

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-12
March 23, 2015

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 2015-22, page 768.

This notice provides for waiver of the section 6654(a) addition to tax for underpayment of estimated taxes for those farmers and fishermen who received erroneous 2014 Forms 1095-A, Health Insurance Marketplace Statements, and who file and pay by April 15, 2015.

INCOME TAX

REG-100400-14, page 779.

These proposed regulations would revise the rules for reporting certain items of income and deduction that are reportable on the day a corporation joins or leaves a consolidated group.

REG-132253-11, page 771.

This document contains proposed regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno and slot machine play.

Notice 2015-21, page 765.

This notice provides a proposed revenue procedure that, if finalized, will provide an optional safe harbor method for individual taxpayers to determine a wagering gain or loss from certain slot machine play.

Notice 2015-22, page 768.

This notice provides for waiver of the section 6654(a) addition to tax for underpayment of estimated taxes for those farmers and fishermen who received erroneous 2014 Forms 1095-A, Health Insurance Marketplace Statements, and who file and pay by April 15, 2015.

Notice 2015-23, page 769.

Resident populations of the 50 states, the District of Columbia, Puerto Rico, and the insular areas for purposes of determining the 2015 calendar year (1) state housing credit ceiling under section 42(h) of the Code, (2) private activity bond volume cap under section 146, and (3) private activity bond volume limit under section 142(k) are reproduced.

EXEMPT ORGANIZATIONS

Announcement 2015-12, page 770.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

Notice 2015-18, page 765.

New section 529A permits a state (or a state agency or instrumentality) to establish and maintain a qualified ABLE program, under which contributions may be made to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account who is disabled. The notice announces that the Treasury Department and IRS currently anticipate issuing proposed regulations that will provide that the designated beneficiary of an ABLE account is the owner of the account. The notice also provides that, with regard to the ABLE account of a designated beneficiary who is not the person with signature authority over that account, the person with signature authority may neither have nor acquire any beneficial interest in the account and must administer the account for the benefit of the designated beneficiary.

(Continued on the next page)

ADMINISTRATIVE

REG-132253-11, page 771.

This document contains proposed regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno and slot machine play.

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 165.—Plain Language Summary

Notice 2015–21 provides a proposed revenue procedure that, if finalized, will provide an optional safe harbor method for individual taxpayers to determine a wagering gain or loss from certain slot machine play.

Part III. Administrative, Procedural, and Miscellaneous

Qualified ABLE Programs

Notice 2015-18

SECTION 1. PURPOSE

This notice provides advance notification of a provision anticipated to be included in the proposed regulations to be issued under section 529A of the Internal Revenue Code.

SECTION 2. BACKGROUND

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (P.L. 113-295). The ABLE Act creates a new section 529A of the Internal Revenue Code (Code) that permits a state (or a state agency or instrumentality) to establish and maintain a new type of tax-advantaged savings program, a qualified ABLE program, under which contributions may be made to an account (an ABLE account) that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account who is a resident of that state and who is disabled (as defined in section 529A). If a state does not establish and maintain its own qualified ABLE program, it may enter into a contract with another state in order to provide its residents with access to a qualified ABLE program. The statute directs the Secretary of the Treasury or his designee to issue regulations or other guidance to implement section 529A no later than June 19, 2015.

The Treasury Department and the Internal Revenue Service (IRS) have been advised that several state legislatures currently are in the process of enacting enabling legislation in order to ensure that their citizens may create ABLE accounts during 2015. While the Treasury Department and the IRS currently are working on section 529A guidance, it is anticipated that ABLE programs may be in operation in some states before such guidance can be issued.

The Treasury Department and the IRS do not want the lack of guidance to discourage states from enacting their en-

abling legislation and creating their ABLE programs, which could delay the ability of the families of disabled individuals or others to begin to fund ABLE accounts for those disabled individuals. Therefore, the Treasury Department and the IRS are assuring states that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, that they will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the guidance when it is issued. The Treasury Department and the IRS intend to provide transition relief with regard to necessary changes to ensure that the state programs and accounts meet the requirements in the guidance, including providing sufficient time after issuance of the guidance in order for changes to be implemented. For those states that are moving forward before the issuance of additional guidance, this notice provides advance notice of certain important ways in which future section 529A guidance is expected to differ from the section 529 proposed regulations so that states promulgating rules may appropriately reflect a fundamental statutory requirement.

SECTION 3. NOTICE

Section 529A was modeled on section 529 of the Code, which provides tax-exempt status to qualified tuition programs (QTPs) established and maintained by a state (or agency or instrumentality thereof), or by one or more eligible educational institutions, under which contributions may be made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. However, there are a few significant differences between the statutory provisions governing QTPs and those governing qualified ABLE programs.

To assist states currently contemplating legislation regarding ABLE programs in advance of issuing further guidance to implement section 529A, the Treasury Department and the IRS advise that the section 529A guidance, when issued, may

differ in various ways from the proposed regulations that have been promulgated under section 529. In particular, the Treasury Department and the IRS currently anticipate that, consistent with section 529A(e)(3), the guidance will provide that the owner of an ABLE account is the designated beneficiary of the account. In addition, the Treasury Department and the IRS currently anticipate that the section 529A guidance will provide that, with regard to the ABLE account of a designated beneficiary who is not the person with signature authority over that account, the person with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account and must administer that account for the benefit of the designated beneficiary of that account.

DRAFTING INFORMATION

The principal author of this notice is Sean Barnett of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Barnett at (202) 317-5800 (not a toll-free number).

Safe Harbor Method for Determining a Wagering Gain or Loss from Slot Machine Play

Notice 2015-21

This notice provides a proposed revenue procedure that, if finalized, will provide an optional safe harbor method for individual taxpayers to determine a wagering gain or loss from certain slot machine play.

Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived. *See also* § 1.61-1 of the Income Tax Regulations. Gains from wagering transactions are included in gross income. *See Rev. Rul. 54-339, 1954-2 C.B. 89.* Neither the statute nor the regulations define the term “transactions.” Gross income from a slot machine wagering transaction is determined on a

session basis. See *Shollenberger v. Commissioner*, T.C. Memo. 2009–306 (2009); *LaPlante v. Commissioner*, T.C. Memo. 2009–226 (2009). Section 165(d) provides that losses from wagering transactions are allowed only to the extent of the gains from such transactions. See also § 1.165–10 of the Income Tax Regulations. *But see* § 873(a) (for a nonresident alien individual, deductions are allowed only to the extent that they are connected with income that is effectively connected with the conduct of a trade or business within the United States). The Internal Revenue Service (Service) and the Treasury Department are aware that determining the amount of a wagering gain or loss from slot machine play is burdensome for taxpayers and sometimes creates controversy between taxpayers and the Service. See, e.g., *Shollenberger, supra*; *LaPlante, supra*; *Kochevar v. Commissioner*, T.C. Memo. 1995–607 (1995). This controversy is complicated by changes in gambling technology. The increased use of electronic gambling, with the development of player’s cards and tickets, has curtailed the redemption of tokens by slot machine players.

To reduce the burden on taxpayers, this proposed revenue procedure, if finalized, will provide an optional safe harbor method for determining what constitutes a session of play for purposes of calculating wagering gains or losses from electronically tracked slot machine play under § 61. The proposed revenue procedure describes the circumstances in which the safe harbor method can be used and provides examples of its application. Use of the safe harbor method will not relieve taxpayers of the requirement to maintain records that substantiate any items reported on their income tax returns. See § 6001; Rev. Proc. 77–29, 1977–2 C.B. 538.

This proposed revenue procedure does not address how the separate transactions determined under the safe harbor are taken into account in determining total gain or loss for a taxable year. See *Shollenberger, supra* (gambling losses are allowable, if at all, as itemized deductions in calculating taxable income). In particular, this revenue procedure does not permit gains or losses from separate sessions to be netted against each other to deter-

mine gain or loss for a taxable year. In addition, this safe harbor method applies only to wagering gains and losses; it does not apply to non-wagering expenses related to gambling. See *Mayo v. Commissioner*, 136 T.C. 81 (2011), *acq.*, 2012–3 I.R.B. 285, *action on dec.*, 2011–06 (Dec. 21, 2011) (section 165(d) does not limit deductions for expenses incurred to engage in the trade or business of gambling).

The Service and the Treasury Department request comments from the public regarding the optional safe harbor method under this proposed revenue procedure. In particular, we request comments regarding: (1) alternative definitions for the term “slot machine;” (2) whether an interruption in play, such as leaving the gaming area for over 15 minutes, should affect the determination of what constitutes a single session of play; (3) whether a session of play should be based on a period other than a calendar day (making adjustments when necessary to accommodate the end of a taxpayer’s year on December 31st); (4) whether the definition of a single session of play should be determined by other factors, such as the duration of a trip or by each slot machine played (comments should include an explanation of the benefits and drawbacks of the proposed method); (5) whether the safe harbor should include payouts in the form of merchandise and bonus rewards; (6) whether the topic is appropriate for the Industry Issue Resolution (IIR) program described in Rev. Proc. 2003–36, 2003–1 C.B. 859; (7) whether a safe harbor method to determine a wagering gain or loss should be developed for other forms of gambling, including, but not limited to, keno, table games, and pari-mutuel wagers (comments should include the form of gambling, a description of the proposed safe harbor method, and an explanation of the benefits and drawbacks of the proposed method); and (8) whether any aspects of the optional safe harbor pose problems of administrability for stakeholders (including whether the issues and possible modifications on which comments are requested would pose problems for sound tax administration).

Comments must be submitted by June 1st, 2015. Comments, identified by Notice 2015–21, may be sent by one of the following methods:

- By Mail:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015–21)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044

- By Hand or Courier Delivery: Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier’s Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2015–21)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

- Electronic: Alternatively, persons may submit comments electronically to Notice.Comments@irs.counsel.treas.gov. Please include “Notice 2015–21” in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in Room 1621, 1111 Constitution Avenue, N.W., Washington, D.C., from 9 a.m. to 4 p.m.

PROPOSED REVENUE PROCEDURE

SECTION 1. PURPOSE

This revenue procedure provides an optional safe harbor method for taxpayers to determine a wagering gain or loss from certain slot machine play.

SECTION 2. BACKGROUND

.01 Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived. See also § 1.61–1 of the Income Tax Regulations. Wagering gains are included in gross income. See Rev. Rul. 54–339, 1954–2 C.B. 89.

.02 Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise.

.03 Section 165(d) provides that losses from wagering transactions are allowed only to the extent of the gains from such transactions.

.04 Section 1.165–10 of the Income Tax Regulations provides that losses sus-

tained during the taxable year on wagering transactions are allowed as a deduction but only to the extent of the gains during the taxable year from the transactions.

.05 Gross income from a wagering transaction is calculated by subtracting wagers placed to produce the payouts from the payouts as a preliminary step in determining gross income. *See Rev. Rul. 83-130, 1983-2 C.B. 148.*

.06 Gross income from a slot machine wagering transaction is determined on a session basis. *See Shollenberger v. Commissioner, T.C. Memo 2009-306 (2009); LaPlante v. Commissioner, T.C. Memo. 2009-226 (2009).* Determining whether a series of wagers is a “session” requires analyzing the relevant facts and circumstances and can present practical difficulties. *Shollenberger, supra.*

SECTION 3. DEFINITIONS

The following definitions apply solely for purposes of this proposed revenue procedure.

.01 *Slot Machine.* “Slot machine” means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

.02 *Payout.* “Payout” means the amount, if any, payable to the taxpayer as a result of a wager placed by the taxpayer.

.03 *Electronically Tracked Slot Machine Play.* The term “electronically tracked slot machine play” means slot machine play using an electronic player system that is controlled by the gaming establishment (such as through the use of a player’s card or similar system) and that records the amount a specific individual won and wagered on slot machine play.

.04 *Session of Play.* A session of play begins when a patron places the first wager on a particular type of game and ends when the same patron completes his or her last wager on the same type of game before the end of the same calendar day. For purposes of this section, the time is determined by the time zone of the location where the patron places the wager. A session of play is always determined with reference to a calendar day (24-hour pe-

riod from 12:00 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day.

SECTION 4. SCOPE

This revenue procedure applies to individual taxpayers who engage in electronically tracked slot machine play.

SECTION 5. APPLICATION

The Service will not challenge a taxpayer’s use of the definition of a session of play set forth in section 3.04 of this revenue procedure in calculating a wagering gain or wagering loss from electronically tracked slot machine play provided that the taxpayer complies with the provisions of section 6.01 through section 6.04 of this revenue procedure.

SECTION 6. DETERMINING GAIN OR LOSS IN A SESSION OF PLAY

.01 A taxpayer determines a wagering gain or loss from electronically tracked slot machine play at the end of a single session of play (as defined in section 3.04) as follows:

(1) A taxpayer recognizes a wagering gain if, at the end of a single session of play, the total dollar amount of payouts from electronically tracked slot machine play during that session exceeds the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play during that session;

(2) A taxpayer recognizes a wagering loss if, at the end of a single session of play, the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play exceeds the total dollar amount of payouts from electronically tracked slot machine play during that session.

.02 A taxpayer must use the same session of play if the taxpayer stops and then resumes electronically tracked slot machine play within a single gaming establishment during the same calendar day.

.03 If a taxpayer uses the definition of a session of play set forth in section 3.04 for any day in a calendar year at a particular gaming establishment, the taxpayer must use that definition for all electronically tracked slot machine play during the taxable year at that same gaming establishment.

.04 If, after engaging in slot machine play at one gaming establishment, a taxpayer leaves that establishment and begins electronically tracked slot machine play at another gaming establishment, a separate session of play begins at the second establishment, even if played within the same calendar day as the first.

.05 *Examples.* In each example below, the taxpayer uses the safe harbor method provided by this revenue procedure for all electronically tracked slot machine play for the calendar year and can properly substantiate all wagering gains and losses pursuant to § 6001. In addition, in each example below, the taxpayer complies with the requirements of sections 6.02 and 6.03 to use the session of play definition set forth in section 3.04 consistently for electronic play over the course of a day and over the course of separate sessions during the taxable year.

Example 1. A taxpayer engages in electronically tracked slot machine play at X, a casino, by using a player’s card. On January 1, the taxpayer plays slot machines at X, for the first time that day, from 3:00 p.m. to 5:00 p.m. At 6:00 p.m., the taxpayer leaves X for dinner. Later that day, the taxpayer returns to X and plays slot machines from 10:00 p.m. to 11:59 p.m. The play at X from 3:00 p.m. to 5:00 p.m. and from 10:00 p.m. to 11:59 p.m. is a single session of play on January 1.

Example 2. Assume the same facts as in *Example 1*, except that the taxpayer plays from 10 p.m. to 2 a.m. The play from 3 p.m. to 5 p.m. and the play from 10 p.m. through 11:59 p.m. constitute a single session of play. The play from 12:00 midnight to 2 a.m. is another session of play on January 2nd.

Example 3. Assume the same facts as in *Example 1*, except that the taxpayer goes to another casino, Y, to engage in electronically tracked slot machine play from 7:00 p.m. to 8:00 p.m. The taxpayer has 2 separate sessions of play on January 1: (1) one session of play from 3:00 p.m. to 5:00 p.m. and 10:00 p.m. to 11:59 p.m. at X, and (2) another session of play from 7:00 p.m. to 8:00 p.m. at Y.

Example 4. On January 1, at 3:00 p.m., the taxpayer starts electronically tracked slot machine play at X for the first time that day. At 5:00 p.m., the taxpayer finishes slot machine play for that day and has payouts in excess of wagers of \$300. For the single session of play on January 1, the taxpayer has gambling winnings of \$300.

Example 5. Assume the same facts as in *Example 4*, except that at 5:00 p.m., the taxpayer leaves the premises of X to eat dinner at a nearby restaurant. At 8:00 p.m., the taxpayer returns to the premises of X for more slot machine play. The taxpayer places wagers until 11:00 p.m. During the period from 8:00 p.m. until 11:00 p.m., the taxpayer’s wagers placed on electronically tracked slot machine play exceeded the total dollar amount of payouts from electronically tracked slot machine play earned by the taxpayer by \$75. The taxpayer’s wagering gain for the

single session of play at X is \$225, the extent to which his payouts from electronically tracked slot machine play during that session exceeds the dollar amount of wagers from electronically tracked slot machine play.

Example 6. Assume the same facts as in *Example 4*, except the taxpayer goes to another area of X and from 5:15 p.m. to 7:00 p.m., engages in additional slot machine play that is not electronically tracked. This revenue procedure applies only to electronically tracked slot machine play (the session from 3:00 p.m. to 5:00 p.m.). Therefore, the taxpayer cannot include the slot machine play from 5:15 p.m. to 7:00 p.m. in the session of play for January 1.

Example 7. Assume the same facts as in *Example 4*, except that, three months later on April 1, the taxpayer returns to X for slot machine play, and begins electronically tracked slot machine play at 6:00 p.m. For the slot machine play on April 1, section 6.03 of this revenue procedure requires the taxpayer to use a session of play that runs from 6:00 p.m. up through 11:59 p.m. (or earlier in that calendar day, if his play ends earlier).

SECTION 7. PROCEDURE

To use this revenue procedure, a taxpayer must write “Revenue Procedure 2015–X” on Line 21 of the Form 1040, U.S. Individual Tax Return. A nonresident alien who is a non-professional gambler must write “Revenue Procedure 2015–X” on line 10, if a resident of Canada, or on line 11, if not a resident of Canada, on Schedule NEC of the Form 1040NR. A nonresident alien who is a professional gambler and uses this Revenue Procedure must write “Revenue Procedure 2015–X” on line 21 of the Form 1040NR.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after [insert date of publication of final revenue procedure], except for section 7, which will be effective no earlier than taxable years beginning on or after January 1, 2016.

DRAFTING INFORMATION

The principal authors of this notice are Amy S. Wei and Renay France of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Renay France at (202) 317-7003 (not a toll-free number).

Transitional Relief from Estimated Tax Additions to Tax for Farmers and Fishermen Who Receive Erroneous Forms 1095–A Notice 2015–22

This notice provides for waiver of the addition to tax under section 6654(a) of the Internal Revenue Code (Code) for underpayment of estimated taxes for those farmers and fishermen who received erroneous 2014 Forms 1095–A, Health Insurance Marketplace Statements and who file and pay by April 15, 2015.

Background

Generally, the Code requires individuals to pay federal income tax as they earn income. To the extent these taxes are not withheld from an individual’s wages, an individual taxpayer must pay estimated taxes.

In general, estimated taxes are required in four installments, and the amount of any required installment shall be 25 percent of the “required annual payment.” I.R.C. § 6654(c) and (d)(1)(A). Taxpayers who fail to make a sufficient and timely payment of tax are liable for an addition to tax under section 6654(a).

Qualifying farmers and fisherman, however, are subject to a special rule, allowing them to make only one installment payment, due on January 15 of the following taxable year. I.R.C. § 6654(i)(1)(A) and (B). A taxpayer qualifies as a farmer or fisherman for the 2014 tax year if at least two-thirds of the taxpayer’s total gross income was from farming or fishing in either 2013 or 2014. I.R.C. § 6654(i)(2). Qualifying farmers and fishermen who choose not to make the required estimated tax installment payment on January 15 are not subject to an addition to tax for failing to pay estimated tax if they file their return and pay the full amount of tax due by March 1 of that following taxable year. I.R.C. § 6654(i)(1)(D). When the last day for performing any act required under the Code falls on a Saturday, Sunday, or legal holiday, the performance of that act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. I.R.C. § 7503. March 1, 2015, is a Sunday. Accordingly, farmers and fishermen who file

their returns and pay the amount owed on or before March 2, 2015, will qualify for the special rule under section 6654(i)(1)(D).

The Internal Revenue Service may waive section 6654 penalties for underpayments of estimated tax in unusual circumstances to the extent its imposition would be against equity and good conscience. I.R.C. § 6654(e)(3).

On February 20, 2015, the Department of Health and Human Services (HHS) announced that it had issued Forms 1095–A, Health Insurance Marketplace Statements, containing erroneous information to some taxpayers who received advance subsidies toward their purchase of health insurance through healthcare.gov.

The Service is providing this relief because a number of taxpayers have been informed that they will be receiving corrected Forms 1095–A from the Health Insurance Marketplace. Taxpayers need this form to file a complete and accurate return. The delay in the receiving accurate Forms 1095–A may prevent some farmers and fishermen from filing their 2014 income tax returns by March 2, 2015. As a result, the IRS is waiving the penalty for failing to make 2014 estimated tax payments for any farmer or fisherman who, due to this delay, files their return and pays any tax due by Wednesday, April 15.

As explained above, farmers and fisherman are eligible for the special rule under section 6654(i)(1)(D) that protects them against the addition to tax for failing to pay estimated tax only if they file their individual returns and pay all of the tax owed by March 2, 2015. Consequently, farmers and fisherman who wait to file and pay until they receive the corrected Forms 1095–A would not get the benefit of section 6654(i)(1)(D) and would be subject to additional liability for the addition to tax for failure to make estimated taxes under section 6654(a).

Transitional Relief for Underpayment of Estimated Taxes

Pursuant to the authority in section 6654(e)(3), the Service will waive the section 6654 addition to tax for the 2014 tax year for farmers and fishermen who received erroneous Forms 1095–A and who miss the March filing and payment deadline, if they file their 2014 returns and pay in full any tax due by April 15, 2015. Farmers and fishermen requesting this addition to tax

waiver must attach Form 2210–F, Underpayment of Estimated Tax by Farmers and Fishermen, to their 2014 tax return. The form can be submitted electronically or on paper. The taxpayer’s name and identifying number should be entered at the top of the form and the waiver box (Part I, Box A) should be checked. The rest of the form should be left blank. Forms, instructions, and other tax assistance are available on IRS.gov. The IRS toll-free number for general tax questions is 1-800-829-1040.

Contact Information

The principal author of this notice is David W. Skinner of the Office of Associate Chief Counsel (Procedure & Administration). For further information, please call (202) 317-3400 (not a toll-free number).

2015 Calendar Year Resident Population Figures Notice 2015–23

This notice advises State and local housing credit agencies that allocate low-income housing tax credits under § 42 of the Internal Revenue Code, and States and other issuers of tax-exempt private activity bonds under § 141, of the population figures to use in calculating: (1) the 2015 calendar year population-based component of the State housing credit ceiling (Credit Ceiling) under § 42(h)(3)(C)(ii); (2) the 2015 calendar year volume cap (Volume Cap) under § 146; and (3) the 2015 volume limit (Volume Limit) under § 142(k)(5).

Generally, § 146(j) requires determining the population figures for the population-based component of both the Credit Ceiling and the Volume Cap for any calendar year on the basis of the most recent census estimate of the resident population of a State (or issuing authority) released by the U.S. Census Bureau before the beginning of the calendar year. Similarly, § 142(k)(5) bases the Volume Limit on the State population.

Sections 42(h)(3)(H) and 146(d)(2) require adjusting for inflation the population-based component of the Credit Ceiling and the Volume Cap. The adjustments for the 2015 calendar year are in Rev. Proc. 2014–61, 2014–47 I.R.B. 860. Section 3.09 of Rev. Proc. 2014–61 provides that,

for calendar year 2015, the amount for calculating the Credit Ceiling under § 42(h)(3)(C)(ii) is the greater of \$2.30 multiplied by the State population, or \$2,680,000. Further, section 3.20 of Rev. Proc. 2014–61 provides that the amount for calculating the Volume Cap under § 146(d)(1) for calendar year 2015 is the greater of \$100 multiplied by the State population, or \$301,515,000.

For the 50 states, the District of Columbia, and Puerto Rico, the population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2015 calendar year are the resident population estimates released electronically by the U.S. Census Bureau on December 23, 2014, and described in Press Release CB14–232. For American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, the population figures for the 2015 calendar year are the 2014 midyear population figures in the U.S. Census Bureau’s International Data Base (IDB). The U.S. Census Bureau electronically announced an update of the IDB on December 19, 2013, in Press Release CB13–TPS.108.

For convenience, these figures are reprinted below.

Alabama	4,849,377
Alaska	736,732
American Samoa	54,517
Arizona	6,731,484
Arkansas	2,966,369
California	38,802,500
Colorado	5,355,866
Connecticut	3,596,677
Delaware	935,614
District of Columbia	658,893
Florida	19,893,297
Georgia	10,097,343
Guam	161,001
Hawaii	1,419,561
Idaho	1,634,464
Illinois	12,880,580
Indiana	6,596,855
Iowa	3,107,126
Kansas	2,904,021
Kentucky	4,413,457

Louisiana	4,649,676
Maine	1,330,089
Maryland	5,976,407
Massachusetts	6,745,408
Michigan	9,909,877
Minnesota	5,457,173
Mississippi	2,994,079
Missouri	6,063,589
Montana	1,023,579
Nebraska	1,881,503
Nevada	2,839,099
New Hampshire	1,326,813
New Jersey	8,938,175
New Mexico	2,085,572
New York	19,746,227
North Carolina	9,943,964
North Dakota	739,482
Northern Mariana Islands	51,483
Ohio	11,594,163
Oklahoma	3,878,051
Oregon	3,970,239
Pennsylvania	12,787,209
Puerto Rico	3,548,397
Rhode Island	1,055,173
South Carolina	4,832,482
South Dakota	853,175
Tennessee	6,549,352
Texas	26,956,958
Utah	2,942,902
Vermont	626,562
Virginia	8,326,289
Virgin Islands, U.S.	104,170
Washington	7,061,530
West Virginia	1,850,326
Wisconsin	5,757,564
Wyoming	584,153

The principal authors of this notice are James A. Holmes, Office of the Associate Chief Counsel (Passthroughs and Special Industries), and Timothy L. Jones, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, please contact Mr. Holmes at (202) 317-4137 (not a toll-free number).

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2015–12

Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of

announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organiza-

tions described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on March 23, 2015 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
American Debt Counseling Inc.	1/1/2007	Sunrise, FL
Ameridebt Inc.	1/1/2000	Washington, DC
C is for Cat	1/1/2010	Santa Clarita, CA
The Center for Entrepreneurial Management Inc.	1/1/2009	New York, NY
Changing Hearts Foundation	12/1/2007	Anaheim, CA
Community Health Network Inc.	1/1/2009	Savannah, TN
Earth Light	1/1/2010	San Diego, CA
El Dorado Charitable Foundation	1/1/2011	Sun City, AZ
Gateways Foundation for Youth and Families	1/1/2009	Tacoma, WA
Hilltoppers Girls Athletic Association	4/1/2010	Cleveland, OH
Jo Ann Davidson Ohio Leadership Institute	1/1/2011	Columbus, OH
Kentucky National Guard Historical Foundation Inc.	4/1/2010	Frankfort, KY
Learning Services of Northern California	7/1/2009	Oakland, CA
Mabel E & George C Ordway Memorial Student Aid TR	1/1/2013	Newport Coast, CA
Rio Verde University Inc.	1/1/2010	Provo, UT
Scripture Keys Ministries	1/1/2010	Denver, CO
Tegan Communities Inc.	1/1/2010	Phoenix, AZ
Turff Therapy	1/1/2010	Baird, TX
West Pittsburgh Partnership for Regional Development Inc.	1/1/2010	Pittsburgh, PA
World Religious Relief	6/1/2007	Southfield, MI

Information Returns; Winnings from Bingo, Keno, and Slot Machines

REG-132253-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno, and slot machine play. The proposed regulations affect persons who pay winnings of \$1,200 or more from bingo and slot machine play, \$1,500 or more from keno, and recipients of such payments. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 2, 2015. Outlines of topics to be discussed at the public hearing scheduled for June 17, 2015 at 10 a.m. must be received by June 2, 2015.

ADDRESSES: Send submissions to: CC: PA: LPD:PR (REG-132253-11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132253-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-132253-11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, David Bergman, (202) 317-6844; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the

hearing, Oluwafunmilayo P. Taylor (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations to Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The proposed regulations would update and simplify the existing information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The updated requirements are proposed to be set forth in a new § 1.6041-10 of the regulations. Accordingly, when § 1.6041-10 of the proposed regulations becomes final, the regulations under § 7.6041-1 will be removed.

Section 6041 generally requires information reporting by every person engaged in a trade or business who, in the course of such trade or business, makes payments of gross income of \$600 or more in any taxable year. The current regulatory reporting thresholds for winnings from bingo, keno, and slot machines deviate from this general rule. Prior to the adoption of the current thresholds in 1977, reporting from bingo, keno, and slot machines was based a sliding scale threshold tied to the amount of the wager and required the wager odds to be at least 300 to 1. On January 7, 1977, temporary regulation § 7.6041-1 was published establishing reporting thresholds for payments of winnings from bingo, keno, and slot machine play in the amount of \$600. In Announcement 77-63, 1977-8 IRB 25, the IRS announced that it would not assert penalties for failure to file information returns before May 1, 1977, to allow the casino industry to submit, and the IRS to consider, information regarding the industry's problems in complying with the reporting requirements. After considering the evidence presented by the casino industry, the IRS announced in a press release that effective May 1, 1977, information reporting to the IRS would be required on

payments of winnings of \$1,200 or more from a bingo game or a slot machine play, and \$1,500 or more from a keno game net of the wager. On June 30, 1977, § 7.6041-1 was amended to raise the reporting thresholds for winnings from a bingo game and slot machine play to \$1,200, and the reporting threshold for winnings from a keno game to \$1,500.

Section 7.6041-1(c) provides that bingo, keno, and slot machine winnings are reported on the Form W-2G, "Certain Gambling Winnings." The payor must provide a copy of the Form W-2G to the payee by January 31 of the year following the year in which the reportable payment is made, and the payor must file the Form W-2G with the IRS by February 28 of the year following the year in which the reportable payment is made. The Form W-2G must include, among other things, the name, address, and taxpayer identification number of the payee and a general description of the two forms of identification used to verify this information.

Explanation of Provisions

The current regulations governing information reporting of winnings from bingo, keno, and slot machine play were published in 1977. There have been significant changes in gaming industry technology since that time. For instance, today many gaming establishments employ electronic slot machines and other mechanisms, such as player's cards, that permit electronic tracking of wagers and/or winnings. In addition, there have been many changes in the tax information reporting regime since the late 1970s, such as the enactment of backup withholding and requirements for electronic filing of information returns, including the Form W-2G. Current regulations under § 7.6041-1 of the Temporary Income Tax Regulations do not take these changes into account. Accordingly, the Treasury Department and the IRS think the regulations for reporting winnings from bingo, keno, and slot machine play need to be updated in light of these developments and that there are opportunities to reduce burden and simplify reporting. The changes proposed by this document are intended to accomplish these goals. In

addition, the Treasury Department and the IRS specifically request comments on certain topics addressed by the regulations.

Filing Requirement

Proposed § 1.6041-10(a) retains the general rule from § 7.6041-1 of the Temporary Income Tax Regulations that every person engaged in a trade or business who, in the course of its trade or business, pays reportable gambling winnings must make an information return with respect to such payments. Proposed § 1.6041-10(a) clarifies that, consistent with current law and as provided in § 1.6041-1(b) of the regulations, the term “persons engaged in a trade or business” includes not only those engaged in a trade or business for profit or gain, but also organizations whose activities are not for profit or gain, such as tax-exempt organizations and governmental entities.

Proposed § 1.6041-10(b) sets thresholds for when winnings from bingo, keno, and slot machine play will be treated as reportable gambling winnings and subject to reporting. Existing § 7.6041-1(b) of the Temporary Income Tax Regulations sets one threshold for bingo and slots, and a different threshold for keno. In addition, under § 7.6041-1(b) of the Temporary Income Tax Regulations, winnings from a keno game are reduced by the amount wagered in that game in determining whether the reporting threshold is satisfied, whereas for bingo and slot machine play winnings are not reduced by the amount wagered in determining whether the reporting threshold is satisfied.

Under the proposed regulations, the reporting thresholds for winnings from bingo, keno and slot machine play (other than electronically tracked slot machine play) remain the same as under the existing regulations. These thresholds are intended to reach a balance between reporting burden and compliance risk. Based on over 35 years of experience with the current thresholds, the IRS thinks they are sufficient at this time to verify correct reporting of wagering income. Accordingly, § 1.6041-10(b) of the proposed regulations provides that reportable gambling winnings means (i) \$1,200 or more in the case of one bingo

game or slot machine play, and (ii) \$1,500 or more in the case of one keno game. However, advances in technology in the nearly four decades since the existing rules were adopted may overcome the compliance concerns that prompted the higher reporting thresholds and may warrant reducing the thresholds for bingo, keno, and slots to \$600, consistent with other information reporting thresholds under § 6041(a). Accordingly, the IRS and Treasury will continue to monitor the effectiveness of the existing (and proposed) reporting thresholds, and may propose to reduce those thresholds at a future time. Comments are specifically requested regarding the proposed reporting thresholds, including the feasibility of reducing those thresholds to \$600 at a future time, whether electronically tracked slot machine play should have a separate reporting threshold, and whether the amounts should be uniform for bingo, keno, and slot machine play.

In addition, the proposed regulations retain the rule from § 7.6041-1(b) of the Temporary Income Regulations that, in determining whether the reporting threshold is satisfied, the amount of the winnings from bingo or slot machine play is not reduced by the amount wagered, but the amount of winnings from one keno game is reduced by the amount wagered in that one game. Allowing the winnings from one keno game to be reduced by the amount wagered in that one game has been permitted by the regulations for over 35 years. This rule has been relied upon by payors and is an established norm in the gaming industry. The proposed regulations do not permit the winnings from one bingo game or slot machine pull to be reduced by the amount wagered in that one game or pull because the IRS does not have data indicating that this is feasible. Comments are requested regarding whether reportable gambling winnings in the case of bingo and slot machine play (other than electronically tracked slot machine play) should be determined by netting the wager against the winnings as with keno.

The proposed regulations also include new rules for determining the reporting threshold for electronically

tracked slot machine play. Under § 1.6041-10(b)(1) of the proposed regulations, electronically tracked slot machine play means slot machine play where an electronic player system that is controlled by the gaming establishment (such as through the use of a player’s card or similar system) records the amount a specific individual won and wagered on slot machine play. The new reporting threshold rules for electronically tracked slot machine play rules are intended to simplify reporting by allowing payors to leverage their existing technology and processes to report winnings from electronically tracked slot machine play. In addition, these changes are intended to facilitate reporting that more closely reflects gross income that will be reported by payees on their individual income tax returns. See Notice 2015-21 for more information on computing gross income attributable to electronically tracked slot machine play. Comments are specifically requested with respect to the definitions of session and electronically tracked slot machine play.

Under these new rules, gambling winnings for electronically tracked slot machine play must be reported when two criteria are met: (i) the total amount of winnings earned from electronically tracked slot machine play during a single session netted against the total amount of wagers placed on electronically tracked slot machines during the same session is \$1,200 or more; and (ii) at least one single win during the session (without regard to the amount wagered) equals or exceeds \$1,200. The first criterion helps to implement the safe harbor for computing gross income attributable to electronically tracked slot machine play described in Notice 2015-21. The second criterion is intended to be consistent with the casino industry’s current practice of gathering payee information when a player wins a single jackpot that satisfies the reporting threshold. The \$1,200 threshold for each criterion is intended to balance reporting burden and compliance risk as discussed previously. Pursuant to § 1.6041-10(b)(3) of the proposed regulations, a session begins when a patron places the first wager on a particular type of game

at the payor's gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same establishment. Under this rule, reporting with respect to electronically tracked slot machine play is not required if no single win (without reduction for the amount of the wager) meets the \$1,200 reporting threshold or if the net amount of winnings reduced by the amount of all wagers for the session is less than \$1,200. However, if the \$1,200 reporting threshold for a single win is satisfied and all winnings from electronically tracked slot machine play during a session netted against all wagers on electronically tracked slot machine play during that session are \$1,200 or more, gambling winnings for the session must be reported on a Form W-2G.

Proposed § 1.6041-10(b)(2) also includes several clarifications regarding the definition of reportable gambling winnings. First, the proposed regulations clarify that all winnings from all cards played during one bingo game are combined and that all winnings from all "ways" on a multi-way keno ticket are combined. Second, the proposed regulations clarify that winnings from different types of games are not combined to determine whether the reporting thresholds are satisfied, and that bingo, keno, electronically tracked slot machine play, and slot machine play that is not electronically tracked are all different types of games.

Proposed § 1.6041-10(b)(4) also adds a definition of the term "slot machine" to these information reporting regulations. Under this definition, a slot machine is a device that, by application of the element of chance, may deliver or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens, whether or not the device is operated by inserting a coin, token, or similar object. The definition of slot machine in the proposed regulations is intended to be consistent with § 44.4402-1(b)(1) of the Wagering Tax Regulations.

Filing and Form and Content of the Information Return

Proposed § 1.6041-10(d) retains the requirement in § 7.6041-1(c) of the Tem-

porary Income Tax Regulations that a payor of reportable gambling winnings file a Form W-2G, "Certain Gambling Winnings," or successor form, on or before February 28 (or March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. Outdated references to the place of filing have been replaced with a requirement that the return is filed with the appropriate Internal Revenue Service location designated in the instructions to the form.

Proposed § 1.6041-10(g) requires a payor of reportable gambling winnings to provide a statement of the reportable gambling winnings to each payee on or before January 31st of the calendar year after the calendar year in which the gambling winnings were paid. Although § 7.6041-1 of the Temporary Income Tax Regulations does not address when to provide statements to the payees, the proposed regulations are a restatement of the requirement to furnish statements to payees in section 6041(d). In addition, proposed § 1.6041-10(i) clarifies that the rules for reporting winnings from bingo, keno, and slot machine play under proposed § 1.6041-10 do not apply to payments made to foreign persons. Instead, gambling winnings paid to a foreign person are generally subject to 30 percent withholding under sections 1441(a) and 1442(a) and are reportable on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Proposed § 1.6041-10(e) retains the rules in § 7.6041-1(c) of the Temporary Regulations regarding the information that is required on the return, including the requirement that the payor describe on the return the two types of identification relied on to verify the payee's identity. However, proposed § 1.6041-10(e) now requires that one of the forms of identification include the payee's photograph to ensure that certain safeguards are in place to properly identify the payee. In addition, under proposed § 1.6041-10(f), the type of identification that is acceptable has been expanded.

Payee Identification

Section 7.6041-1(c)(3) of the Temporary Income Tax Regulations, which has been in place since 1977, provides that the identification verifying the payee's identity must include the payee's social security number. According to those regulations, examples of acceptable identification include a driver's license, a social security card, or a voter registration card. However, today most forms of identification do not include a person's social security number. Therefore, many payees do not have identification that contains the payee's social security number and, even if they do, they may not have this identification with them at the time that they receive a payment of reportable gambling winnings. To address this issue, § 1.6041-10(f) of the proposed regulations provides that, in addition to government-issued identification, a properly completed Form W-9 signed by the payee is an acceptable form of identification to verify the payee's identifying information. This rule is consistent with procedures currently used by many payors to address the fact that most forms of identification do not contain social security numbers. Accordingly, payors who verify payee information using identification set forth in proposed § 1.6041-10(f) before the date that final regulations implementing these provisions are published in the Federal Register will be treated as meeting the requirements of § 7.6041-1(c) of the Temporary Income Tax Regulations.

Aggregate Reporting Method

Proposed § 1.6041-10(h) provides an alternative method for reporting multiple winnings from bingo, keno, and slots. Under current regulations, each payment of gambling winnings from a single bingo or keno game, or slot machine play that meets the reporting threshold is required to be reported on a Form W-2G to the same payee. To simplify reporting, proposed § 1.6041-10(h) would allow a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game during the same session to report the aggregate amount of such reportable gambling winnings on one Form W-2G. This aggregate reporting method may be used

at the payor's option. Proposed § 1.6041–10(h)(3) sets forth certain recordkeeping requirements for a payor using the aggregate reporting method.

Gambling Winnings Other Than Bingo, Keno, and Slot Machine Play

These proposed regulations apply to reporting of gambling winnings from bingo, keno, and slot machine play. The Treasury Department and the IRS are aware that taxpayers required to report winnings from pari-mutuel gambling may have concerns, similar to those addressed in these proposed regulations, relating to when wagers with respect to horse races, dog races, and jai alai may be treated as identical. Identical wagers are combined and offset against winnings to determine proceeds from the wager for purposes of determining whether the reporting thresholds are satisfied. The Treasury Department and the IRS intend to amend the regulations under § 31.3402(q)–1 in a manner consistent with these proposed regulations and request comments from the public on this topic. In addition, comments are requested regarding whether the aggregate reporting method should be available for gambling winnings other than winnings from bingo, keno, and slot machine play.

Proposed Effective/Applicability Date

These regulations are proposed to apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance

as to the timing and filing of information reporting returns for payors who make reportable payments of bingo, keno, or slot machine winnings and who are required by section 6041 to make returns reporting those payments. The requirement for payors to make information returns is imposed by statute and not these regulations. In addition, this rule is reducing the existing burden on payors to comply with the statutory requirement by simplifying the process for payors to verify payees' identities using a broader range of documents that are more readily available and also by allowing payors to reduce the number of information returns they issue if they adopt the new aggregate reporting methodology in the regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the requests for comments noted in the Background Section, Treasury and the IRS request comments on any other aspects of the proposed rules, and any other issues relating to the payment of bingo, keno, and slot machine winnings that are not addressed in the proposed regulations. All comments will be available at www.regulations.gov for public inspection and copying.

A public hearing has been scheduled for June 17, 2015, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate

entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble.

The rules of § 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) and an outline of the topics to be discussed and the time to be devoted to each topic by **[INSERT 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Charles W. Gorham, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source.

Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6041–10 is added to read as follows:

§ 1.6041–10 Return of information as to payments of winnings from bingo, keno, and slot machine play.

(a) *In general.* Every person engaged in a trade or business (as defined in § 1.6041–1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph (b)(2) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (h) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) *Definitions.* (1) *Electronically tracked slot machine play.* For purposes of this section, the term “electronically tracked slot machine play” means slot machine play using an electronic player system that is controlled by the gaming establishment (such as through the use of a player’s card or similar system) that records the amount a specific individual won and wagered on slot machine play.

(2) *Reportable gambling winnings.* (i) For purposes of this section, the term “reportable gambling winnings” is defined as follows:

(A) For bingo, the term “reportable gambling winnings” means winnings of \$1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined).

(B) For keno, the term “reportable gambling winnings” means winnings of \$1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all “ways” on a multi-way keno ticket are combined).

(C) For slot machine play (other than electronically tracked slot machine play as defined in paragraph (b)(1) of this section), the term “reportable gambling winnings” means winnings of \$1,200 or more from one slot machine play, without reduction for the amount wagered.

(D) For electronically tracked slot machine play (as defined in (b)(1) of this section), the term “reportable gambling winnings” means net winnings of \$1,200 or more, but only if the winnings from at least one electronically tracked slot machine play during the session, without reduction for any amount wagered, is \$1,200 or more. For purposes of this paragraph (b)(2)(i)(D) of this section, net winnings is determined by combining the amount of all winnings from all electronically tracked slot machine play during the session reduced by the amount of all wagers from all electronically tracked slot machine play during the same session.

(ii) Winnings and wagers from different types of games are not combined to determine if the reporting threshold is satisfied. Bingo, keno, and slot machine play are different types of games. Electronically tracked slot machine play and slot machine play that is not electronically tracked are different types of games.

(iii) Winnings include the fair market value of a payment in any medium other than cash.

(iv) The amount wagered in the case of a free play is zero.

(v) For purposes of paragraph (b)(2)(i)(D) of this section, with respect to electronically tracked slot machine play, if the amount wagered during a session exceeds the amount won during the same session, the amount of winnings is zero.

(3) *Session.* For purposes of this section, a session of play begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same gaming establishment. For purposes of this section, the time is determined by the time zone of the location where the patron places the wager. A session of play is always determined with reference to a calendar day (24-hour period from 12 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day. Nothing in this section prohibits a payor from terminating a session for any reason before the end of that calendar day.

(4) *Slot machine.* The term “slot machine” means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

(c) *Examples.* The following examples illustrate the provisions of paragraphs (a) and (b) of this section:

Example 1. At 10 a.m., A wagers \$20 at casino R on one play on a slot machine that is not electronically tracked. A wins \$1,200 from this wager. At 2 p.m. on the same day, A wagers \$100 on one keno game at casino R. A wins \$1,550 from that wager. A makes no other wagers that day:

(i) Under paragraph (b)(2)(i)(C) of this section, A’s \$1,200 in winnings from slot machine play that is not electronically tracked are not reduced by the amount wagered. Therefore, the \$1,200 winnings from slot machine play that is not electronically tracked are reportable gambling winnings. R must report the \$1,200 in winnings from slot machine play that it pays to A.

(ii) Under paragraph (b)(2)(ii) of this section, because winnings from different types of games are not combined to determine whether the threshold for reportable gambling winnings is satisfied, A’s winnings from slot machine play that is not electronically tracked are not combined with A’s winnings from keno. A’s winnings from keno are below the \$1,500 reporting threshold for keno, because the gross amount of \$1,550 that A won is reduced by the \$100 amount that A wagered. R is therefore not required to report the winnings from keno that it pays to A under paragraph (b)(2)(i)(B) of this section.

Example 2. Between 11 a.m. and 11 p.m. on the same day, B places five wagers of \$20 each at casino Q on slot machine play that is not electronically tracked. B wins a total of \$1,600 during that period of time as follows: an \$800 win on the first play, no win on the second play, no win on the third play, a \$600 win on the fourth play, and a \$200 win on the fifth play. Under paragraph (b)(2)(i)(C) of this section, winnings from slot machine play that is not electronically tracked are not combined to determine whether the reporting threshold is satisfied. Therefore, none of B’s winnings is a reportable gambling winning and Q is not required to report winnings from slot machine play that it pays to B.

Example 3. During one session at casino R, C places two \$20 wagers on one electronically tracked slot machine and three \$20 wagers on a different electronically tracked slot machine. The first four wagers result in no wins. The fifth wager results in a win of \$2,000. C makes no further wagers on any games at R during the same session. C’s combined winnings for the session (\$2,000) reduced by C’s combined wagers for the session (\$100) is \$1,900, which is over the \$1,200 threshold described in paragraph (b)(2)(i)(D) of this section. In addition, C had one win in the same session of \$1,200 or more (\$2,000 win). There-

fore, under paragraph (b)(2)(i)(D) of this section, R paid reportable gambling winnings with respect to electronically tracked slot machine play of \$1,900. Accordingly, R must report the winnings of \$1,900 that it paid to C.

Example 4. Assume the same facts as in *Example 3*, except that the fourth wager results in an \$800 win and the fifth wager results in a \$1,000 win. C's combined winnings for the session of \$1,800 (\$800 + \$1,000) reduced by C's combined wagers placed during the session of \$100 is \$1,700. However, C did not have a single win during that session of \$1,200 or more, as required under paragraph (b)(2)(i)(D) of this section, for there to be reportable gambling winnings from electronically tracked slot machine play. Accordingly, R is not required to report the winnings from the session from electronically tracked slot machine play that it pays to C.

Example 5. During one session, D places ten \$200 wagers on electronically tracked slot machine play at casino S. The first nine wagers result in no wins. The last wager results in a \$1,500 win. D's combined winnings for the session (\$1,500) reduced by D's combined wagers placed during the session (\$2,000) did not result in any net winnings from electronically tracked slot machine play during the session. Under paragraph (b)(2)(i)(D) of this section, gambling winnings from a session of electronically tracked slot machine play are not reportable gambling winnings unless they include a single win of \$1,200 or more and the net amount of all winnings during the session reduced by all wagers placed during the session is \$1,200 or more. Here, there was a single win of \$1,500, which exceeds the threshold for a single win under paragraph (b)(2)(i)(D) of this section. However, because the net amount of the winnings reduced by all the wagers placed during the session is not \$1,200 or more, paragraph (b)(2)(i)(D) of this section is not satisfied. Therefore, during the session, D did not have reportable gambling winnings with respect to electronically tracked slot machine play during the session and S is not required to report the winnings it pays D with respect to electronically tracked slot machine play during this session.

Example 6. During one session, E places five \$20 wagers at casino T on slot machine play that is not electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of \$1,200. During the same session, E also places five \$20 wagers at casino T on slot machine play that is electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of \$1,400. E makes no wagers on any other games at T during that session. Under paragraph (b)(2)(ii) of this section, winnings from slot machine play that is not electronically tracked and winnings from electronically tracked slot machine play are not combined. However, even without combining the winnings from both types of slot machine play, T paid reportable gambling winnings with respect to both the slot machine play that is not electronically tracked, and electronically tracked slot machine play as follows:

(i) Under paragraph (b)(2)(i)(C) of this section, E's \$1,200 of winnings from slot machine play

that is not electronically tracked is not reduced by the amount wagered, even though all of E's wagers were placed during the same session. Accordingly, the \$1,200 of winnings from slot machine play that is not electronically tracked meets the threshold in paragraph (b)(2)(i)(C) of this section and T must report the \$1,200 in winnings from slot machine play that is not electronically tracked that it pays to E.

(ii) Because E's combined winnings from electronically tracked slot machine play during the session (\$1,400) reduced by E's combined wagers on electronically tracked slot machine play placed during the session (\$100) is \$1,200 or more (\$1,400 - \$100 = \$1,300) and E had at least one win during the same session of \$1,200 or more (a win of \$1,400), under paragraph (b)(2)(i)(D) of this section, T paid E reportable gambling winnings with respect to electronically tracked slot machine play. Accordingly, T must also report winnings from the electronically tracked slot machine play during the session of \$1,300 that it pays to E.

Example 7. During the same session, F makes five \$20 wagers at casino V on slot machine play that is electronically tracked on the same slot machine. The first three wagers result in no wins. The fourth wager results in a win of \$900. The fifth wager results in a win of \$1,100. After the fifth wager, F uses free play to make a wager. The free play wager occurs during the same session as the five wagers and is also electronically tracked. As a result of the free play, F wins \$1,200. In this case, there are reportable gambling winnings from electronically tracked slot machine play. Under paragraph (b)(2)(i)(D) of this section, F's combined winnings from electronically tracked slot machine play during the session (\$3,200) reduced by F's combined wagers placed on electronically tracked slot machine play during the session ($(\$20 \times 5) + 0 = \100) is \$3,100, and F had at least one win in the same session of \$1,200 or more (a win of \$1,200 from the free play). Accordingly, V must report the \$3,100 of winnings from the electronically tracked slot machine play during the session that it pays to F.

Example 8. Between 11 p.m. and 11:59 p.m. on Day 1, G makes five \$20 wagers at casino W on slot machine play that is electronically tracked. The first four wagers placed on Day 1 result in no wins. The fifth wager placed on Day 1 results in an \$800 win. Between 12:00 a.m. and 12:15 a.m. on Day 2, G makes two \$20 wagers on the same slot machine at casino W that is electronically tracked. The first wager placed on Day 2 results in a win of \$600. The second wager placed on Day 2 results in a win of \$900.

(i) Under paragraphs (b)(2)(i)(D) and (b)(3) of this section, the winnings from one session of electronically tracked slot machine play are not combined with the winnings from another session of electronically tracked slot machine play for purposes of determining reportable gambling winnings. In this case, G engaged in electronically tracked slot machine play during two sessions, even though he played the same type of game on the same machine at the same gambling establishment. Therefore, each session must be analyzed to

determine whether there were reportable gambling winnings from electronically tracked slot machine play.

(ii) During the session on Day 1, G won \$800. Because no single win was \$1,200 or more on Day 1, there were no reportable gambling winnings from electronically tracked slot machine play on Day 1 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 1 that it paid to G.

(iii) During the session on Day 2, G won \$600 and \$900. Because no single win was \$1,200 or more on Day 2, there were no reportable gambling winnings from electronically tracked slot machine play on Day 2 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 2 that it paid to G.

(d) *Prescribed form; time and place for filing the return.* The return described in paragraph (a) of this section is a Form W-2G, "Certain Gambling Winnings" or successor form. The Form W-2G must be filed with the appropriate Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. See section 6011 and § 1.6011-2 for requirements to file electronically.

(e) *Information included on the return.* Each return required by paragraph (a) of this section must contain:

- (1) The name, address, and taxpayer identification number of the payor;
- (2) The name, address, and taxpayer identification number of the payee;
- (3) A general description of the two types of identification (as described in paragraph (f) of this section), one of which must have the payee's photograph on it, that the payor relied on to verify the payee's name, address, and taxpayer identification number;
- (4) The date and amount of payment;
- (5) The type of wagering transaction (bingo, keno, slot machine play, or electronically tracked slot machine play);
- (6) In the case of a bingo or keno game, any number, color, or other designation assigned to the game for which the payment is made;
- (7) In the case of slot machine play (including electronically tracked slot machine play), the identification number of the slot machine(s) (for example, location and asset number);

(8) Any other information required by the form, instructions, revenue procedure, or other applicable guidance published in the Internal Revenue Bulletin.

In the case of aggregate reporting under paragraph (h) of this section, the amount of the payment in paragraphs (e)(4) is the aggregate amount of payments of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in paragraph (b)(3) of this section). Unless otherwise provided in forms, instructions, or other guidance, in the case of aggregate reporting under paragraph (h) of this section the information required by paragraphs (e)(5), (6), (7) of this section, and this paragraph (e)(8) must be maintained by the payor as described in paragraph (h)(3) of this section.

(f) *Identification.* The following items are treated as identification for purposes of paragraph (e)(3) of this section—

(1) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, or voter registration card) in the name of the payee; and

(2) A Form W-9, "Request for Taxpayer Identification Number and Certification," signed by the payee, that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W-9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(g) *Furnishing a statement to the payee.* Every payor required to make a return under paragraph (a) of this section must also make and furnish to each payee, with respect to each payment of reportable gambling winnings, a written statement that contains the information that is required to be included on the return under paragraph (e) of this section. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which

payment of the reportable gambling winnings is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(h) *Aggregate reporting of bingo, keno, and slot machine winnings.* (1) *In general.* In lieu of filing a separate information return for each payment of reportable gambling winnings as required by paragraph (a) of this section, a payor may use the aggregate reporting method (defined in paragraph (h)(2) of this section) to report reportable gambling winnings from bingo, keno, or slot machine play (including electronically tracked slot machine play). A payor using the aggregate reporting method to file information returns under paragraph (a) of this section must also furnish statements to the payee under paragraph (g) of this section using the aggregate reporting method.

(2) *Aggregate reporting method defined.* (i) The aggregate reporting method is a method of reporting more than one payment of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in this paragraph (b)(3) of this section) on one information return or statement.

(ii) A payor may use the aggregate reporting method for payments to some payees and not others, at its own discretion. In addition, with respect to a single payee, the payor may use the aggregate reporting method to report winnings from one type of game, but not for winnings from another type of game.

(iii) Failure to report some reportable gambling winnings from a particular type of game during one session to a particular payee under the aggregate reporting method (for whatever reason, including because the winnings are not permitted to be reported using the aggregate reporting method under paragraph (h)(4) of this section) will not disqualify the payor from using the aggregate reporting method to report other reportable gambling winnings

from that type of game during that session to that payee.

(3) *Recordkeeping under the aggregate reporting method.* A payor using the aggregate reporting method must maintain a record of every payment of reportable gambling winnings from the same type of game made to the same payee during the session that will be reported using the aggregate reporting method. Every individual that the payor has determined is responsible for an entry in the record must confirm the information in the entry by signing the record in a manner that will enable the signature to be associated with the relevant entry. Each payment of a reportable gambling winning made to the same payee and reported under the aggregate reporting method must have its own entry in the record, however, the information required by paragraphs (e)(1), (e)(2), and (e)(3) of this section is not required to be recorded more than one time per session. A payor that uses the aggregate reporting method must retain a copy of the record in its files. The record (which may be electronic provided the requirements set forth in forms, instructions, or guidance published in the Internal Revenue Bulletin are met) must include the following information about each payment:

(i) The payee's signature confirming the information in the record;

(ii) The information required under paragraph (e) of this section;

(iii) The time of the win resulting in the reportable gambling winnings;

(iv) Except in the case of electronically tracked slot machine play, the total amount of reportable gambling winnings;

(v) In the case of electronically tracked slot machine play—

(A) The total amount of the winnings during the session from electronically tracked slot machine play; and

(B) The total amount of the wagers placed during the session on electronically tracked slot machine play;

(vi) The amount of reportable gambling winnings;

(vii) The method of payment to the payee (for example, cash, check, voucher, token, or chips); and

(viii) The name and gaming license number of the individual that the payor

has determined is responsible for ensuring that the entry with respect to the reportable gambling winnings (including the general description of two types of identification used to verify the payee's name, address, and taxpayer identification number) is complete and accurate. Such individual may or may not be the same individual who prepared the entry.

(4) *When the aggregate reporting method may not be used.* A payor cannot use the aggregate reporting method if—

(i) The payee is a foreign person;

(ii) The payor knows or has reason to know that the person making the wager is not the person entitled to the winnings or is not the only person entitled to the winnings (regardless of whether the person making the wager furnishes a Form 5754, "Statement by Person(s) Receiving Gambling Winnings," or successor form); or

(iii) Backup withholding under section 3406(a) applies to the payment.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (h):

Example 1. On Day 1, C places five wagers at casino R on five different slot machines that are not electronically tracked. The first two wagers result in no win. The third wager results in a \$1,500 win. The fourth wager results in a \$2,500 win. The fifth wager results in an \$800 win:

(i) Under paragraph (b)(2)(i)(C) of this section, there are reportable gambling winnings from the slot machine play that is not electronically tracked of \$4,000 (\$1,500 + \$2,500). The \$800 win is not a reportable gambling winning from slot machine play that is not electronically tracked because it does not equal or exceed the \$1,200 threshold.

(ii) Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same session, R is permitted to use the aggregate reporting method under this paragraph (h). If R decides not to use the aggregate reporting method and meets the requirements of paragraph (h), a separate Form W-2G would have to be filed and furnished for the payment of reportable gambling winnings of \$1,500 and for the payment of reportable gambling winnings of \$2,500. However, if R decides to use the aggregate reporting method, R may report total reportable gambling winnings from slot machine play that is not electronically tracked of \$4,000 (\$1,500 + \$2,500) on one Form W-2G.

Example 2. Assume the same facts as *Example 1*, except that in addition to the winnings described in Example 1, at 1 a.m. on Day 2, C wins \$3,250 from one slot machine play that is not electronically tracked at casino R. Even though C played the same

type of game (slot machines that are not electronically tracked) on Day 1 and Day 2, because under paragraph (b)(3) of this section the win at 1 a.m. on Day 2 is a win during a new session, under paragraph (h)(2)(i) of this section the \$3,250 of reportable gambling winnings cannot be aggregated with the reportable gambling winnings of \$4,000 from Day 1 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$4,000 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W-2G, and \$3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W-2G.

Example 3. At 2 p.m. on Day 1, D won \$2,000 (after reducing the amount of the win by the amount wagered) playing one keno game at casino S. D provides S with his driver's license. The driver's license has D's photograph on it, as well as D's name and address. The driver's license does not include D's social security number. D cannot remember his social security number and has no other identification at the time with his social security number on it. D does not provide S with his social security number before S pays the winnings to D. Because D cannot remember his social security number, D cannot complete and sign a Form W-9. S deducts and withholds \$560 (28 percent of \$2,000) under the backup withholding provisions of section 3406(a) and pays the remaining \$1,440 in winnings to D. D returns to casino S and at 6 p.m. on Day 1 wins \$1,500 (after reducing the amount of the win by the amount wagered) in one keno game. D provides S with his driver's license as well as D's social security card. S generally uses the aggregate reporting method and in all cases where it is used, S complies with the requirements of this paragraph (h). At 8 p.m. and 10 p.m. on Day 1, D wins an additional \$1,800 and \$1,700 (after reducing the amount of the win by the amount wagered), respectively, from two different keno games. For each of these two wins, an employee of S obtains the information from D required by this paragraph (h):

(i) Under paragraph (b)(2)(i)(B) of this section, each of D's wins from the four games of keno on Day 1 (\$2,000, \$1,500, \$1,700, and \$1,800) are reportable gambling winnings. Because D's first win on Day 1 was at 2 p.m. and D's last win on Day 1 was at 10 p.m., all of D's reportable gambling winnings from keno are won during the same session. Because S satisfies the requirements of paragraph (h)(2)(i), S may use the aggregate reporting method to report D's reportable gambling winnings from keno. However, pursuant to paragraph (h)(4)(iii) of this section, the \$2,000 payment made to D at 2 p.m. cannot be reported under the aggregate reporting method because that payment was subject to backup withholding. Accordingly, if S uses the aggregate reporting method under this paragraph (h), S will have to file two Forms W-2G with respect to D's reportable gambling winnings from keno on Day 1. On the first Form W-2G, S will report \$2,000 of reportable gambling winnings and \$560 of backup withholding with respect to the 2 p.m. win from keno, and on the second Form W-2G S will report

\$5,000 of reportable gambling winnings from keno (representing the three payments of \$1,500, \$1,700, and \$1,800 that D won between 6 p.m. and 10 p.m. on Day 1).

Example 4. In one session on Day 1, E won five reportable gambling winnings from five different bingo games at a casino T. T generally uses the aggregate reporting method and in all cases where it is used, T complies with the requirements of this paragraph (h). Although E signed the entry in the record T maintains for payment of the first four reportable gambling winnings, E refuses to sign the entry in the record for the fifth payment of reportable gambling winnings. T may use the aggregate reporting method for the first four payments of reportable gambling winnings to E. However, because the entry in the record for the fifth payment of reportable gambling winnings does not include E's signature, that payment may not be reported under the aggregate reporting method. Accordingly, if T uses the aggregate reporting method under paragraph (h) of this section, T must prepare two Forms W-2G as follows: On the first Form W-2G, T must report the first four payments of reportable gambling winnings from bingo made to E on Day 1. On the second Form W-2G, T must report the fifth payment of reportable gambling winnings from bingo made to E on Day 1.

(i) *Payments to foreign persons.* See § 1.6041-4 regarding payments to foreign persons. See § 1.6049-5(d) for determining whether the payee is a foreign person.

(j) *Effective/applicability date.* This section applies to payments of reportable gambling winnings from bingo, keno, slot machine play, and electronically tracked slot machine play made on or after the date these regulations are published as final regulations in the **Federal Register**. For payments made before that date, other than payments from electronically tracked slot machine play, payors may rely on the provisions of these proposed regulations.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 3. The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805* * *

Par. 4. In § 31.3406(g)-2, paragraph (d)(3) is amended by removing the text “§ 7.6041-1” and adding the text “§ 1.6041-10” in its place.

* * * * *

John Dalrymple,
Deputy Commissioner for
Services and Enforcement

Guidance Regarding Reporting Income and Deductions of a Corporation That Becomes or Ceases to be a Member of a Consolidated Group

REG-100400-14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the consolidated return regulations. These proposed regulations would revise the rules for reporting certain items of income and deduction that are reportable on the day a corporation joins or leaves a consolidated group. The proposed regulations would affect such corporations and the consolidated groups that they join or leave.

DATES: Written or electronic comments and requests for a public hearing must be received by June 4, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-100400-14), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-100400-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-100400-14).

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Russell G. Jones, (202) 317-6847; concerning the submission of comments or to request a public hearing, Oluwafunmilayo (Funmi) P. Taylor, (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

1. Introduction

This notice of proposed rulemaking contains proposed regulations that amend 26 CFR part 1 under section 1502 of the Internal Revenue Code (Code). Section 1502 authorizes the Secretary to prescribe regulations for corporations that join in filing a consolidated return, and it expressly provides that those rules may be different from the provisions of chapter 1 of subtitle A of the Code that would apply if those corporations filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502-1.

These proposed regulations provide guidance under § 1.1502-76, which prescribes rules for determining the taxable period in which items of income, gain, deduction, loss, and credit (tax items) of a corporation that joins in filing a consolidated return are included. Section 1.1502-76(b) provides, in part, that if a corporation (S) becomes or ceases to be a member of a consolidated group during a consolidated return year, S must include in the consolidated return its tax items for the period during which it is a member. S also must file a separate return (including a consolidated return of another group) that includes its items for the period during which it is not a member.

2. Prior and Current Regulations

On September 8, 1966, the IRS and the Treasury Department promulgated regulations under § 1.1502-76 in TD 6894, 31 FR 11794 (1966 regulations). Section 1.1502-76(b) of the 1966 regulations was silent regarding the treatment of S's tax items that accrued on the day S became or ceased to be a member of a consolidated group (S's change in status). Thus, whether S's tax items for the day of S's change in status should have been reflected on S's tax return for the short period ending with S's change in status, or whether these tax items should have been reflected instead on S's tax return for the short period beginning after S's change in

status, was unclear under the 1966 regulations.

On August 15, 1994, the IRS and the Treasury Department published final regulations (TD 8560; 59 FR 41666) under § 1.1502-76(b) (current regulations) that revised the 1966 regulations to eliminate uncertainty regarding the treatment of tax items recognized by S on the day of S's change in status. Under the general rule of § 1.1502-76(b)(1)(ii)(A)(I) of the current regulations (current end of the day rule), S is treated for all federal income tax purposes as becoming or ceasing to be a member of a consolidated group at the end of the day of S's change in status, and S's tax items that are reportable on that day generally are included in the tax return for the taxable year that ends as a result of S's change in status.

The notice of proposed rulemaking that proposed the current end of the day rule (57 FR 53634, Nov. 12, 1992) (1992 NPRM) indicated that the current end of the day rule was intended to provide certainty and prevent inconsistent reporting of S's items between the consolidated and separate returns. Prior to the 1992 NPRM, some taxpayers had inferred (based upon the administrative practice of the IRS) that the inclusion in a particular return of a tax item of S incurred on the day of S's change in status depended on a factual determination of whether the transaction occurred before or after noon on the day of S's change in status (the so-called "lunch rule").

There are two exceptions to the current end of the day rule. The first exception (in § 1.1502-76(b)(1)(ii)(A)(2)) provides that if a corporation is an S corporation (within the meaning of section 1361(a)(1)) immediately before becoming a member of a consolidated group, the corporation becomes a member of the group at the beginning of the day the termination of its S corporation election is effective (termination date), and its taxable year ends for all federal income tax purposes at the end of the preceding day (S corporation exception). The S corporation exception was added by TD 8842 (64 FR 61205; Nov. 10, 1999) to eliminate the need to file a one-day C corporation return for the day an S corporation is acquired by a consolidated group. No additional rule was necessary with respect to a qualified S corpo-

ration subsidiary (QSub) of an S corporation that joins a consolidated group. See § 1.1361-5(a)(3).

Added at the same time as the current end of the day rule, the second exception (in § 1.1502-76(b)(1)(ii)(B)) provides that if a transaction occurs on the day of S's change in status that is properly allocable to the portion of S's day after the event resulting in S's change in status, S and certain related persons must treat the transaction as occurring at the beginning of the following day for all federal income tax purposes (current next day rule). The current next day rule was added in response to comments to the 1992 NPRM suggesting that the current end of the day rule created a "seller beware" problem with respect to S's tax items arising on the day of S's change in status but after the event causing S's change in status. Commenters suggested that, for example, if consolidated group A sold the stock of S to consolidated group B, and group B caused S to sell one of its divisions on the same day it was acquired by group B, the gain from the sale of the division would be inappropriately allocable to group A's consolidated return. Commenters recommended that final regulations adopt rules substantially similar to the current next day rule to protect the reasonable expectations of sellers and buyers of S's stock. Commenters suggested that a rule providing this type of protection was most appropriate with respect to extraordinary items, and some commenters suggested that a rule similar to the current next day rule should operate unless the seller and buyer of S agreed otherwise.

3. Proposed Regulations

A. Overview

The IRS and the Treasury Department have determined that changes should be made to the regulations under § 1.1502-76(b) due to uncertainty regarding the appropriate application of the current next day rule. These proposed regulations address this concern as well as additional concerns with the current regulations, as summarized in this section 3.A. and discussed in greater detail in sections 3.B. through 3.K. of this preamble.

To provide certainty, the proposed regulations generally clarify the period in which S must report certain tax items by replacing the current next day rule with a new exception to the end of the day rule (proposed next day rule) that is more narrowly tailored to clearly reflect taxable income and prevent certain post-closing actions from adversely impacting S's tax return for the period ending on the day of S's change in status. The proposed next day rule applies only to "extraordinary items" (as defined in § 1.1502-76(b)(2)(ii)(C) of the proposed regulations) that result from transactions that occur on the day of S's change in status, but after the event causing the change, and that would be taken into account by S on that day. This rule requires those extraordinary items to be allocated to S's tax return for the period beginning the next day. The proposed next day rule is expressly inapplicable to any extraordinary item that arises simultaneously with the event that causes S's change in status.

The proposed regulations further clarify that fees for services rendered in connection with S's change in status constitute a "compensation-related deduction" for purposes of § 1.1502-76(b)(2)(ii)(C)(9) (if payment of the fees would give rise to a deduction), and therefore an extraordinary item. The proposed regulations also clarify that the anti-avoidance rule in § 1.1502-76(b)(3) may apply to situations in which a person modifies an existing contract or other agreement in anticipation of S's change in status.

The proposed regulations also add a rule (previous day rule, described in section 3.C. of this preamble) to clarify the application of the S corporation exception. In addition, the proposed regulations limit the scope of the end of the day rule, the next day rule, the S corporation exception, and the previous day rule to determining the period in which S must report certain tax items and determining the treatment of an asset or a tax item for purposes of sections 382(h) and 1374 (as opposed to applying for all federal income tax purposes).

Additionally, the proposed regulations provide that short taxable years resulting from intercompany transactions to which section 381(a) applies (intercompany section 381 transactions) are not taken into

account in determining the carryover period for a tax item of the distributor or transferor member in the intercompany section 381 transaction or for purposes of section 481(a). Furthermore, the proposed regulations provide that the due date for filing S's separate return for the taxable year that ends as a result of S becoming a member is not accelerated if S ceases to exist in the same consolidated return year.

The proposed regulations make several other conforming and non-substantive changes to the current regulations as well. Finally, the proposed regulations add several examples to illustrate the proposed rules.

The IRS and the Treasury Department note that neither the current regulations nor the proposed regulations are intended to supersede general rules in the Code and regulations concerning whether an item is otherwise includible or deductible.

B. Proposed Next Day Rule

The current next day rule provides that S and certain related persons must treat a transaction as occurring at the beginning of the day following S's change in status if the transaction occurs on the day of S's change in status and is "properly allocable" to the portion of that day following S's change in status. The IRS and the Treasury Department believe, however, that the standards provided in the current next day rule for determining whether a transaction is "properly allocable" to the portion of S's day after the event resulting in S's change in status have been inappropriately interpreted by taxpayers. The current next day rule provides that a determination of whether a transaction is "properly allocable" to the portion of S's day after the event resulting in S's change in status is respected if it is "reasonable and consistently applied by all affected persons." In determining whether an allocation is "reasonable," certain factors enumerated in the current regulations are to be considered, including whether tax items arising from the same transaction are allocated inconsistently. Some taxpayers have interpreted these rules as providing flexibility in reporting tax items that result from transactions occurring on the day of S's change in status so that those items can be allocated by agreement to the

day of, or to the day following, S's change in status. The IRS and the Treasury Department view this interpretation of the current next day rule as inappropriate because it effectively would permit taxpayers to elect the income tax return on which these tax items are reported and therefore may not result in an allocation that clearly reflects taxable income. This electivity is inconsistent with the purpose of § 1.1502-76(b) to clearly reflect the income of S and the consolidated group. Further, the IRS and the Treasury Department have observed that the current regulations create controversy between taxpayers and the IRS as to whether certain of S's tax items that become reportable on the day of S's change in status are properly allocated to S's tax return for the period ending that day rather than to S's tax return for the period beginning the next day.

The proposed next day rule is intended to eliminate the perceived electivity and the source of these controversies. Under the proposed regulations, the application of the proposed next day rule is mandatory rather than elective—if an extraordinary item results from a transaction that occurs on the day of S's change in status, but after the event resulting in the change, and if the item would be taken into account by S on that day, the transaction resulting in the extraordinary item is treated as occurring at the beginning of the following day for purposes of determining the period in which S must report the item.

The proposed regulations also provide that the proposed next day rule is inapplicable to items that arise simultaneously with the event that causes S's change in status. Under the end of the day rule (as revised by these proposed regulations), those items are reported on S's tax return for the short period ending on the day of S's change in status. The proposed regulations are expected to afford taxpayers and the IRS greater certainty regarding the period to which S's tax items resulting from such a transaction are allocated.

C. Previous Day Rule

As noted in section 2 of this preamble, the special rule for S corporations provides an exception to the end of the day rule if an S corporation joins a consoli-

dated group. To avoid creating a one-day C corporation tax return for the termination date, the S corporation exception provides that S becomes a member of the group at the beginning of the termination date, and that S's taxable year ends for all federal income tax purposes at the end of the preceding day.

Although these proposed regulations retain the S corporation exception, the proposed regulations add a previous day rule that mirrors the principles of the proposed next day rule. Whereas the proposed next day rule requires extraordinary items resulting from transactions that occur on the day of S's change in status (but after the event causing the change) to be allocated to S's tax return for the short period that begins the following day, the previous day rule requires extraordinary items resulting from transactions that occur on the termination date (but before or simultaneously with the event causing S's status as an S corporation to terminate) to be allocated to S's tax return for the short period that ends on the previous day (that is, the day preceding the termination date).

D. Revised Scope of the End of the Day Rule and Related Rules

Under the current end of the day rule, S becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends "for all federal income tax purposes" at the end of that day. However, applying the end of the day rule for purposes other than the reporting of S's tax items could yield results inconsistent with other consolidated return rules. For example, under §§ 1.1502-13 and 1.1502-80(d)(1), if a member contributes property subject to a liability in excess of the property's basis to a nonmember in exchange for the nonmember's stock, and if the transferee becomes a member of the transferor's consolidated group as a result of the exchange, the transaction is treated as an intercompany transaction and section 357(c) does not apply. However, if the end of the day rule applies "for all federal income tax purposes," it may be unclear whether the transferee becomes a member "immediately after the transaction," whether the transaction is an intercom-

pany transaction, and whether section 357(c) could apply to the transaction.

To eliminate possible confusion arising from application of the current end of the day rule and related rules, these proposed regulations provide that the end of the day rule, the proposed next day rule, the S corporation exception, and the previous day rule apply for purposes of determining the period in which S must report its tax items, as well as for purposes of sections 382(h) and 1374 (discussed in section 3.I. of this preamble).

E. Extraordinary Items

The proposed next day rule mandatorily applies to extraordinary items that result from a transaction that occurs on the day of S's change in status but after the event that causes the change. In contrast, the previous day rule mandatorily applies to extraordinary items that result from a transaction that occurs on the day of S's change in status but before or simultaneously with the event that causes S's status as an S corporation to terminate.

One category of extraordinary items, set forth in § 1.1502-76(b)(2)(ii)(C)(9) of the current regulations, applies to any "compensation-related deduction in connection with S's change in status." The proposed regulations clarify that this category of extraordinary items includes (among other items) a deduction for fees for services rendered in connection with S's change in status. For example, if payment of a fee for the services of a financial adviser is contingent upon a successful acquisition of S's stock, to the extent the fee gives rise to a deduction, the deduction for the accrual of that expense is an extraordinary item, and the deduction is allowable only in S's taxable year that ends at the close of the day of the change.

The IRS and the Treasury Department request comments as to whether the list of extraordinary items set forth in § 1.1502-76(b)(2)(ii)(C) should be modified to include any item not currently listed or whether any item currently included should be deleted or modified. Specifically, the IRS and the Treasury Department are considering whether the item in § 1.1502-76(b)(2)(ii)(C)(5) ("[a]ny item carried to or from any portion of the original year (e.g., a net operating loss carried

under section 172), and any section 481(a) adjustment”) should be modified to include “any section 481(a) adjustment or the acceleration thereof,” and whether the item in § 1.1502-76(b)(2)(ii)(C)(6) (“[t]he effects of any change in accounting method initiated by the filing of the appropriate form after S’s change in status”) should continue to be included in the list of extraordinary items.

The IRS and the Treasury Department also request comments as to whether any extraordinary item should be excluded, in whole or in part, from application of the next day rule and the previous day rule. In particular, the IRS and the Treasury Department request comments as to whether the extraordinary items set forth in § 1.1502-76(b)(2)(ii)(C)(5) and (6) of the current regulations should be excluded, in whole or in part, from application of these rules.

F. Ratable Allocation

Rather than require S to perform a closing of the books on the day of its change in status, the current regulations under § 1.1502-76(b)(2)(ii) permit S’s tax items, other than the extraordinary items, to be ratably allocated between S’s two short taxable years if certain conditions are met. The IRS and the Treasury Department request comments as to whether S no longer should be permitted to elect to ratably allocate its tax items between the periods ending and beginning with S’s change in status.

G. Certain Foreign Entities

Solely for purposes of determining the short taxable year of S to which the items of a passthrough entity in which S owns an interest are allocated, § 1.1502-76(b)(2)(vi)(A) of the current regulations generally provides that S is treated as selling or exchanging its entire interest in the entity immediately before S’s change in status. This rule does not apply to certain foreign corporations the ownership of which may give rise to deemed income inclusions under the Code. In addition, a deemed income inclusion from a foreign corporation and a deferred tax amount from a passive foreign investment company under section 1291 are treated as

extraordinary items under § 1.1502-76(b)(2)(ii)(C)(11). The IRS and the Treasury Department request comments as to whether such deemed income inclusions or deferred tax amounts should continue to be treated as extraordinary items, whether rules having similar effects to the rule in § 1.1502-76(b)(2)(vi)(A) relating to passthrough entities should be adopted for controlled foreign corporations and passive foreign investment companies in which S owns an interest, and whether any other changes should be made to § 1.1502-76(b)(2)(vi) of the current regulations.

H. Anti-Avoidance Rule

Under § 1.1502-76(b)(3) of the current regulations, if any person acts with a principal purpose contrary to the purposes of § 1.1502-76(b) to substantially reduce the federal income tax liability of any person (prohibited purpose), adjustments must be made as necessary to carry out the purposes of § 1.1502-76 of the current regulations (anti-avoidance rule). The proposed regulations clarify that the anti-avoidance rule may apply to situations in which a person modifies an existing contract or other agreement in anticipation of S’s change in status in order to shift an item between the taxable years that end and begin as a result of S’s change in status if such actions are undertaken with a prohibited purpose. The IRS and the Treasury Department request comments regarding this proposed amendment to the anti-avoidance rule.

I. Coordination with Sections 382(h) and 1374

1. Section 382

For purposes of section 382, the term *recognized built-in loss* (RBIL) means any loss recognized during the recognition period on the disposition of any asset held by the loss corporation immediately before the date of the section 382 ownership change (change date), to the extent the loss reflects a built-in loss on the change date. Section 382(h)(2)(B). The term *recognition period* means the five-year period beginning on the change date. Section 382(h)(7)(A).

Section 382(h)(1)(B) generally provides that if a loss corporation has a net unrealized built-in loss (NUBIL), then any RBIL taken into account in a taxable year any portion of which falls in the recognition period (recognition period taxable year) is treated as a deduction subject to the loss corporation’s section 382 limitation as if the RBIL were a pre-change loss. The amount of RBILs subject to the section 382 limitation in any recognition period taxable year is limited, however, to the excess of the NUBIL over total RBILs in prior taxable years ending in the recognition period. (The amount of such excess is referred to in this preamble as the outstanding NUBIL balance.) In other words, the amount of the NUBIL limits the amount of RBILs that are treated as pre-change losses, and any built-in loss treated as an RBIL further reduces the outstanding NUBIL balance.

In many cases, the event that causes S’s change in status for purposes of § 1.1502-76(b)(1)(ii) also causes S to undergo an ownership change for purposes of section 382. Thus, an item of deduction or loss that becomes reportable on the day of S’s change in status falls within the recognition period beginning that day, even if the item is allocated to S’s short period ending that day under the end of the day rule. As a consequence, an item that should be a pre-change loss is treated as an RBIL that reduces the outstanding NUBIL balance. For example, assume consolidated group A sells all of S’s stock to consolidated group B. If on the day of S’s change in status (but before the event causing the change), S recognizes a loss on the sale of an asset, under the end of the day rule the loss is reported on group A’s consolidated return. However, notwithstanding that the loss may not be claimed by group B, the loss may be treated as an RBIL and reduce the outstanding NUBIL balance.

To prevent such an outcome, these proposed regulations provide that, for purposes of section 382(h), items includible in the short taxable year that ends as a result of S’s change in status (including items allocated to that taxable year under the end of the day rule) are not treated as occurring in the recognition period. Rather, only items includible in S’s short

taxable year that begins as a result of S's change in status (including items allocated to that taxable year under the proposed next day rule) are treated as occurring in the recognition period. Therefore, the beginning of the recognition period for purposes of section 382(h) would correspond with the beginning of S's short taxable year that begins on the day after S's change in status.

2. Section 1374

Section 1374 generally imposes a corporate-level tax (section 1374 tax) on the recognition of gain by an S corporation that formerly was a C corporation (or that acquired assets from a C corporation in a transferred basis transaction) during a recognition period specified in section 1374(d)(7) (section 1374 recognition period), but only to the extent of the corporation's net recognized built-in gain (as defined in section 1374(d)(2)) for a given taxable year. The section 1374 tax also applies to certain tax items attributable to the corporation's C corporation taxable years. In addition, regulations under section 337(d) extend section 1374 treatment to (1) a C corporation's conversion to a real estate investment trust (REIT), regulated investment company (RIC), and certain tax-exempt entities, or (2) certain cases in which a REIT, RIC, or tax-exempt entity acquires assets in a transferred basis transaction from a C corporation.

As with the application of section 382(h), the event that causes S's change in status for purposes of § 1.1502-76(b)(1)(ii) may be the event that results in S being a corporation that is subject to the section 1374 tax. Therefore, it is necessary to determine in which return (the group's consolidated return or S's separate return beginning the day after S's change in status) S's tax items for the day of S's change in status are included. Similarly, if the event that causes S's change in status for purposes of § 1.1502-76(b)(1)(ii) is the event that results in S ceasing to be a corporation subject to the section 1374 tax, it is necessary to determine in which return (the group's consolidated return or S's separate return for the period ending the day before S's change in status) S's tax items for the day of S's

change in status are included. The proposed regulations thus provide that if S ceases to be a corporation subject to the section 1374 tax upon becoming a member, or if S elects to be a corporation that is subject to the section 1374 tax for its first separate return year after ceasing to be a member, S's items of recognized built-in gain or loss for purposes of section 1374 will include only the amounts reported on S's separate return (including items reported on that return under the previous day rule or the next day rule).

J. Intercompany Section 381 Transactions

Under the current consolidated return regulations, if a member distributes or transfers its assets to another corporation that is a member immediately after the distribution or transfer in an intercompany section 381 transaction, and if the distributor or transferor member has a net operating loss carryover or a net capital loss carryover, the distributor or transferor member will not be treated as having a short taxable year for purposes of determining the years to which the loss may be carried. Sections 1.1502-21(b)(3)(iii) and 1.1502-22(b)(4).

These proposed regulations would amend current law by moving these rules to § 1.1502-76(b)(2)(i) and making conforming changes to §§ 1.1502-21(b)(3)(iii) and 1.1502-22(b)(4). In addition, these proposed regulations would expand these rules by providing that a short taxable year of the distributor or transferor member by reason of an intercompany section 381 transaction is not counted as a separate taxable year for purposes of determining either the taxable years to which any tax attribute of the distributor or transferor member may be carried or the taxable years in which an adjustment under section 481(a) is taken into account. No inference should be drawn from the proposed changes to these rules as to whether a short taxable year of a member resulting from an intercompany section 381 transaction is counted under current law for purposes of determining the years to which a tax credit may be carried or in

which a section 481 adjustment is taken into account.

K. Due Date for Filing Tax Returns

The proposed regulations also eliminate a provision that could cause taxpayers to inadvertently miss a return filing deadline. Under § 1.1502-76(b)(4) of the current regulations, if S joins a consolidated group, the due date for filing S's separate return is the earlier of the due date (with extensions) of the group's return or the due date (with extensions) of S's return if S had not joined the group. If S goes out of existence during the consolidated return year in which S joins a group, its taxable year would end. Under section 6072, the due date for S's short period return would be the 15th day of the third month (ninth month, with extensions) following the date on which S ceases to exist. Accordingly, if S ceases to exist during the same consolidated return year in which it becomes a member, the due date for S's tax return for the short period that ended as a result of S becoming a member could be accelerated. To prevent a taxpayer from inadvertently missing a filing date and being subject to potential penalties for filing a late return, the proposed regulations provide that if S goes out of existence in the same consolidated return year in which it becomes a member, the due date for filing S's separate return is determined without regard to S's ceasing to exist.

L. Non-Substantive Changes

In addition to the changes described in this preamble, the proposed regulations make several non-substantive changes to the current regulations, including moving an example concerning § 1.1502-80(d) from the text of § 1.1502-76(b)(1)(ii)(B)(2) of the current regulations to § 1.1502-13(c)(7)(ii), Example 3(e).

Effective/Applicability Date

The amendments to §§ 1.1502-21(b)(3)(iii), 1.1502-22(b)(4)(i), 1.1502-76(b)(2)(i), and 1.1502-76(b)(4) will apply to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Fed-**

eral Register. The other amendments to § 1.1502-76(b) will apply to corporations becoming or ceasing to be members of consolidated groups on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulations apply only to transactions involving corporations that file consolidated federal income tax returns, and that such corporations tend to be larger businesses. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russell G. Jones of the Office of Associate Chief Counsel (Corporate). However, 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.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Section 1.1361-5 also issued under 26 U.S.C. 1361. * * *

Section 1.1362-3 also issued under 26 U.S.C. 1362. * * *

Section 1.1502-13 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-21 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-22 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-28 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-76 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502. * * *

§ 1.1361-5 [Amended]

Par. 2. Section 1.1361-5 is amended:

1. In paragraph (a)(3), by removing “§ 1.1502-76(b)(1)(ii)(A)(2) (relating to a special rule)” and adding “§ 1.1502-76(b)(1)(ii)(B) (relating to special rules)” in its place.

2. In paragraph (a)(4), *Example 4*, by removing “§ 1.1502-76(b)(1)(ii)(A)(2)” and adding “§ 1.1502-76(b)(1)(ii)(B)(I)” in its place.

§ 1.1362-3 [Amended]

Par. 3. Section 1.1362-3 is amended in paragraph (a)(ii) by removing “§ 1.1502-76(b)(1)(ii)(A)(2)” and adding “§ 1.1502-76(b)(1)(ii)(B)” in its place.

Par. 4. Section 1.1502-13 is amended by adding *Example 3(e)* to paragraph (c)(7)(ii) to read as follows:

§ 1.1502-13 *Intercompany transactions.*

* * * * *

(c) * * *

(7) * * *

(ii) * * *

Example 3. * * *

(e) *Liability in excess of basis.* The facts are the same as in paragraph (a) of this *Example 3*, except that S and B are not members of the same consolidated group immediately before S’s transfer of the land to B, and the land is encumbered with an \$80 liability. Immediately after the transfer, S and B are members of the same consolidated group. Thus, the transfer is an intercompany transaction to which section 357(c) does not apply pursuant to § 1.1502-80(d).

* * * * *

Par. 5. Section 1.1502-21 is amended by revising paragraph (b)(3)(iii) and adding paragraph (h)(1)(iv) to read as follows:

§ 1.1502-21 *Net operating losses.*

* * * * *

(b) * * *

(3) * * *

(iii) *Short years in connection with intercompany transactions to which section 381(a) applies.* If a member distributes or transfers assets in an intercompany transaction to which section 381(a) applies, see § 1.1502-76(b)(2)(i).

* * * * *

(h) * * *

(1) * * *

(iv) Paragraph (b)(3)(iii) of this section applies to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**. For transactions occurring before the date these regulations are published as final regulations in the **Federal Register**, see § 1.1502-21(b) as contained in 26 CFR part 1, revised as of April 1 preceding the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 6. Section 1.1502-22 is amended by:

1. Revising paragraph (b)(4)(i).

2. Revising the heading of paragraph (h).

3. Adding paragraph (h)(1)(iii).

The revisions and addition read as follows:

§ 1.1502-22 Consolidated capital gain and loss.

* * * * *
(b) * * *

(4) *Special rules*—(i) *Short years in connection with intercompany transactions to which section 381(a) applies.* If a member distributes or transfers assets in an intercompany transaction to which section 381(a) applies, see § 1.1502-76(b)(2)(i).

* * * * *

(h) *Effective/applicability date*—* * *

(1) * * *

(iii) Paragraph (b)(4)(i) of this section applies to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**. For transactions occurring before the date these regulations are published as final regulations in the **Federal Register**, see § 1.1502-22(b) as contained in 26 CFR part 1, revised as of April 1 preceding the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

§ 1.1502-28 [Amended]

Par. 7. Section 1.1502-28 is amended in paragraph (b)(11) by removing “§ 1.1502-76(b)(1)(ii)(B)” and adding “§ 1.1502-76(b)(1)(ii)(A)(2)” in its place.

Par. 8. Section 1.1502-76 is amended:

1. By adding a sentence at the end of paragraph (b)(1)(i).
2. By revising paragraphs (b)(1)(ii)(A) and (B).
3. By adding paragraph (b)(1)(ii)(D).
4. By adding a sentence at the end of paragraph (b)(2)(i).
5. By revising paragraph (b)(2)(ii)(C)(9).
6. By removing the last sentence of paragraph (b)(2)(iii).
7. By removing the last sentence of paragraph (b)(2)(v).
8. In paragraph (b)(2)(vi)(C) by removing “paragraph (b)(2)(v)” and adding “paragraph (b)(2)(vi)” in its place.
9. By revising paragraph (b)(3).
10. By adding a sentence at the end of paragraph (b)(4).

11. By adding *Examples 8, 9, and 10* to paragraph (b)(5).

12. By revising paragraph (b)(6).

The revisions and additions read as follows:

§ 1.1502-76 Taxable year of members of group.

* * * * *

(b) * * *

(1) * * *

(i) * * * If a corporation (S) becomes or ceases to be a member in a stock disposition or purchase for which an election under section 336(e) or section 338 is made, paragraphs (b)(1)(ii), (b)(2)(ii), and (b)(2)(iii) of this section do not apply to the transaction.

(ii) * * *

(A) *In general*—(1) *End of the day rule.* If S becomes or ceases to be a member during a consolidated return year, S’s tax year ends, and (except as provided in paragraph (b)(1)(ii)(A)(2) or paragraph (b)(1)(ii)(B) of this section) for purposes of determining the period in which S must report an item of income, gain, deduction, loss, or credit, S is treated as becoming or ceasing to be a member at the end of the day on which its status as a member changes (end of the day rule).

(2) *Next day rule.* If an extraordinary item (as defined in paragraph (b)(2)(ii)(C) of this section) results from a transaction that occurs on the day of S’s change in status as a member, but after the event resulting in the change, and the item would be taken into account by S on that day, the transaction resulting in the extraordinary item is treated as occurring at the beginning of the following day for purposes of determining the period in which S must report the item (next day rule). The next day rule does not apply to any extraordinary item that becomes includible or deductible simultaneously with the event that causes the change in S’s status.

(B) *Special rules for former S corporations*—(1) *Beginning of the day rule.* If an election under section 1362(a) is in effect for S immediately before S becomes a member, S is treated as becoming a member at the beginning of the day the termination of its election under section 1362(a) is effective (termination date),

and S’s taxable year ends at the end of the day preceding the termination date. See § 1.1361-5(a)(3) for the treatment of certain qualified S corporation subsidiaries.

(2) *Previous day rule.* If an extraordinary item (as defined in paragraph (b)(2)(ii)(C) of this section) results from a transaction that occurs on the termination date, but before or simultaneously with the event resulting in the termination of S’s election under section 1362(a), and the item would be taken into account by S on that day, the transaction resulting in the extraordinary item is treated as occurring at the end of the previous day for purposes of determining the period in which S must report the item (previous day rule). See § 1.1361-5(a)(3) for the treatment of certain qualified S corporation subsidiaries.

* * * * *

(D) *Coordination with sections 382 and 1374.* If the day of S’s change in status is also the date of an ownership change for purposes of section 382, the rules and principles of this section apply in determining the treatment of any item or asset for purposes of section 382(h). Accordingly, if the day of S’s change in status is also a change date, the determination of net unrealized built-in gain or loss will reflect the application of both the end of the day rule and the next day rule, to the extent each applies. Moreover, items includible in the taxable year that ends as a result of S’s change in status are not treated as occurring in the recognition period described in section 382(h)(7)(A), and items includible in the taxable year that begins as a result of S’s change in status are treated as occurring in the recognition period. If S ceases to be a corporation subject to the tax imposed by section 1374 upon becoming a member of a consolidated group, or if S elects to be a corporation that is subject to such tax for its first separate return year after ceasing to be a member, S’s items of recognized built-in gain or loss for purposes of section 1374 will include only the amounts reported on S’s separate return (including items reported on that return under the previous day rule or the next day rule).

* * * * *

(2) * * *

(i) * * * If a member distributes or transfers assets in an intercompany transaction to which section 381(a) applies, a short taxable year of the distributor or transferor corporation is not taken into account either for purposes of determining the taxable years to which any tax attribute of the distributor or transferor corporation may be carried or for purposes of determining the taxable years in which an adjustment under section 481(a) is taken into account.

(ii) * * *

(C) * * *

(9) Any compensation-related deduction in connection with S's change in status (including, for example, a deduction for fees for services rendered in connection with S's change in status and for bonus, severance, and option cancellation payments made in connection with S's change in status);

* * * * *

(3) *Anti-avoidance rule.* If any person acts with a principal purpose contrary to the purposes of this paragraph (b) to substantially reduce the federal income tax liability of any person (including by modifying an existing contract or other agreement in anticipation of a change in S's status to shift an item between the taxable years that end and begin as a result of S's change in status), adjustments must be made as necessary to carry out the purposes of this section.

(4) * * * In addition, if S ceases to exist in the same consolidated return year in which S becomes a member, the due date for filing S's separate return shall be determined without regard to S's ceasing to exist in that year.

(5) * * *

Example 8. Allocation of certain amounts that become deductible on the day of S's change in status—(a) Facts. P purchases all of the stock of S, an accrual-basis, stand-alone C corporation, on June 30 pursuant to a stock purchase agreement. At the time of the stock purchase, S has outstanding nonqualified stock options issued to certain employees. The options did not have a readily ascertainable fair market value when granted, and the options do not provide for a deferral of compensation (as defined in § 1.409A-1(b)). Under the option agreements, S is obligated to pay its employees certain amounts in cancellation of their stock options upon a change in control of S. P's purchase of S's stock causes a change in control of S, and S's obligation to make option cancellation payments to its employees becomes fixed and determinable upon the closing of the stock purchase.

Several days after the closing of the stock purchase, S pays its employees the amounts required under the option agreements.

(b) *Analysis.* P's purchase of S's stock causes S to become a member of the P group at the end of the day on June 30. Under paragraph (b)(2)(ii)(C)(9) of this section, a deduction arising from S's liability to pay its employees in cancellation of their stock options in connection with S's change in status is an extraordinary item that cannot be prorated and must be allocated to June 30. The next day rule is inapplicable to this deduction because S's liability to pay its employees becomes deductible on the day of S's change in status simultaneously with the event that causes S's change in status. Consequently, a deduction for the option cancellation payments must be reported under the end of the day rule on S's tax return for the period ending June 30.

(c) *Success-based fees.* The facts are the same as in paragraph (a) of this *Example 8*, except that S also engages a consulting firm to provide services in connection with P's purchase of S's stock. Under the terms of the engagement letter, S's obligation to pay for these services is contingent upon the successful closing of the stock purchase. The stock purchase closes successfully, and S's obligation to pay its consultants becomes fixed and determinable at closing. To the extent S's payment of a success-based fee to its consultants is otherwise deductible, this item is an extraordinary item that cannot be prorated and must be reported under the end of the day rule on S's return for the period ending June 30. (See paragraph (b)(2)(ii)(C)(9) of this section.) The next day rule is inapplicable to the deduction because S's liability to pay its consultants becomes deductible on the day of S's change in status simultaneously with the event that causes S's change in status.

(d) *Unwanted assets.* The facts are the same as in paragraph (a) of this *Example 8*, except that, after closing on June 30, S sells to an unrelated party certain assets used in S's trade or business that are not wanted by the P group. Gain or loss on the sale of these assets is an extraordinary item that results from a transaction that occurs on the day of S's change in status, but after the event resulting in the change. Consequently, under the next day rule, the gain or loss must be reported on S's tax return for the period beginning July 1.

Example 9. Redemption that causes a change in status—(a) Facts. P owns 80 shares of S's only class of outstanding stock, and a person whose ownership of S stock is not attributed to P under section 302(c) owns the remaining 20 shares. On June 30, S distributes land with a basis of \$100 and a fair market value of \$140 to P in redemption of all of P's stock in S.

(b) *Analysis.* As a result of the redemption, S ceases to be a member of P's consolidated group on June 30. S will recognize \$40 of gain under section 311(b) on the distribution of the land to P. The next day rule is inapplicable because S's gain becomes includible on the day of S's change in status simultaneously with the event that causes S's change in status. Consequently, S's gain must be reported under the end of the day rule in its taxable year ending June 30, during which S was

a member of the P group. Under § 1.1502-32(b)(2)(i), P's basis in its S stock is increased to reflect S's \$40 gain immediately before the redemption of S's stock.

(c) *Partial redemption.* The facts are the same as in paragraph (a) of this *Example 9*, except that S distributes the land to P in redemption of 20 shares of P's stock in S. Thus, immediately after the redemption, P owns 75% (60 shares / 80 shares) of S's outstanding stock, and S's minority shareholder owns 25% (20 shares / 80 shares). The redemption does not satisfy the requirements of section 302(b) and is treated under section 302(d) as a distribution to which section 301 applies. The end of the day rule does not apply for purposes of determining whether P and S are members of the same consolidated group immediately after the redemption. Because P owns only 75% of S's stock immediately after the redemption, the distribution is not an intercompany distribution described in § 1.1502-13(f)(2)(i). Thus, P may not exclude any amount of the distribution that is a dividend, and P's basis in S's stock is not reduced under § 1.1502-32(b)(2)(iv). P may be entitled to a dividends received deduction under section 243(c) (but see section 1059(e)). For the reasons discussed in paragraph (b) of this *Example 9*, S's gain under section 311(b) must be reported under the end of the day rule in S's taxable year ending June 30, during which S was a member of the P group.

(d) *Distribution of loss property.* The facts are the same as in paragraph (a) of this *Example 9*, except that the land distributed by S to P has a fair market value of \$60 rather than \$140. The end of the day rule applies for purposes of determining the taxable year in which S must take into account its realized loss on the distribution of the land. Thus, under the end of the day rule, S's loss on the distribution of the land, which occurs simultaneously with S's ceasing to be a member, is taken into account in S's taxable year that ends as a result of the redemption. However, the end of the day rule does not apply for other purposes; for example, the rule does not apply in determining whether the transaction is an intercompany distribution or in determining the attributes (as defined in § 1.1502-13(b)(6)) of the loss. Therefore, because S is not a member immediately after the distribution, S's loss on the distribution is not recognized under section 311(a). Under the end of the day rule, the loss is taken into account as a noncapital, nondeductible expense on the P group's consolidated return, and under § 1.1502-32(b)(1)(i), P's basis in its S stock is decreased by \$40 immediately before S leaves the group.

Example 10. Extraordinary item of S corporation—(a) Facts. On July 1, P purchases all the stock of S, an accrual-basis corporation with an election in effect under section 1362(a). Prior to the sale, S had engaged a consulting firm to find a buyer for S's stock, and the consulting firm's fee was contingent upon the successful closing of the sale of S's stock.

(b) *Analysis.* To the extent S's payment of the success-based fee to its consultants is otherwise deductible, this item is an extraordinary item (see paragraph (b)(2)(ii)(C)(9) of this section) that becomes deductible on July 1 simultaneously with the event that terminates S's election as an S

corporation. Under paragraph (b)(1)(ii)(B)(2) of this section, S's obligation to pay the fee is treated as becoming deductible on June 30 under the previous day rule.

(6) *Effective/applicability date.* Paragraphs (b)(2)(i) and (b)(4) of this section apply to consolidated return years

beginning on or after the date these regulations are published as final regulations in the **Federal Register**. Otherwise, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or

after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

John Dalrymple,
*Deputy Commissioner for
Services and Enforcement*

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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