

Internal Revenue bulletin

Bulletin No. 2015–6
February 9, 2015

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.

SPECIAL ANNOUNCEMENT

Notice 2015–9, page 590.

This Notice provides limited penalty relief for taxpayers who have a balance due on their 2014 income tax return as a result of reconciling advance payments of the premium tax credit against the premium tax credit allowed on the tax return.

INCOME TAX

Rev. Rul. 2015–3, page 580.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for February 2015.

Notice 2015–8, page 589.

Notice 2015–08 provides guidance on Section 45R for certain small employers that cannot offer a qualified health plan (QHP) through the Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in Iowa in which a QHP through a SHOP Exchange will not be available for all or part of the 2015 calendar year.

Notice 2015–9, page 590.

This Notice provides limited penalty relief for taxpayers who have a balance due on their 2014 income tax return as a result of reconciling advance payments of the premium tax credit against the premium tax credit allowed on the tax return.

EMPLOYEE PLANS

Notice 2015–7, page 585.

This notice announces that the Treasury Department and IRS anticipate issuing proposed regulations that would permit a state or local retirement system that is a governmental plan (within the meaning of section 414(d)) to cover public charter school employees if certain requirements are satisfied. The notice also announces that broader transition relief will be addressed in the proposed regulations. The notice includes a request for public comments.

EXCISE TAX

Notice 2015–3, page 583.

This notice provides rules for claimants to make one-time claims for the retroactively extended 2014 biodiesel mixture and alternative fuel excise tax credits. It also provides guidance for claimants to claim the other retroactively extended credits for 2014, including the alternative fuel mixture excise tax credit.

Finding Lists begin on page ii.



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.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action

on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas “acqui-

escence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does NOT ACQUIESCE in the following decisions:

Gracia v. Commissioner,¹
T.C. Memo. 2004-147

Estate of Martinez v. Commissioner,²
T.C. Memo. 2004-150

Mirarchi v. Commissioner,³
T.C. Memo. 2004-148

Price v. Commissioner,⁴
T.C. Memo. 2004-149

¹Nonacquiescence relating to the holding that a general partner who guaranteed the debt of a partnership and was not in bankruptcy in his individual capacity may exclude from gross income under section 108(a) partnership debt cancelled in a title 11 case of the partnership.

²Nonacquiescence relating to the holding that a general partner who guaranteed the debt of a partnership and was not in bankruptcy in his individual capacity may exclude from gross income under section 108(a) partnership debt cancelled in a title 11 case of the partnership.

³Nonacquiescence relating to the holding that a general partner who guaranteed the debt of a partnership and was not in bankruptcy in his individual capacity may exclude from gross income under section 108(a) partnership debt cancelled in a title 11 case of the partnership.

⁴Nonacquiescence relating to the holding that a general partner who guaranteed the debt of a partnership and was not in bankruptcy in his individual capacity may exclude from gross income under section 108(a) partnership debt cancelled in a title 11 case of the partnership.

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the

month of February 2015. See Rev. Rul. 2015-3, page 580.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Rev. Rul. 2015-3

This revenue ruling provides various prescribed rates for federal income tax purposes for February 2015 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.

Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2015-3 TABLE 1
Applicable Federal Rates (AFR) for February 2015
Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	.48%	.48%	.48%	.48%
110% AFR	.53%	.53%	.53%	.53%
120% AFR	.58%	.58%	.58%	.58%
130% AFR	.62%	.62%	.62%	.62%
		<i>Mid-term</i>		
AFR	1.70%	1.69%	1.69%	1.68%
110% AFR	1.87%	1.86%	1.86%	1.85%
120% AFR	2.04%	2.03%	2.02%	2.02%
130% AFR	2.21%	2.20%	2.19%	2.19%
150% AFR	2.56%	2.54%	2.53%	2.53%
175% AFR	2.98%	2.96%	2.95%	2.94%
		<i>Long-term</i>		
AFR	2.41%	2.40%	2.39%	2.39%
110% AFR	2.66%	2.64%	2.63%	2.63%
120% AFR	2.90%	2.88%	2.87%	2.86%
130% AFR	3.14%	3.12%	3.11%	3.10%

REV. RUL. 2015-3 TABLE 2
Adjusted AFR for February 2015
Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.46%	.46%	.46%	.46%
Mid-term adjusted AFR	1.39%	1.39%	1.39%	1.39%
Long-term adjusted AFR	2.41%	2.40%	2.39%	2.39%

REV. RUL. 2015-3 TABLE 3
Rates Under Section 382 for February 2015

Adjusted federal long-term rate for the current month	2.41%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.68%

REV. RUL. 2015-3 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for February 2015

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.47%
Appropriate percentage for the 30% present value low-income housing credit	3.20%

REV. RUL. 2015-3 TABLE 5
Rate Under Section 7520 for February 2015

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.0%
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Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015–3, page 580.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015–3, page 580.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2015. See Rev. Rul. 2015–3, page 580.

Part III. Administrative, Procedural, and Miscellaneous

Biodiesel and Alternative Fuels; Claims for 2014; Excise Tax

Notice 2015-3

Section 1. PURPOSE

This notice provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d) and 6427(e) of the Internal Revenue Code (Code) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2014 (collectively, 2014 biodiesel and alternative fuel incentives). These rules are prescribed under § 160(e) of the Tax Increase Prevention Act of 2014 (Pub. L. 113-295) (the Act). This notice also provides instructions for how a claimant may offset its § 4081 liability with the § 6426(e) alternative fuel mixture credit, and provides instructions for how a claimant may make certain income tax claims for biodiesel, second generation biofuel, and alternative fuel.

Section 2. BACKGROUND

Sections 6426(a) and (c) allow a blender of a biodiesel (including renewable diesel) mixture to claim a \$1.00-per-gallon credit against its tax liability under § 4081 (relating to the tax imposed on taxable fuel). Similarly, §§ 6426(a) and (e) allow a blender of an alternative fuel mixture to claim a credit against its tax liability under § 4081, except that the credit amount is \$0.50 per gallon. Sections 6426(a) and (d) allow a person that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat and in aviation to claim a \$0.50-per-gallon credit against the claimant's tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel).

Blenders of biodiesel (including renewable diesel) mixtures and persons that sell or use alternative fuel as a fuel in a motor vehicle or motorboat and in aviation may claim any excess credit under §§ 6426(c) or (d) as a payment under § 6427(e) or as a refundable income tax

credit under § 34. As an alternative to the payments and credits allowed under §§ 6426, 6427, and 34, a blender of a biodiesel (including renewable diesel) mixture may claim a nonrefundable income tax credit under § 40A (see Section 8 of this notice for additional information).

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2013 (September 30, 2014, in the case of any sale or use involving liquefied hydrogen), but were reinstated by the Act for sales and uses during 2014. Section 160(e) of the Act directs the Secretary of the Treasury (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426(c), 6426(d) and 6427(e) covering periods during 2014. The Act requires the guidance to provide for a 180-day period for the submission of claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after the guidance is issued.

Sections 152 and 153 of the Act also reinstated Code provisions authorizing credits for second generation biofuel producers (§ 40(b)(6)) and biodiesel and renewable diesel used as fuel (§ 40A), respectively. The second generation biofuel producer credit expired for production after December 31, 2013, and was reinstated by the Act for production during 2014. The credit for biodiesel and renewable diesel used as fuel expired for sales and uses after December 31, 2013, and was reinstated by the Act for sales and uses during 2014.

Section 3. SCOPE

This notice provides the procedure for claiming 2014 biodiesel and alternative fuel incentives. Claimants that filed "protective" or anticipatory claims during 2014 for biodiesel and alternative fuel incentives covered by this notice should refile their claims pursuant to the procedures provided in this notice. The IRS will not treat as perfected any such protective or anticipatory claims previously filed with the IRS that are not timely supplemented in accordance with these procedures.

Except as provided by this notice, the rules in Notice 2005-4, 2005-1 C.B. 289 (providing guidance on alcohol and biodiesel fuel tax credits and payments), as modified by Notice 2005-62, 2005-2 C.B. 443 (providing guidance for certain biodiesel issues not addressed in Notice 2005-4), and Notice 2006-92, 2006-2 C.B. 774 (providing guidance on alternative fuel and alternative fuel mixture taxes, credits, and payments), apply to claims for 2014 biodiesel and alternative fuel incentives.

The § 6426(e) alternative fuel mixture credit expired on December 31, 2013 (September 30, 2014, in the case of any liquefied hydrogen mixtures), and was reinstated by the Act for sales and uses during 2014. This notice prescribes a method for submitting claims relating to alternative fuel mixtures (including liquefied hydrogen mixtures, if the credit was not previously claimed) sold or used during 2014.

This notice does not affect the income tax claims described in Section 8 of the notice.

Section 4. HOW TO MAKE A ONE-TIME CLAIM FOR CREDITS AND PAYMENTS ALLOWABLE UNDER §§ 6426(c), 6426(d), AND 6427(e)

Claimants must follow the procedures listed below to make a one-time claim under this notice for payment of credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) relating to biodiesel and alternative fuel incentives.

- Claimants must submit claims for 2014 biodiesel and alternative fuel incentives on Form 8849, *Claim for Refund of Excise Taxes*.
- Claimants must include Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*, with their submission and enter amounts for 2014 biodiesel and alternative fuel incentives on Line 2 and Line 3 of Schedule 3, as appropriate.
- Claimants must follow the instructions to Form 8849 and Schedule 3 when preparing their submission to the extent that those instructions do not conflict with this notice.

- Each claimant must claim all 2014 biodiesel and alternative fuel incentives for which the claimant is eligible on a single Form 8849.
- Each claimant must mail its submission to the address listed for Schedule 3 in the instructions to Form 8849 under *Where to File*. Alternatively, claimants may electronically file Form 8849 and Schedule 3 through any electronic return originator, transmitter, or intermediate service provider participating in the IRS *e-file* program for excise taxes.
- Claimants are reminded that they must be registered by the IRS in order to make alternative fuel claims under §§ 6426(d) and 6427(e) and to make alternative fuel mixture claims under § 6426(e) (described in Section 6 of this notice). Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.

Section 5. CLAIM PERIOD AND DUE DATE FOR BIODIESEL AND ALTERNATIVE FUEL INCENTIVES

Although a claimant may submit its claim under this notice as early as January 16, 2015, the 180-day claim period for 2014 biodiesel and alternative fuel incentives begins on February 9, 2015. Consequently, all claims for 2014 biodiesel and alternative fuel incentives must be filed on or before August 8, 2015. The IRS will not process claims filed after that date. The IRS will deem any claim that is submitted by the method prescribed in this notice before February 9, 2015, as filed on February 9, 2015.

If the IRS does not pay a 2014 biodiesel and alternative fuel incentives claim that conforms to this notice within 60 days after the claim is received, the IRS will pay the claim with interest from the claim filing date (February 9, 2015, in the case of claims submitted before that date) using the overpayment rate and method provided by § 6621 of the Code.

Section 6. HOW TO MAKE AN ALTERNATIVE FUEL MIXTURE CLAIM UNDER § 6426(e)

For 2014, all alternative fuel mixture credit claims allowed by § 6426(e), including claims for the fourth quarter, must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*. Although in prior years § 6426(e) claims could be made on the Form 720, *Quarterly Federal Excise Tax Return*, the IRS is unable to process 2014 claims on the fourth quarter Form 720 due to the timing of enactment of the Act. Failure to file a Form 720, *Quarterly Federal Excise Tax Return*, and remit the § 4081 tax due for any quarter in 2014 before submitting a claim allowed by § 6426(e) on Form 720X will result in delayed processing of the claim and delayed payment of refunds resulting from the credit. Similarly, failure to follow the claim procedure in this section will result in delayed processing and payment of 2014 § 6426(e) claims. Claimants are reminded that the claim for a § 6426(e) credit for any quarter may not exceed the § 4081 liability incurred in the quarter for which the credit is being claimed. Form 720X allows claimants to adjust multiple quarters on a single Form 720X.

Section 7. CLAIM PERIOD AND DUE DATE FOR ALTERNATIVE FUEL MIXTURE CREDITS

The claim period for the 2014 alternative fuel mixture credit begins on February 9, 2015. The IRS will deem any claim that is submitted by the method prescribed in section 6 of this notice before February 9, 2015, as filed on February 9, 2015. Generally, claims for the § 6426(e) alternative fuel mixture credit must be made within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

Section 8. CLAIMS NOT AFFECTED BY THIS NOTICE

This notice does not affect 2014 claims for the nonrefundable income tax credit under § 40(b)(6) for second generation biofuel producers. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 6478, *Biofuel Producer Credit*. The notice also does

not affect 2014 claims for the nonrefundable income tax credits under § 40A(b)(1) for biodiesel mixtures, § 40A(b)(2) for biodiesel (including renewable diesel), or under § 40A(b)(4) for the small agri-biodiesel producer credit. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*. A taxpayer must submit Form 8864 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 40A(c), credits allowable under § 40A must be reduced to the extent that any benefit is claimed under §§ 6426 and 6427 with respect to the same biodiesel (including renewable diesel).

Similarly, this notice does not affect 2014 claims for the refundable income tax credit under § 34 for biodiesel mixtures or alternative fuel. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 4136, *Credit for Federal Tax Paid on Fuels*. A taxpayer must submit Form 4136 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 34(b), credits are not allowed under § 34 for any amount properly payable under § 6427 and claimed in a timely filed claim. For this purpose, the IRS will treat as timely filed any claim submitted for amounts payable under § 6427 that conforms to the rules provided in this notice.

Section 9. DRAFTING INFORMATION

The principal author of this notice is Amanda F. Dunlap of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Amanda F. Dunlap on (202) 317-6855 (not a toll-free number).

Relief for Certain Participants in § 414(d) Governmental Plans

Notice 2015-7

I. PURPOSE

The IRS and the Treasury Department anticipate issuing proposed regulations under § 414(d) of the Internal Revenue Code (Code) to define the term “governmental plan.” This document describes specific rules that the IRS and Treasury Department are considering proposing that relate to whether a State or local retirement system that covers employees of a charter school is a governmental plan within the meaning of § 414(d). Section III of this notice describes the guidance under consideration, which would provide that employees of a public charter school may participate in a State or local retirement system if certain conditions are satisfied. Section IV of this notice discusses the potential for broader transition relief for governmental plans once final regulations under § 414(d) are issued. Section V of this notice requests comments on the guidance under consideration described in section III of this notice.

II. BACKGROUND

Section 414(d) of the Code provides that the term governmental plan generally means “a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.” See sections 3(32) and 4021(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) for definitions of the term “governmental plan,” which govern for purposes of title I and title IV of ERISA, respectively.¹

Currently, there are no regulations interpreting § 414(d) of the Code. Neither § 414(d) of the Code nor ERISA define key terms relating to governmental plans,

including the terms “established and maintained,” “political subdivision,” “agency,” and “instrumentality.” Revenue Ruling 89-49, 1989-1 C.B. 117, provides guidance for determining whether a retirement plan maintained by an organization is a governmental plan within the meaning of § 414(d). The revenue ruling lists several factors for determining whether a sponsoring organization or participating employer is an agency or instrumentality of the United States or any State or political subdivision of a State. The factors in Rev. Rul. 89-49 are similar to the factors listed in Rev. Rul. 57-128, 1957-1 CB 31, which provides guidance on whether an entity is an instrumentality that is wholly-owned by one or more States or political subdivisions of a State for purposes of the exemption from employment taxes under §§ 3121(b)(7) and 3306(c)(7) of the Code.

Rev. Rul. 57-128 lists the following factors to be considered in determining whether an organization is an instrumentality of one or more States or political subdivisions thereof: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more States or political subdivisions; (3) whether there are any private interests involved, or whether the States or political subdivisions involved have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory authority or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists; and (6) the degree of the organization’s financial autonomy and the source of its operating expenses.

Rev. Rul. 89-49 focuses more on the degree of control that the Federal or State government has over the organization’s everyday operations than Rev. Rul. 57-128. Other factors considered in Rev. Rul.

89-49 include: whether there is specific legislation creating the organization; the source of funds for the organization; the manner in which the organization’s trustees or operating board are selected; and whether the applicable government unit considers the employees of the organization to be employees of the applicable government unit. Rev. Rul. 89-49 provides that satisfaction of one or all of the factors is not necessarily determinative of whether an organization is a governmental entity.

On November 8, 2011, the IRS and Treasury Department published an Advance Notice of Proposed Rulemaking (ANPRM) (REG-157714-06), relating to the definition of a governmental plan under § 414(d) of the Code, in the **Federal Register** (76 FR 69172) (§ 414(d) ANPRM). The § 414(d) ANPRM describes guidance under consideration that would set forth rules relating to the determination of whether a retirement plan is a governmental plan within the meaning of § 414(d).² The guidance under consideration would define key terms relating to governmental plans, including “established and maintained,” “political subdivision,” and “agency or instrumentality.”

For purposes of determining whether an entity is an agency or instrumentality of the United States or an agency or instrumentality of a State or political subdivision of a State, the guidance under consideration described in the § 414(d) ANPRM would provide a facts and circumstances analysis. The factors used in this analysis are drawn from the factors historically used in governmental plan determinations, including the factors set forth in Rev. Ruls. 57-128 and 89-49, as well as court decisions.³ The factors described in the anticipated guidance described in the § 414(d) ANPRM include whether the entity’s governing board or body is controlled by a State or political subdivision; whether the members of the entity’s governing board or body are publicly nominated and elected; the extent to

¹The definition of the term “governmental plan” also includes special rules relating to (a) plans to which the Railroad Retirement Act of 1935 or 1937 (49 Stat. 967, as amended by 50 Stat. 307) applies, (b) plans of an international organization that is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669), and (c) certain plans that are established and maintained by an Indian tribal government (as defined in § 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with § 7871(d)), or an agency or instrumentality of either.

²The IRS and Treasury Department also issued an ANPRM (REG-133223-08) relating to special rules for ITGs on November 8, 2011 in the **Federal Register** (76 FR 69188).

³For a discussion of court cases analyzing governmental entity status, see the discussion under the heading, “Judicial Determinations of Governmental Entity Status” in the Appendix to the § 414(d) ANPRM.

which a State has financial responsibility for the general debts and other liabilities of entity; and the extent to which the entity is delegated, pursuant to statute, the authority to exercise sovereign powers. For a complete discussion of each of the factors in the guidance under consideration described in the § 414(d) ANPRM, see the discussion under the heading “Definition of agency or instrumentality of a State or a political subdivision of a State” in the “Explanation of Provisions” section of the Appendix to the § 414(d) ANPRM.

The § 414(d) ANPRM requested comments from the public on the guidance under consideration. With respect to this request, members of the public charter school community submitted over 2,000 comments, which, together with all of the other comment letters received, the IRS and Treasury Department continue to review. Although the § 414(d) ANPRM does not change the law regarding or directly address whether a charter school is a governmental entity or whether employees of charter schools are permitted to participate in a governmental plan (such as a State or local retirement system), comments from members of the charter school community raised several concerns with the guidance under consideration. Mainly, the commenters expressed concern that if the guidance described in the § 414(d) ANPRM were published in its current form as a final regulation, the guidance would deter State or local retirement systems from permitting charter school employee participation in their retirement systems in order to retain their governmental plan status. Commenters indicated that this, in turn, would jeopardize the retirement security of charter school employees and adversely affect charter schools’ ability to attract and retain teachers.

Forty-two States and the District of Columbia have laws authorizing the chartering of independent public schools of choice. These schools, often referred to as public charter schools, are generally funded with public revenue on a per-pupil basis. Public charter schools do not charge tuition, are open to all students within a specified geographic

boundary, and are viewed by States as part of the public school system. However, public charter schools typically operate independently of the governance structures that generally are in place for other public schools, such as a district board of education.

In general, States that authorize public charter schools either require or permit public charter school employees to participate in their State retirement systems. In response to the § 414(d) ANPRM, commenters from the public charter school community expressed concern that the autonomy granted to public charter schools would mean that charter school employees would not be able to continue participation in State or local retirement systems. Commenters argued that Congress intended charter schools to be treated as public schools, but recognized that charter schools were not subject to governmental control in the same manner as traditional public schools.⁴ Commenters requested that, when the guidance under consideration described in the § 414(d) ANPRM is ultimately issued, the guidance permit participation of public charter school employees in governmental plans. One request was that the proposed regulations provide the use of a safe harbor to permit public charter school employees to participate in State or local retirement systems. Other requests included that the proposed regulations provide a revised set of factors, without distinction between main factors and other factors, that a typical public charter school would more clearly satisfy; that the proposed regulations include an example under the facts and circumstances test showing that a typical public charter school is an agency or instrumentality of a State or political subdivision of a State; and that the proposed regulations provide a grandfathering rule permitting current and future public charter school employees to participate in a State or local retirement system.

III. GUIDANCE UNDER CONSIDERATION

After review and consideration of comments received with respect to the § 414(d) ANPRM, the IRS and Treasury Department are considering issuing the guidance described in section III.A of this notice relating to whether a State or local retirement system that covers employees of a public charter school is a governmental plan within the meaning of § 414(d). The guidance under consideration would take into account the special and unique nature of public charter schools, the governance structure associated with these schools, the structure of many public school systems that permit or encourage public school teachers to move between public charter and traditional public schools, and the relationship between public charter schools and the agencies authorized by the State or political subdivision of the State (such as an authorized public chartering agency as defined in 20 U.S.C. § 7721i(4)) that hold these schools accountable for academic results. It is expected that the principles described in section III.A of this notice would apply regardless of whether the retirement plan is a defined benefit, defined contribution, § 403(b), or § 457(b) governmental plan. The IRS and Treasury Department intend the guidance described in section III.A of this notice to cover only employees of public charter schools and anticipate that the effect of participation of employees of entities other than public charter schools in a State or local retirement system on the system’s status as a governmental plan under § 414(d) of the Code would be determined in accordance with the general rules set forth in the regulations after final regulations under § 414(d) are issued.

A. Participation of a public charter school in a State or local retirement system

The IRS and Treasury Department are considering proposing regulations under § 414(d) specifying that a State or local retirement system that covers employees of a public charter school will not fail to

⁴See Part B of the Individuals with Disabilities Act, 20 U.S.C. § 1400 *et. seq.*, under which charter schools are treated as public schools for purposes of eligibility for federal funding and 20 U.S.C. § 7721i(1)(A), under which a charter school is defined as a public school that “is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, . . .”

be a governmental plan within the meaning of § 414(d) if certain conditions are satisfied. Specifically, the guidance under consideration would specify that a State or local retirement system will not fail to be a governmental plan within the meaning of § 414(d) merely because the system permits employees of an entity that satisfies the requirements listed in paragraphs (a) through (e) below to participate in the system:

(a) The entity is a nonsectarian independent public school that serves a governmental purpose by providing tuition-free elementary or secondary education, or both.

(b) The entity is established and operated in accordance with a specific State statute authorizing the granting of charters to create independent public schools or authorizing the establishment of independent public schools.

(c) Participation in the State or local retirement system by the entity's employees is expressly required or permitted under applicable law.

(d) The entity satisfies either paragraph (d)(1) or (d)(2) below.

(1) The entity's governing board or body is controlled by a State, political subdivision of a State, or agency or instrumentality of a State or of a political subdivision of a State. For this purpose, either (i) a State, political subdivision of a State, or an agency or instrumentality of a State or political subdivision of a State must have the power to nominate, appoint, remove, and replace a majority of the members of the entity's governing board or body, or (ii) a majority of the members of the entity's governing board or body must be publicly nominated and elected.

(2) In lieu of satisfying the requirements in paragraph (d)(1), the entity satisfies the requirements in paragraphs (d)(2)(i) through (d)(2)(iii) below.

(i) The primary source of the entity's funding is from a State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State.

(ii) The rights of the entity's employees to their accrued benefits under the State or local retirement system are not dependent on whether the entity continues to participate in the system and, in the event the entity ceases participation, a

governmental entity has responsibility for the accrued benefits of the entity's employees, including the continued funding of the accrued benefits, to no lesser extent than a governmental entity has responsibility for the continued funding of the accrued benefits of the employees of any other participating employer in the system in the event that other employer were to cease to be a participating employer.

(iii) The entity is part of a local educational agency, as defined in 20 U.S.C. 7801(26) (or is its own local educational agency), and is subject to the significant regulatory control and oversight by a State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State, as described in paragraphs (d)(2)(iii)(I) and (d)(2)(iii)(2) below.

(I) The entity is held accountable by an authorized public chartering agency as defined in 20 U.S.C. § 7221i(4), which has the power to approve, renew, and revoke the charter of the entity. For this purpose, the authorized public chartering agency must be authorized under State law to approve charters for the creation of independent public schools and to hold the entity accountable for results.

(2) The entity is required to comply with health and safety standards, as well as academic and financial accountability standards, that are similar to those that are generally applicable to other public schools in the State.

(e) All financial interests of ownership in the entity are held by a State, political subdivision of a State, or agency or instrumentality of a State or of a political subdivision of a State. A State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State is not treated as holding all financial ownership interests in an entity unless, upon dissolution or final liquidation of the entity, the entity's governing documents require the entity's net assets to be distributed to another public school that meets the requirements in (a) through (e) of this section III.A or to a State, political subdivision of a State, or agency or instrumentality thereof.

B. Example

For purposes of illustrating the guidance under consideration described in sec-

tion III.A of this notice, the following example is provided.

1. *Facts.* Charter School A is an independent public school of choice (that is, a public school in which parents have a choice in determining the school their children will attend) established and operated in accordance with the laws of State X as a nonprofit corporation under § 501(c)(3) of the Code. Charter School A is a nonsectarian elementary school that provides tuition-free education.

Under the laws of State X, Charter School A has elected to be a participating employer in State X's Retirement System P, which is a defined benefit governmental plan as described in § 414(d). Under the laws of State X, Charter School A is responsible for making any employer contribution that otherwise would be the legal responsibility of the school district, and the State X will be responsible for making employer contributions to the same extent it would be legally responsible if the employees of Charter School A were school district employees.

Charter School A is funded through appropriations of State X based on the school's average daily attendance. This funding mechanism is similar to the funding mechanism for traditional public schools. Charter School A is controlled by an independent board of directors elected by parents of children who are enrolled in the charter school. Although subject to certain State X laws relating to education, Charter School A is exempt from other State X laws that apply to traditional public schools, such as laws relating to student transportation and purchasing and contracting. Charter School A, like all public charter schools in State X, is overseen by the State X Board of Education (which is the sole authorized public chartering agency in State X). For example, Charter School A is subject to audit by the State X Board of Education, which has the power to place the charter school on probation, not renew the charter contract, or revoke the charter contract. Charter School A is also subject to the same health and safety standards and state-level educational assessments used for accountability purposes as traditional public schools in State X. In addition, Charter School A must participate in the statewide testing programs of State X.

The board of directors for Charter School A is responsible for budgeting, staffing, and other management of the school, but State X requires that Charter School A must satisfy generally accepted accounting standards of fiscal management. Charter School A's charter provides that it will engage in an annual independent, outside audit by a certified public accountant of its financial and administrative operations and will provide a copy of the audit to the State X Board of Education. Charter School A must comply with rules and implementing statutes that prescribe how appropriations of State X may be spent.

Charter School A's governing documents require that, upon closure, dissolution, or final liquidation of the entity, Charter School A's net assets would be distributed to another public school that meets the requirements in (a) through (e) of section III.A of this notice or to an agency or instrumentality of State X, such as a traditional public school or the State X Board of Education.

2. *Conclusion.* Based on the facts described in section III.B.1 of this notice, Charter School A meets the requirements of the guidance under consideration described in section III.A of this notice. Therefore, State X's Retirement System P will not fail to be a governmental plan within the meaning of § 414(d) merely because the system permits Charter School A to participate in the system as a participating employer.

C. *Coordination with other agencies*

The IRS and Treasury Department, in developing the guidance under consideration described in section III.A of this notice, consulted with the Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) (the "Agencies"). As was the case with the § 414(d) ANPRM, staff from the DOL and PBGC agreed that it would be advantageous for the Agencies and the regulated community for there to be coordinated criteria for determining whether a plan is a governmental plan within the meaning of § 414(d) of the Code, section 3(32) of ERISA, and section 4021(b)(2) of ERISA. With respect to this notice, the IRS and Treasury Department also consulted with the Department of Education.

IV. TRANSITION RELIEF

A. *Periods prior to the effective date of final regulations under § 414(d) of the Code*

The guidance under consideration in section III.A of this notice would first be issued as part of the proposed regulations under § 414(d). The IRS and Treasury Department anticipate that the proposed regulations will provide guidance under § 414(d), including the guidance under consideration described in section III.A of this notice and the subject matter of the guidance under consideration described in the § 414(d) ANPRM. The proposed regulations will reflect consideration of comments received in response to the comment requests in this notice and the § 414(d) ANPRM. Before the proposed regulations are ultimately adopted as final regulations, consideration will be given to any written or electronic comments that are submitted to the IRS in accordance with the comment request that will be included in the preamble to the proposed regulations. The preamble to the proposed regulations will request comments on all aspects of the proposed rules.

The IRS and Treasury Department anticipate that the final regulations under § 414(d) will apply prospectively and will include a delayed effective date. The IRS and Treasury Department anticipate that the final regulations under § 414(d) will provide that a State or local retirement system that covers employees of a public charter school that meets the requirements of the guidance under consideration described in section III.A of this notice for periods starting on and after the effective date of the final regulations will not fail to be a governmental plan within the meaning of § 414(d), even if the plan covered those employees for periods before the effective date of the final regulations when the public charter school did not meet the requirements of the guidance under consideration described in section III.A of this notice.

The guidance under consideration described in section III.A of this notice should not be construed to create any inference concerning the proper interpretation of § 414(d) prior to the effective date of final regulations under § 414(d).

B. *Broader transition relief*

The § 414(d) ANPRM requested comments on whether safe harbors or transition relief, including grandfathering, should be provided in the proposed regulations. Some commenters suggested that the proposed regulations grandfather retirement plans that have received § 414(d) private letter rulings from the IRS, while other commenters advocated for full grandfathering for employees of any entity that has previously been a participating employer in a governmental plan. Comments were also received requesting that future guidance provide a *de minimis* exception, create safe and unsafe harbors for governmental plan determinations, implement an extended period to come into compliance with the requirements after final regulations under § 414(d) are issued, and provide the ability to correct a § 414(d) governmental plan under the Employee Plans Compliance Resolution System, Rev. Proc. 2013-12 (2013-4 IRB 313), if the plan is not in compliance with final regulations under § 414(d). Commenters also pointed out that, in at least some cases, state contractual or constitutional protections may serve to restrict a state's ability to amend the plan provisions that apply to certain participants. The IRS and Treasury Department are in the process of reviewing each of these comments. It is expected that questions regarding broader transition relief will be addressed when proposed regulations are issued under § 414(d) of the Code.

V. COMMENTS REQUESTED

Comments are requested regarding the guidance under consideration that is described in III.A of this notice. Comments are also requested regarding whether the requirements of the guidance under consideration described in section III.A of this notice are sufficient to limit the guidance to participation of employees of public charter schools in a State or local retirement system and, for example, to not cover participation of employees of entities that provide management or other services to public charter schools. Written comments should be submitted by May 11, 2015. Send submissions to CC:PA:LPD:PR, (Notice 2015-07), Room 5203, Internal Revenue Service, PO Box 7604,

Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Notice 2015-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at notice.comments@irs.counsel.treas.gov (Notice 2015-07). All comments will be available for public inspection.

DRAFTING INFORMATION

The principal author of this notice is Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Kinard or Sarah Bolen at (202) 317-6799 (not a toll-free number).

Section 45R-2015 Guidance with Respect to the Tax Credit for Employee Health Insurance Expenses of Certain Small Employers

Notice 2015-8

I. PURPOSE

This notice provides guidance on section 45R of the Internal Revenue Code (Code) for certain small employers that cannot offer a qualified health plan (QHP) through the Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in Iowa in which a QHP through a SHOP Exchange will not be available for all or part of 2015 calendar year. Section IV of this notice includes a list of those counties. With respect to those employers in Iowa, this notice provides guidance on how to satisfy the requirements for the section 45R credit for coverage provided during the 2015 calendar year and the portion of a health plan year beginning in 2015, if any, that continues into 2016. (See Notice 2014-6,

2014 I.R.B. 279, for guidance on counties in other states in which a QHP through a SHOP Exchange might not be available during 2014.)

II. BACKGROUND

Section 45R was added to the Code by section 1421 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Pub. L. No. 111-148. Section 45R offers a tax credit to certain small employers that provide health insurance coverage to their employees (eligible small employers). The credit generally is available for taxable years beginning after December 31, 2009. For taxable years beginning after December 31, 2013, the credit is available only with respect to premiums paid by a small employer for a QHP offered by the employer to its employees through a SHOP Exchange, and is available only for a period of two-consecutive-taxable years. Additionally, for taxable years beginning after December 31, 2013, the maximum credit rate is increased to 50 percent from 35 percent for eligible small employers (and to 35 percent from 25 percent for tax-exempt eligible small employers). An eligible small employer may claim the credit by filing an income tax return and attaching Form 8941, "Credit for Small Employer Health Insurance Premiums" (or in the case of tax-exempt eligible small employers, filing Form 990-T, "Exempt Organization Business Income Tax Return," and attaching Form 8941).

The Treasury Department and the IRS issued final regulations under section 45R on June 30, 2014 (79 FR 36640). The regulations provide guidance on determining eligibility for the credit and calculating and claiming the credit.

The Treasury Department and the IRS have been advised by the Department of Health and Human Services (HHS) that for calendar year 2015 the SHOP Exchanges in Iowa will not have QHPs available in certain counties for employers to offer to their employees. Under HHS regulations governing employer eligibility for SHOP Exchanges, an employer may either (1) offer coverage to all of its eligible full-time employees through the SHOP whose service area includes the employer's principal business address, or (2) offer coverage to each eligible full-time employee through the SHOP whose

service area includes that employee's primary worksite. 45 CFR 155.710(b)(3). Under either approach, an employer may offer SHOP coverage to employees whose primary worksite is at its principal business address only if that address is located within the service area of the SHOP. As a result, absent the relief provided in this notice, an otherwise eligible small employer with its principal business address in a county without any QHPs available would be denied the opportunity to claim the section 45R credit for 2015. To provide these otherwise eligible small employers an opportunity to claim the section 45R credit for 2015, this notice provides relief for those employers for the plan year of the employer's group health plan beginning in 2015, including any portion of that plan year that continues into 2016, with respect to employees whose primary worksite is at the employer's principal business address.

On December 17, 2013, the Treasury Department and the IRS issued Notice 2014-6, 2014-2 I.R.B. 279, which provided transition relief for employers in certain counties in Washington and Wisconsin with no SHOP coverage available in 2014. The Treasury Department and the IRS have determined that similar relief, described in section III of this notice, is appropriate for employers in certain counties in Iowa with no SHOP coverage available in 2015. Nothing in this notice is intended to modify or otherwise affect the relief provided in Notice 2014-6.

III. 2015 RELIEF

An eligible small employer with a principal business address in one of the counties listed in section IV below may calculate the credit under section 45R by treating health insurance coverage provided for the 2015 health plan year as qualifying for the section 45R credit, provided that that the coverage would have qualified for a credit under section 45R under the rules applicable before January 1, 2014. This treatment applies with respect to the coverage provided during the 2015 calendar year and during any portion of a health plan year beginning in 2015 that continues into 2016. If the eligible small employer claims the section 45R credit for the 2015 taxable year, then the credit will be calculated at the 50 percent

rate (35 percent for tax-exempt eligible small employers) for the entire 2015 taxable year. If the eligible small employer first claims the section 45R credit for the 2015 taxable year, the 2015 taxable year will be the first year of the two-consecutive-taxable year credit period. If the eligible small employer first claims the section 45R credit for the 2014 taxable year, then the 2015 taxable year will be the second year of the two-consecutive-taxable year credit period, regardless of whether the eligible small employer takes advantage of the relief in this notice regarding the credit for coverage provided under the rules applicable before January 1, 2014.

The relief in this notice is illustrated by the following examples. The examples assume that the employer is an eligible small employer that is not a tax-exempt employer, and that its principal business address is in a county listed in this notice.

Example 1. (i) Facts. Employer does not claim the credit for coverage provided for its 2014 taxable year. Employer has a 2015 health plan year and a 2015 taxable year that both begin January 1, 2015, and end December 31, 2015. Employer provides health insurance coverage from January 1, 2015, through December 31, 2015, that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided for the entire 2015 taxable year. If Employer claims the credit for coverage provided for the 2015 taxable year, the 2015 taxable year is the first year of its two-consecutive-taxable year credit period.

Example 2. (i) Facts. Employer does not claim the credit for coverage provided for its 2014 taxable year. Employer has a 2015 taxable year that begins January 1, 2015, and ends December 31, 2015, and a 2015 health plan year that begins April 1, 2015, and ends March 31, 2016. From April 1, 2015 through December 31, 2015 (the initial months of its plan year that begins April 1, 2015) and from January 1, 2016 through March 31, 2016, Employer provides coverage that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided from April 1, 2015 through December 31, 2015. Employer may also claim the credit under section 45R for coverage provided for its 2016 taxable year from January 1, 2016 through March 31, 2016 (in addition to any credit under section 45R for which Employer is eligible based on coverage provided from April 1 through December 31 of the 2016 taxable year).

Example 3. (i) Facts. Employer has a 2015 taxable year that begins January 1, 2015 and ends December 31, 2015, and a 2015 health plan year that begins May 1, 2015 and ends April 30, 2016. Employer provided coverage through a SHOP plan for 2014 and qualifies for, and claims, the credit for 2014. In 2015, Employer provides coverage through a SHOP plan for January 2015. Beginning February 1 and through April 30, 2015, Employer provides coverage with a policy for the remainder of the plan year that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014. From May 1, 2015, through December 31, 2015 (the initial months of its plan year that begins May 1, 2015), and from January 1, 2016, through April 30, 2016, Employer provides coverage that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) Conclusion. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided from January 1, 2015, through December 31, 2015. Employer may not claim the credit under section 45R for coverage provided for its 2016 taxable year because its two-consecutive-taxable year period ends with 2015.

IV. LIST OF IOWA COUNTIES

Adair, Adams, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Worth, Wright.

V. EFFECTIVE DATE

This notice is effective as of January 16, 2015 and applies to periods after December 31, 2014.

DRAFTING INFORMATION

The principal author of this notice is Stephanie Caden of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For

further information regarding this notice contact Stephanie Caden at (202) 317-5500 (not a toll-free number).

PENALTY RELIEF RELATED TO ADVANCE PAYMENTS OF THE PREMIUM TAX CREDIT FOR 2014

Notice 2015-9

Purpose

This Notice provides limited relief for taxpayers who have a balance due on their 2014 income tax return as a result of reconciling advance payments of the premium tax credit against the premium tax credit allowed on the tax return. Specifically, this Notice provides relief from the penalty under § 6651(a)(2) of the Internal Revenue Code for late payment of a balance due and the penalty under § 6654(a) for underpayment of estimated tax. To qualify for the relief, taxpayers must meet certain requirements described below. This relief applies only for the 2014 taxable year.

This relief does not apply to any underpayment of the individual shared responsibility payment resulting from the application of § 5000A because such underpayments are not subject to either the § 6651(a)(2) penalty or the § 6654(a) penalty.

Background

Section 6651(a)(2) imposes a penalty on a failure to pay (on or before the due date for payment, including any extension of time for payment) an amount shown as tax on any return. However, the § 6651(a)(2) penalty is not imposed if the taxpayer shows that the failure was due to reasonable cause and not willful neglect. In general, individuals must pay the tax shown on the return by April 15.

Section 6654(a) imposes a penalty in the case of an underpayment of estimated tax by an individual. Generally, taxpayers are required to make tax payments on non-wage income in quarterly installments. An underpayment of estimated tax is the excess of the required quarterly estimated tax payment over the amount actually paid on or before the due date for

the payment. Most taxpayers will avoid this penalty if they owe less than \$1,000 in tax on their 2014 income tax return after subtracting their withholding, or if their withholding and estimated taxes total at least 90% of the tax for taxable year 2014, or 100% of the tax shown on their 2013 taxable year return. Additionally, § 6654(e)(3) authorizes the Internal Revenue Service (the Service) to waive the § 6654(a) penalty for underpayments of estimated tax in unusual circumstances to the extent its imposition would be against equity and good conscience.

Beginning in 2014, an eligible individual covered, or whose family member is covered, under a qualified health plan through an Affordable Insurance Exchange (Exchange), also called a Health Insurance Marketplace, is allowed a premium tax credit under § 36B.

Section 1412 of the Patient Protection and Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–152, 124 Stat. 1029, provides that a taxpayer may receive assistance in paying premiums for coverage in a qualified health plan through advance payments of the premium tax credit. Advance credit payments are made directly to the insurance provider. The amount of the advance credit payments is determined when an individual enrolls in a qualified health plan through an Exchange and is based on projected household income and family size for the year of coverage.

A taxpayer claims the premium tax credit on the income tax return for the taxable year of coverage. The amount of the credit is based on actual household income and family size for the year reflected on the tax return. Under § 36B(f)(2) and § 1.36B–4(a)(1)(i) of the Income Tax Regulations, a taxpayer must reconcile, or compare, the amount of premium tax credit allowed on the tax return with advance credit payments. Changes in the circumstances on which the advance credit payments are based could result in a difference between the amount of advance credit payments and the premium tax credit to which the taxpayer is entitled. If advance credit payments are more than the premium tax credit allowed on the return, the difference (excess advance

payments) is treated as additional tax and may result in either a smaller refund or a larger balance due (or, if the premium tax credit allowed is more than the advance credit payments made, the excess credit amount may result in a larger refund or lower balance due). Taxable year 2014 is the first year for which taxpayers will be required to reconcile advance credit payments with the premium tax credit.

Penalty Relief for 2014

Some taxpayers who have a balance due on their 2014 income tax returns attributable to the reconciliation of their advance credit payments and the premium tax credit calculated on their returns may not be able to pay by the due date for payment, generally April 15. Taxpayers who do not pay their entire tax liability by the due date for payment generally would be liable for the § 6651(a)(2) penalty for failure to pay, unless they requested and were granted relief due to reasonable cause. Additionally, some taxpayers may discover when they reconcile advance credit payments with the premium tax credit that their estimated tax payments were understated, potentially making these taxpayers liable for the § 6654(a) estimated tax penalty. Therefore, in consideration of these factors, and consistent with the authority in § 6651(a)(2) and § 6654(e)(3) to provide relief from penalties for taxpayers, this Notice provides relief from the § 6651(a)(2) and § 6654(a) penalties for taxpayers who satisfy the requirements in this Notice.

Pursuant to this Notice, the Service will abate the § 6651(a)(2) penalty for taxable year 2014 for taxpayers who (i) are otherwise current with their filing and payment obligations; (ii) have a balance due for the 2014 taxable year due to excess advance payments of the premium tax credit; and (iii) report the amount of excess advance credit payments on their 2014 tax return timely filed, including extensions (Line 46 of Form 1040 or Line 29 of Form 1040A).

Further, the Service will waive the § 6654 penalty for taxable year 2014 for an underpayment of estimated tax for taxpayers who have an underpayment attributable to excess advance credit payments if the taxpayers (i) are otherwise current with their filing and payment obligations;

and (ii) report the amount of the excess advance credit payments on a 2014 tax return timely filed, including extensions.

For purposes of this Notice, taxpayers will be treated as current with their filing and payment obligations if as of the date they file their 2014 income tax returns, they (i) have filed, or filed an extension for, all currently required federal tax returns, and (ii) paid or have entered into an installment agreement (which is not in default), an offer in compromise, or both to satisfy a federal tax liability. If a taxpayer has not paid a tax due because there is a genuine dispute between the taxpayer and the Service that has not been finally determined as to the existence or amount of the correct tax liability under the law, then the amount of tax in dispute will be treated as being current during the pendency of the dispute.

Taxpayers should be aware that this Notice does not extend the time to file a return. To obtain an automatic extension of time to file, a taxpayer should file Form 4868, “Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,” on or before April 15, 2015. Additionally, § 6601 imposes interest on amounts of tax not paid by the due date, determined without regard to an extension of time for payment. Taxpayers will be required to pay interest on the balance due from the original deadline to pay, which is generally April 15, 2015, even if they qualify for penalty relief under this Notice. Nothing in this Notice affects the ability of a taxpayer to claim relief based on existing law and procedures.

Procedure for Claiming Penalty Relief

Requesting relief from the failure to pay penalty

Generally, the Service automatically assesses the § 6651(a)(2) penalty against taxpayers and sends a notice demanding payment. When responding to such a notice, taxpayers should submit a letter to the address listed in the notice that contains the statement: “I am eligible for the relief granted under Notice 2015–9 because I received excess advance payment of the premium tax credit.”

Taxpayers who file their returns by April 15, 2015 will be entitled to relief

under this Notice even if they have not fully paid the underlying liability by the time they request relief.

Taxpayers who file their returns after April 15, 2015 must fully pay the underlying liability by April 15, 2016 to be eligible for relief under this Notice.

Interest will accrue until the underlying liability is fully paid. See Publication 4849, *Can't Pay the Tax You Owe?*, for further information on how to pay your past due federal income tax liability.

Requesting relief from the estimated tax penalty

To request a waiver of the § 6654(a) penalty as provided in this Notice, taxpayers should check box A in Part II of Form 2210, complete page 1 of the form, and include the form with their return, along with the statement: "Received excess advance payment of the premium tax credit." Taxpayers do not need to attach documentation from the Exchange, explain the circumstances under which they received an excess advance payment, or

complete any page other than page 1 of the Form 2210. Taxpayers also do not need to figure the amount of penalty for the penalty to be waived.

Contact Information

The principal author of this Notice is Danielle W. Pierce of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this Notice, contact Danielle Pierce at (202) 317-6845 (not a toll-free number).

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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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2014–27 through 2014–52 is in Internal Revenue Bulletin 2014–52, dated December 28, 2014.

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¹A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2014–27 through 2014–52 is in Internal Revenue Bulletin 2014–52, dated December 28, 2014.

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

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