion. The temporary regulations therefore clarified the application of the nominal share basis designation rule of the 2009 regulations. Specifically, the temporary regulations provided that, using the facts of the example described earlier in this section, because P (an actual shareholder of S2 (the issuing corporation)) is deemed to receive a nominal share of S2 stock described in § 1.368-2(l), P must, after allocating and adjusting the basis of the nominal S2 share in accordance with the rules of §§ 1.358-1 and 1.358-2, and after adjusting the basis in the nominal S2 share for any transfers described in § 1.368-2(l) (that is the transfer from S3 to S1 and from S1 to P), designate the share of S2 stock actually held by P to which the basis, if any, of the nominal S2 share will attach. The purpose of the temporary regulations was to clarify that only a shareholder that owned actual shares of the issuing corporation's stock immediately after a value-for-value All Cash D reorganization could designate one of its actual shares of the issuing corporation's stock to which the nominal share's basis, if any, would attach.

A notice of proposed rulemaking (REG-101273-10) cross-referencing the temporary regulations was also published in the **Federal Register** (76 FR 71919) on November 21, 2011. No written comments were received in response to the notice of proposed rulemaking. In addition, no requests for a public hearing were received, and accordingly, no hearing was held.

5. Final Regulations

This Treasury Decision adopts the temporary regulations with clarifying changes. These changes include redesignating the paragraphs under § 1.358-2(a)(2)(iii) to separate newly designated § 1.358-2(a)(2)(iii)(A), the bargain exchange basis rule, and newly designated § 1.358-2(a)(2)(iii)(B), the nominal share basis designation rule, and clarifying the language of these rules. The IRS and the Treasury Department do not intend any substantive changes to the rules of the temporary regulations.

The changes to newly designated § 1.358-2(a)(2)(iii)(A)(1) and (2) were made to clarify that the deemed recapital-

ization under the second step of the bargain exchange basis rule occurs only after the stock treated as issued by the issuing corporation pursuant to § 1.368-2(l) is held by a shareholder that actually owns issuing corporation stock. Thus, using the facts of the example described in section 4 of this preamble, except that the consideration provided by S2 is not \$100 of cash but only \$90 of cash, because S1 (the shareholder of S3 (the transferor corporation)) does not actually own any stock of S2 (the issuing corporation), the basis of the S2 stock treated as issued under the first step of the bargain exchange basis rule that S1 receives in the section 356 exchange is determined under §§ 1.358-1 and 1.358-2 (without regard to the second step of the bargain exchange basis rule or the nominal share basis designation rule) and then further adjusted for the transfer to P described in § 1.368-2(l) prior to the deemed recapitalization of the stock of S2 that P actually holds and is deemed to hold.

The numbering changes reflected in newly designated § 1.358-2(a)(2)(iii)(A)(I), (2) and (B) were made to clarify that the nominal share basis designation rule applies in cases in which a nominal share of issuing corporation stock is deemed issued under § 1.368-2(l). Additional changes were made under § 1.358-2(a)(2)(iii) to emphasize that the nominal share basis designation rule applies only after an actual shareholder of the issuing corporation receives the nominal share pursuant to § 1.368-2(l), and that such a shareholder must attach the nominal share's basis to a share of the issuing corporation's stock that the particular shareholder actually owns.

In addition, the analysis of *Example 16* of § 1.358-2(c) has been clarified to confirm that Corporation P must designate a share of Corporation Y stock to which the distributed nominal share's zero basis will attach. This designation of the share to which the basis of a nominal share must attach is relevant in various scenarios, including if an affiliated group files a consolidated return and must determine the particular share that is a successor asset for purposes of § 1.1502-13. Finally, minor editorial changes were made to reflect the new paragraph designations under § 1.358-2(a)(2)(iii) and to make *Exam-*

ples 15 and 16 of § 1.358-2(c) consistent with the clarifying changes adopted by the final regulations.

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 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 these 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 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 businesses, and no comments were received.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.358-2 is also issued under 26 U.S.C. 358(b).

Par. 2. Section 1.358-2 is amended by:

1. Revising paragraph (a)(2)(iii).
2. Adding new *Example 15* and *Example 16* to paragraph (c).
3. Revising paragraph (d).

The revisions and additions are as follows:

§ 1.358-2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(iii)(A) For purposes of this section, if a shareholder or security holder surrenders a share of stock or a security in a transaction under the terms of section 354 (or so much of section 356 as relates to section 354) in which the shareholder or security holder receives no property or property (including property permitted by section 354 to be received without the recognition of gain or "other property" or money) with a fair market value less than that of the stock or securities surrendered in the transaction:

(I) Such shareholder or security holder shall be treated as receiving the stock, securities, other property, and money actually received by the shareholder or security holder in the transaction and an amount of stock of the issuing corporation (as defined in § 1.368-1(b)) that has a value equal to the excess of the value of the stock or securities the shareholder or security holder surrendered in the transaction over the value of the stock, securities, other property, and money the shareholder or security holder actually received in the transaction. If the shareholder owns only one class of stock of the issuing corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the issuing corporation, the stock deemed received by the shareholder pursuant to the previous sentence shall be stock of such class. If the shareholder owns multiple classes of stock of the issuing corporation the receipt of which would be consistent with the economic rights associated with each class of stock of the issuing corporation, the stock deemed received by the shareholder shall be stock of each such class owned by the shareholder immediately prior to the transaction, in proportion to the value of the stock of each such class owned by the shareholder at that time. The basis of each share of stock or security of the issuing corporation deemed received and actually received shall be determined under the rules of this section. If and to the extent necessary to reflect the actual ownership of the issuing corporation immediately after the exchange to which section

354 (or so much of section 356 as relates to section 354) applies, an appropriate amount of the stock of the issuing corporation treated as issued to the shareholder or security holder in the exchange is deemed further transferred in accordance with § 1.368-2(l) to reflect the actual ownership of the issuing corporation. Paragraph (a)(2)(iii)(A)(2) of this section is only applied to any shareholder of the issuing corporation after all of the deemed transfers pursuant to § 1.368-2(l) are completed. The transferred shares' basis shall be adjusted for all deemed transfers required by § 1.368-2(l).

(2) A direct shareholder of the issuing corporation that receives the shares deemed issued as part of the transaction, as described in paragraph (a)(2)(iii)(A)(I) of this section, shall then be treated as surrendering all of its shares of stock and securities in the issuing corporation, including those shares of stock or securities held immediately prior to the transaction, those shares of stock or securities actually received in the transaction, and those shares of stock deemed received as described in paragraph (a)(2)(iii)(A)(I) of this section, in a reorganization under section 368(a)(1)(E) in exchange for the shares of stock and securities of the issuing corporation that the shareholder or security holder actually holds immediately after the transaction. The basis of each share of stock and security deemed received in the reorganization under section 368(a)(1)(E) shall be determined under the rules of this section.

(B) For purposes of this section, if an actual shareholder of the issuing corporation is deemed to receive a nominal share of stock of the issuing corporation as provided in § 1.368-2(l), then that shareholder must, after allocating and adjusting the basis of the nominal share in accordance with the rules of this section and § 1.358-1, designate the share of stock of the issuing corporation that it owns to which the basis, if any, of the nominal share will attach. If the shareholder does not actually own any shares of stock in the issuing corporation immediately after the exchange to which section 354 (or so much of section 356 as relates to section 354) applies, the nominal share of stock of the issuing corporation received by the

shareholder in the exchange is deemed further transferred in accordance with § 1.368-2(l) without applying the designation rule set forth in the first sentence of this paragraph until it is transferred to a person that actually owns stock in the issuing corporation. The transferred share's basis shall be adjusted for all deemed transfers required by § 1.368-2(l).

* * * * *

(c) * * *

Example 15. (i) Facts. Each of Corporation X and Corporation Y has a single class of stock outstanding, all of which is owned by J, an individual. J purchased 100 shares of Corporation X stock on Date 1 for \$1.50 each, resulting in J having an aggregate basis in the stock of Corporation X of \$150. On Date 2, Corporation Y acquires the assets of Corporation X for \$100 of cash, their fair market value, in a transaction described in § 1.368-2(l). Pursuant to the terms of the exchange, Corporation X does not receive any Corporation Y stock. Corporation X distributes the \$100 of cash to J and retains no assets.

(ii) Analysis. Pursuant to § 1.368-2(l), Corporation Y will be deemed to issue a nominal share of Corporation Y stock to Corporation X in addition to the \$100 of cash actually exchanged for the Corporation X assets. Corporation X will then be deemed to distribute the nominal share of Corporation Y stock to J in addition to the \$100 of cash actually distributed to J. Pursuant to § 1.368-2(l), J, the actual shareholder of Corporation Y, the issuing corporation, is deemed to receive the nominal share of Corporation Y stock described in § 1.368-2(l). J will have a basis of \$50 in the nominal share of Corporation Y stock under section 358(a)(1). Therefore, under paragraph (a)(2)(iii)(B) of this section, J must designate a share of Corporation Y stock to which J's basis of \$50 in the nominal share of Corporation Y stock will attach.

Example 16. (i) Facts. Each of Corporation X and Corporation Y has a single class of stock outstanding, all of which is owned by Corporation P. Corporation T has a single class of stock outstanding, all of which is owned by Corporation X. The corporations do not join in the filing of a consolidated return. Corporation X purchased 100 shares of Corporation T stock on Date 1 for \$1.50 each, resulting in Corporation X having an aggregate basis in the stock of Corporation T of \$150. On Date 2, Corporation Y acquires the assets of Corporation T for \$100 of cash, their fair market value, in a transaction described in § 1.368-2(l). Pursuant to the terms of the exchange, Corporation T does not receive any Corporation Y stock. Corporation T distributes the \$100 of cash to Corporation X and retains no assets.

(ii) Analysis. Pursuant to § 1.368-2(l), Corporation Y will be deemed to issue a nominal share of Corporation Y stock to Corporation T in addition to the \$100 of cash actually exchanged for the Corporation T assets. Corporation T will be deemed to distribute the nominal share of Corporation Y stock

to Corporation X in addition to the \$100 of cash actually distributed. Corporation X will have a basis of \$50 in the nominal share of Corporation Y stock under section 358(a). However, Corporation X is not an actual shareholder of Corporation Y, the issuing corporation. Therefore, Corporation X cannot designate any share of Corporation Y stock under paragraph (a)(2)(iii)(B) of this section to which the basis of the nominal share of Corporation Y stock will attach and Corporation X will be deemed to distribute the nominal share of Corporation Y stock to Corporation P as required by § 1.368-2(l). Corporation X does not recognize the loss on the deemed distribution of the nominal share to Corporation P under section 311(a). Corporation P's basis in the nominal share it receives is zero, its fair market value, under section 301(d). Under paragraph (a)(2)(iii)(B) of this section, Corporation P must designate a share of Corporation Y stock to which the nominal share's zero basis will attach.

(d) Effective/applicability date. This section generally applies to exchanges and distributions of stock and securities occurring on or after January 23, 2006. However, paragraph (a)(2)(iii) and Examples 15 and 16 of paragraph (c) of this section apply to exchanges and distributions of stock and securities occurring on or after November 12, 2014. See § 1.358-2T(a)(2)(iii) and § 1.358-2T(c), Examples 15 and 16, as contained in 26 CFR part 1, revised April 1, 2014, for exchanges and distributions of stock and securities occurring on or after November 21, 2011 and before November 12, 2014; see § 1.358-2(a)(2)(iii), as contained in 26 CFR part 1, revised as of April 1, 2011, for exchanges and distributions of stock and securities occurring on or after January 23, 2006 and before November 21, 2011.

§ 1.358-2T [Removed]

Par. 3. Section 1.358-2T is removed.

John Dalrymple
Deputy Commissioner for
Services and Enforcement.

Approved: October 17, 2014

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

(Filed by the Office of the Federal Register on November 10, 2014, 8:45 a.m., and published in the issue of the Federal Register for November 12, 2014, 79 F.R. 67059)

Part III. Administrative, Procedural, and Miscellaneous

Group Health Plans that Fail to Cover In-Patient Hospitalization Services

Notice 2014-69

I. PURPOSE AND OVERVIEW

The Department of Health and Human Services (HHS) and the Department of the Treasury (including the Internal Revenue Service) (collectively, the Departments) have become aware that certain group health plan benefit designs that do not provide coverage for in-patient hospitalization services are being promoted to employers. A plan that fails to provide substantial coverage for these services would fail to offer fundamental benefits that are nearly universally covered, and historically have been considered integral to coverage, under typical employer-sponsored group health plans. Promoters of these plans contend that the plans satisfy minimum value within the meaning of the Affordable Care Act (including section 36B(c)(2)(C)(ii) of the Internal Revenue Code (Code) and final HHS regulations under section 1302(d)(2)(C) of the Affordable Care Act (referred to in this notice as minimum value or MV)), as determined through use of the on-line MV Calculator referred to in final HHS regulations and proposed Treasury regulations.

Questions have been raised as to whether plans that fail to provide substantial coverage for in-patient hospitalization services should satisfy the requirements for providing minimum value. Concerns have been raised as to whether the continuance tables underlying the MV Calculator (and thus the MV Calculator) produce valid actuarial results for unconventional plan designs that exclude substantial coverage for in-patient hospitalization services. These concerns include that the standard population and other underlying assumptions used in developing the MV Calculator and associated continuance tables are based on typical self-insured employer-sponsored plans, essentially all of which historically have included coverage for these services, and that design-

ing a plan to exclude such coverage could substantially affect the composition of the population covered by discouraging enrollment by employees who have, or anticipate that they might have, significant health issues. It has been suggested that these and other effects resulting from excluding substantial coverage of in-patient hospitalization services may not be adequately taken into account by the MV Calculator and its underlying continuance tables. Similar concerns have been raised regarding the possibility of using the MV calculator to demonstrate that an unconventional plan design that excludes substantial coverage of physician services provides minimum value.

The Departments believe that plans that fail to provide substantial coverage for in-patient hospitalization services or for physician services (or for both) (referred to in this notice as Non-Hospital/Non-Physician Services Plans) do not provide the minimum value intended by the minimum value requirement and will shortly propose regulations to this effect with a view to being in a position to finalize such regulations during 2015 and make them applicable upon finalization. Accordingly, employers should consider the consequences of the inability to rely solely on the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides minimum value for any portion of any taxable year ending on or after January 1, 2015, that follows finalization of such regulations. However, solely in the case of an employer that has entered into a binding written commitment to adopt, or has begun enrolling employees in, a Non-Hospital/Non-Physician Services Plan prior to November 4, 2014 based on the employer's reliance on the results of use of the MV Calculator (a Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plan), the Departments anticipate that final regulations, when issued, will not be applicable for purposes of Code section 4980H with respect to the plan before the end of the plan year (as in effect under the terms of the plan on November 3, 2014) if that plan year begins no later than March 1, 2015.

Pending issuance of final regulations, an employee will not be required to treat a Non-Hospital/Non-Physician Services Plan as providing minimum value for purposes of an employee's eligibility for a premium tax credit under Code section 36B, regardless of whether the plan is a Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plan.

II. BACKGROUND

An employee or family member who is offered coverage under an eligible employer-sponsored plan that offers affordable MV coverage for the employee may not receive premium tax credit assistance under Code section 36B for coverage in a qualified health plan. An applicable large employer (as defined in Code section 4980H(c)(2)) may be liable for a section 4980H assessable payment if one or more of its full-time employees receives a premium tax credit.

Under Code section 36B(c)(2)(C)(ii), a plan provides MV if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs. Section 1302(d)(2)(C) of the Affordable Care Act provides that in determining the percentage of the total allowed costs of benefits provided by a group health plan or health insurance coverage under the Code, as well as under the Public Health Service Act (PHSA), regulations promulgated by the Secretary of HHS under section 1302(d)(2), addressing actuarial value, apply.

HHS published final regulations under section 1302(d)(2) on February 25, 2013 (78 FR 12834), effective on April 26, 2013. For plans required to cover the essential health benefits (EHB), the HHS regulations define the percentage of the total allowed costs of benefits as (1) the anticipated covered medical spending for EHB (as defined in 45 CFR 156.110(a)) paid by a health plan for a standard population, (2) computed in accordance with the plan's cost-sharing, and (3) divided by the total anticipated allowed charges for EHB coverage provided to a standard population. 45 CFR 156.20.

As stated in the preamble to the HHS regulations (see 78 FR 12833), employer-sponsored group health plans are not required to offer EHBs unless they are insured health plans offered in the small group market subject to section 2707(a) of the PHSA. The preamble also states that MV is measured based on the provision of EHBs to a standard population based on typical self-insured group health plans and that, in determining MV, plans may take into account those benefits covered by the employer that are covered in any one of the state EHB-benchmark plans. See 45 CFR 156.145(b).

Proposed regulations under Code section 36B on MV published by Treasury and the IRS on May 3, 2013 (78 FR 25909), apply these rules in defining the standard population for MV purposes and the MV percentage. The proposed Code section 36B regulations provide that the MV percentage is determined by dividing the plan's anticipated spending (based on the plan's cost-sharing) for EHB under any one state benchmark plan by the total cost of EHBs for the standard population and converting the result to a percentage. Proposed 26 CFR 1.36B-6(c). Neither the final HHS regulations nor the proposed Code section 36B regulations require employer-sponsored self-insured and insured large group plans to cover every EHB category or conform their plans to an EHB benchmark that applies to individual and small group market plans.

The HHS regulations allow MV to be determined using an MV Calculator (available at <http://cciio.cms.gov/resources/regulations/index.html>) or a safe harbor established by HHS and the IRS. Under the regulations, plans with "nonstandard" features that are incompatible with the MV Calculator or a safe harbor may determine MV through an actuarial certification from a member of the American Academy of Actuaries. A plan in the small group market provides MV if it meets the requirements for any of the levels of metal coverage defined at 45 CFR 156.140(b) (bronze, silver, gold, or platinum).

The proposed Code section 36B regulations require plans to determine MV by using either a safe harbor or the MV

Calculator. Employers using the MV Calculator may, however, supplement the MV Calculator by obtaining actuarial valuation of a plan's nonstandard features.

III. INTENDED APPROACH

A. Proposed Amendments to Regulations Relating to Minimum Value

HHS intends to promptly propose amending 45 CFR 156.145 to provide that a plan will not provide minimum value if it excludes substantial coverage for in-patient hospitalization services or physician services (or both). Treasury and the IRS intend to issue proposed regulations that apply these proposed HHS regulations under Code section 36B. Accordingly, under the HHS and Treasury regulations, an employer will not be permitted to use the MV Calculator (or any actuarial certification or valuation) to demonstrate that a Non-Hospital/Non-Physician Services Plan provides minimum value.

It is anticipated that the proposed changes to regulations will be finalized in 2015 and will apply to plans other than Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plans on the date they become final rather than being delayed to the end of 2015 or the end of the 2015 plan year. As a result, a Non-Hospital/Non-Physician Services Plan (other than a Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plan) should not be adopted for the 2015 plan year. (As noted above, it is anticipated that the proposed changes to regulations, when finalized, will not apply to Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plans until after the end of the plan year beginning no later than March 1, 2015. The Departments anticipate that final rulemaking will be completed on or about that date.)

Pending issuance of final regulations, in no event will an employee be required to treat a Non-Hospital/Non-Physician Services Plan as providing MV for purposes of an employee's eligibility for a premium tax credit under Code section 36B, regardless of whether the plan is a

Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plan.

A. Employer Duty to Inform Employees

An employer that offers a Non-Hospital/Non-Physician Services Plan (including a Pre-November 4, 2014 Non-Hospital/Non-Physician Services Plan) to an employee (1) must not state or imply in any disclosure that the offer of coverage under the Non-Hospital/Non-Physician Services Plan precludes an employee from obtaining a premium tax credit, if otherwise eligible, and (2) must timely correct any prior disclosures that stated or implied that the offer of the Non-Hospital/Non-Physician Services Plan would preclude an otherwise tax-credit-eligible employee from obtaining a premium tax credit. Without such a corrective disclosure, a statement (for example, in a summary of benefits and coverage) that a Non-Hospital/Non-Physician Services Plan provides minimum value will be considered to imply that the offer of such a plan precludes employees from obtaining a premium tax credit. However, an employer that also offers an employee another plan that is not a Non-Hospital/Non-Physician Services Plan and that is affordable and provides MV is permitted to advise the employee that the offer of this other plan will or may preclude the employee from obtaining a premium tax credit.

FOR FURTHER INFORMATION

The Departments have coordinated on the guidance and other information contained in this notice, and HHS is concurrently issuing parallel guidance. Questions concerning the information contained in this notice may be directed to HHS at 301-492-5153 or the IRS at 202-317-7006. Additional information for employers regarding the Affordable Care Act is available at www.healthcare.gov, www.irs.gov/ACA, and www.business.usa.gov.

2015 Limitations Adjusted As Provided in Section 415(d), etc.¹

Notice 2014-70

Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

Cost-of-Living Adjusted Limits for 2014

Effective January 1, 2015, the limitation on the annual benefit under a defined benefit plan under § 415(b)(1)(A) remains unchanged at \$210,000.

For a participant who separated from service before January 1, 2015, the participant's limitation under a defined benefit plan under § 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2014, by 1.0178.

The limitation for defined contribution plans under § 415(c)(1)(A) is increased in 2015 from \$52,000 to \$53,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of § 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2015 are as follows:

The limitation under § 402(g)(1) on the exclusion for elective deferrals described in § 402(g)(3) is increased from \$17,500 to \$ 18,000.

The annual compensation limit under §§ 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$260,000 to \$265,000.

The dollar limitation under § 416(i)(1)(A)(i) concerning the definition of key

employee in a top-heavy plan remains unchanged at \$170,000.

The dollar amount under § 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from \$1,050,000 to \$1,070,000, while the dollar amount used to determine the lengthening of the 5-year distribution period remains unchanged at \$210,000.

The limitation used in the definition of highly compensated employee under § 414(q)(1)(B) is increased from \$115,000 to \$ 120,000.

The dollar limitation under § 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$5,500 to \$6,000. The dollar limitation under § 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in § 401(k)(11) or 408(p) for individuals aged 50 or over is increased from \$2,500 to \$ 3,000.

The annual compensation limitation under § 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under § 401(a)(17) to be taken into account, is increased from \$385,000 to \$395,000.

The compensation amount under § 408(k)(2)(C) regarding simplified employee pensions (SEPs) is increased from \$550 to \$600.

The limitation under § 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from \$12,000 to \$12,500.

The limitation on deferrals under § 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$17,500 to \$18,000.

The compensation amounts under § 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes remains unchanged at \$105,000. The compensation amount under § 1.61-21(f)(5)(iii) is increased from \$210,000 to \$215,000.

The Code also provides that several retirement-related amounts are to be adjusted using the cost-of-living adjustment under § 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2015 are as follows:

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing a joint return is increased from \$36,000 to \$36,500; the limitation under § 25B(b)(1)(B) is increased from \$39,000 to \$39,500; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$60,000 to \$61,000.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from \$27,000 to \$27,375; the limitation under § 25B(b)(1)(B) is increased from \$29,250 to \$29,625; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$45,000 to \$45,750.

The adjusted gross income limitation under § 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from \$18,000 to \$18,250; the limitation under § 25B(b)(1)(B) is increased from \$19,500 to \$19,750; and the limitation under §§ 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$30,000 to \$30,500.

The deductible amount under § 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at \$5,500.

The applicable dollar amount under § 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from \$96,000 to \$98,000. The applicable dollar amount under § 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$60,000 to \$61,000. The applicable dollar amount under § 219(g)(3)(B)(iii) for a married individual filing a separate return is not subject to the annual cost-of-living adjustment and remains \$0. The applicable dollar amount under § 219(g)(7)(A) for a taxpayer who is not an active partic-

¹Based on News Release IR-2014-99 dated October 23, 2014

ipant but whose spouse is an active participant is increased from \$181,000 to \$183,000.

The adjusted gross income limitation under § 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from \$181,000 to \$183,000. The adjusted gross income limitation under § 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$114,000 to \$116,000. The applicable dollar amount under § 408A(c)

(3)(B)(ii)(III) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains \$0.

The dollar amount under § 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election under § 430(c)(2)(D) has been made is increased from \$1,084,000 to \$1,101,000.

Drafting Information

The principal author of this notice is John Heil of the Employee Plans, Tax

Exempt and Government Entities Division. For further information regarding the data in this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern time Monday through Friday. For information regarding the methodology used in arriving at the data in this notice, please e-mail Mr. Heil at *RetirementPlanQuestions@irs.gov*.

Part IV. Items of General Interest

Application of One-Per-Year Limit on IRA Rollovers

Announcement 2014–32

This announcement is a follow-up to Announcement 2014–15, 2014–16 I.R.B. 973, addressing the application to Individual Retirement Accounts and Individual Retirement Annuities (collectively, “IRAs”) of the one-rollover-per-year limitation of § 408(d)(3)(B) of the Internal Revenue Code.

Section 408(d)(3)(A)(i) provides generally that any amount distributed from an IRA will not be included in the gross income of the distributee to the extent the amount is paid into an IRA for the benefit of the distributee no later than 60 days after the distributee receives the distribution (often referred to as a “60-day rollover”). Section 408(d)(3)(B) provides that an individual is permitted to make only one nontaxable 60-day rollover between IRAs in any 1-year period. As discussed in Announcement 2014–15, Proposed Regulation § 1.408–4(b)(4)(ii) and IRS Publication 590, *Individual Retirement Arrangements (IRAs)*, provided that the one-rollover-per-year limitation was applied on an IRA-by-IRA basis. However, the Tax Court in *Bobrow v. Commissioner*, T.C. Memo. 2014–21, held that the limitation applies on an aggregate basis, meaning that an individual could not make more than one nontaxable 60-day rollover within each 1-year period even if the rollovers involved different IRAs. In Announcement 2014–15, the IRS indicated that it anticipated following the interpretation of § 408(d)(3)(B) in *Bobrow*,

and accordingly that it would withdraw the proposed regulation and revise Publication 590 to the extent needed to follow that interpretation, but that it would not apply the *Bobrow* interpretation of § 408(d)(3)(B) before 2015. Consistent with Announcement 2014–15, Proposed Regulation § 1.408–4(b)(4)(ii) was withdrawn on July 11, 2014 (79 FR 40031), and subsequent relevant IRS publications (including new Publication 590–A, *Contributions to Individual Retirement Arrangements (IRAs)*) will reflect the *Bobrow* interpretation of § 408(d)(3)(B).

This announcement is intended to address certain concerns that have arisen since the release of Announcement 2014–15. The IRS will apply the *Bobrow* interpretation of § 408(d)(3)(B) for distributions that occur on or after January 1, 2015. This means that an individual receiving an IRA distribution on or after January 1, 2015, cannot roll over any portion of the distribution into an IRA if the individual has received a distribution from any IRA in the preceding 1-year period that was rolled over into an IRA. However, as a transition rule for distributions in 2015, a distribution occurring in 2014 that was rolled over is disregarded for purposes of determining whether a 2015 distribution can be rolled over under § 408(d)(3)(A)(i), provided that the 2015 distribution is from a different IRA that neither made nor received the 2014 distribution. In other words, the *Bobrow* aggregation rule, which takes into account all distributions and rollovers among an individual’s IRAs, will apply to distributions from different IRAs only if each of the distributions occurs after 2014.

A rollover from a traditional IRA to a Roth IRA (a “conversion”) is not subject to the one-rollover-per-year limitation, and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers. However, a rollover between an individual’s Roth IRAs would preclude a separate rollover within the 1-year period between the individual’s traditional IRAs, and vice versa. (For purposes of this announcement, the term “traditional IRA” includes a simplified employee pension described in § 408(k) and a SIMPLE IRA described in § 408(p).)

The one-rollover-per-year limitation also does not apply to a rollover to or from a qualified plan (and such a rollover is disregarded in applying the one-rollover-per-year limitation to other rollovers), nor does it apply to trustee-to-trustee transfers. See Rev. Rul. 78–406, 1978–2 C.B. 157. IRA trustees are encouraged to offer IRA owners requesting a distribution for rollover the option of a trustee-to-trustee transfer from one IRA to another IRA. IRA trustees can accomplish a trustee-to-trustee transfer by transferring amounts directly from one IRA to another or by providing the IRA owner with a check made payable to the receiving IRA trustee.

DRAFTING INFORMATION

The principal author of this announcement is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this announcement may be sent via e-mail to RetirementPlanQuestions@irs.gov.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

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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
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