

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

**Bulletin No. 2015-15**  
**April 13, 2015**

## SPECIAL ANNOUNCEMENT

### **Announcement 2015-11, page 883.**

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) Program, formerly known as the Advance Pricing Agreement (APA) Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2013. This sixteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2014. It does not provide guidance regarding the application of the arm's length standard.

## INCOME TAX

### **Announcement 2015-11, page 883.**

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) Program, formerly known as the Advance Pricing Agreement (APA) Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2013. This sixteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2014. It does not provide guidance regarding the application of the arm's length standard.

### **Rev. Proc. 2015-26, page 875.**

The revenue procedure provides instructions, in cases in which the common parent of a consolidated group ceases to exist, for all communications relating to the identification of the agent to act on behalf of the consolidated group pursuant to § 1.1502-77(c) of the Income Tax Regulations. The revenue procedure is the exclusive procedure under § 1.1502-77(c) for making the communications identified in section 3 of this revenue procedure.

### **Rev. Proc. 2015-29, page 882.**

Revenue Procedure 2015-29 amplifies section 3.01 of Revenue Procedure 2015-3 and provides that the Service will no longer issue rulings to taxpayers concerning whether the taxpayer meets the requirements of section 45 or Notice 2010-54, 2010-40 I.R.B. 403 for refined coal.

### **T.D. 9715, page 851.**

Final regulations under section 1502 of the Code address certain issues raised by the existing regulations concerning the agent for a consolidated group filing a Federal income tax return, as well as questions with respect to the authority of the agent for the group. These final regulations clarify that the agent for the consolidated group that becomes either a partnership or an entity that is disregarded from its owner for Federal income tax purposes remains as the agent for the group. Another change is that in situations where the agent for the group may no longer continue to be the agent for the group, the final regulations provide, under most circumstances, that the continuing agent for the group will be automatically determined by a default selection.

**(Continued on the next page)**

**T.D. 9716, page 863.**

Section 162(m) generally limits the otherwise allowable deduction for compensation paid with respect to a covered employee of a publicly held corporation to no more than \$1,000,000 per year. These final regulations clarify that qualified performance-based compensation attributable to stock options and stock appreciation rights must specify the maximum number of shares with respect to which options or rights may be granted to each individual employee. These final regulations also clarify the application of the transition rule for taxpayers that are not publicly held corporations and then become publicly held corporations.

**ADMINISTRATIVE****T.D. 9718, page 866.**

This NPRM relates to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011.

**EMPLOYEE PLANS****Announcement 2015–13, page 908.**

This announcement explains the effect of H.R. 2591, which became Public Law 113–243. The announcement also explains how taxpayers should report the rollover of "airline payment amounts" into traditional IRAs.

**T.D. 9716, page 863.**

Section 162(m) generally limits the otherwise allowable deduction for compensation paid with respect to a covered employee of a publicly held corporation to no more than \$1,000,000 per year. These final regulations clarify that qualified performance-based compensation attributable to stock options and stock appreciation rights must specify the maximum number of shares with respect to which options or rights may be granted to each individual employee. These final regulations also clarify the application of the transition rule for taxpayers that are not publicly held corporations and then become publicly held corporations.

**EXCISE TAX****Notice 2015–29, page 873.**

This notice provides guidance on how the special rule for expatriate health plans for the 2014 and 2015 fee years under the Expatriate Health Coverage Clarification Act of 2014 applies to the health insurance provider fee under ACA § 9010. Under the notice, a covered entity will receive a reduction in its 2015 fee liability for expatriate health plans, as defined by HHS's Medical Loss Ratio final rule, that are attributable to the 2014 and 2015 fee years.

# 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

26 CFR 1.1502-77: Regulations Revising Rules Regarding Agency for a Consolidated Group

## T.D. 9715

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

#### Regulations Revising Rules Regarding Agency for a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations regarding the agent for an affiliated group of corporations that files a consolidated return (consolidated group). The final regulations provide guidance concerning the identity and authority of the agent for a consolidated group. These final regulations affect all corporations in consolidated groups.

**DATES:** *Effective Date:* These regulations are effective on April 1, 2015.

*Applicability Date:* For dates of applicability, see § 1.1502-77(j).

#### FOR FURTHER INFORMATION

**CONTACT:** Gerald B. Fleming at (202) 317-6975 or Richard M. Heinecke at (202) 317-6065 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1699. The collection of information in these final regulations is in paragraphs (c)(4), (c)(5)(iii), (c)(6)(i)(B), (c)(6)(ii), (c)(6)(iv), (c)(7)(i)(A), (c)(7)(i)(B), (c)(7)(ii), and (f)(3) of § 1.1502-77. The collection of information is necessary to make cer-

tain that the Commissioner of Internal Revenue (Commissioner), agent for the consolidated group, and members of the group are each informed of the proper identity of the agent for any given period, and are able to timely exercise their privileges and fulfill their responsibilities with respect to the filing of a consolidated return.

For more information, see Rev. Proc. 2015-26, IRB 2015-15, the revenue procedure published to accompany the final regulations that provides instructions with respect to all communications relating to the identification of an agent for a consolidated group.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

#### Background and Explanation of Provisions

##### 1. Introduction

This Treasury Decision contains final regulations that amend 26 CFR part 1, under section 1502 of the Internal Revenue Code of 1986 (Code) (Final Regulations). Section 1502 authorizes the Secretary to prescribe regulations for corporations that join in filing consolidated returns and provides that such rules may be different from the provisions of chapter 1 of subtitle A of the Code that would apply if such corporations filed separate returns. These Final Regulations provide guidance under § 1.1502-77 with respect to the agent for a group of affiliated corporations that file a consolidated return (agent), including rules for identifying and communicating with the agent, and determining the scope of the agent's authority.

The Final Regulations apply to consolidated return years beginning on or after April 1, 2015. Regulations in effect before April 1, 2015 will continue to apply to consolidated tax years beginning before April 1, 2015.

Contemporaneously with the publication of the Final Regulations in the **Federal Register**, the IRS is issuing Rev. Proc. 2015-26, IRB 2015-15, providing instructions regarding the manner of making all communications that relate to the identification of an agent under the Final Regulations. Rev. Proc. 2015-26, IRB 2015-15, will obsolete Rev. Proc. 2002-43, 2002-2 CB 99 (see § 601.601(d)(2)(ii)(b) of this chapter) (Determination of Substitute Agent for a Consolidated Group When the Common Parent Ceases to Exist) with respect to consolidated return years for which these Final Regulations apply. Thus, Rev. Proc. 2002-43 will continue to apply for consolidated return years subject to prior regulations.

##### 2. Overview of prior guidance regarding agents

On June 28, 2002, the IRS and the Treasury Department promulgated final regulations under § 1.1502-77 in TD 9002, 67 FR 43538, to provide rules concerning the identity and authority of the agent and the designation of a new agent. These regulations were amended by TD 9255 (71 FR 13001) (March 14, 2006) and TD 9343 (72 FR 40066) (July 23, 2007). (The June 28, 2002 regulations and amendments are collectively referred to in this preamble as the 2002 Regulations.)

On June 29, 2002, the IRS released Rev. Proc. 2002-43 to prescribe instructions for all communications relating to the determination of a substitute agent and the designation of a substitute agent by a terminating common parent.

On May 30, 2012, the IRS and the Treasury Department proposed regulations that would replace the 2002 Regulations (2012 Proposed Regulations). The 2012 Proposed Regulations were published in the **Federal Register** (77 FR 31786). No request for a hearing was re-

ceived. One comment was received with respect to the 2012 Proposed Regulations, but it made no specific recommendations. No other comments were received, including with respect to the specific request for comments regarding the expansion of the circumstances in which the Commissioner could designate agents, and the ability of an agent to resign.

### 3. Summary of the 2002 Regulations

Under the 2002 Regulations, the common parent of a group ceased to be the agent if its existence terminated under applicable law, if it became disregarded as an entity separate from its owner for federal tax purposes (a disregarded entity), or if it became an entity classified as a partnership for federal tax purposes. In such cases, the common parent could generally designate its successor, another member of the group, or a group member's successor as the substitute agent for the group (provided such designee was a domestic corporation for federal tax purposes). However, any such designation required affirmative approval by the Commissioner.

Although in general a common parent must be a domestic corporation, a common parent could be an entity created or organized under the laws of a foreign country and treated as a domestic corporation by reason of section 7874 (treating a foreign corporation as a domestic corporation as a result of certain outbound inversion transactions) or an election under section 953(d) to treat a foreign insurance company as a domestic corporation (foreign common parent). In recognition of the logistical problems this could create, the 2002 Regulations permitted the Commissioner to designate a domestic member of the group to act as the agent (domestic substitute agent) in the case of a foreign common parent.

Finally, the 2002 Regulations provided certain rules relating to partnerships and partners subject to sections 6221 through 6234 of the Code, enacted by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) (TEFRA), generally providing that the Commissioner would deal directly with a member that was the tax matters partner (TMP) regarding specified matters for the part-

ners in a TEFRA partnership even if the TMP is not the agent.

### 4. Overview of the 2012 Proposed Regulations

The 2012 Proposed Regulations retained the general rules, concepts, and examples of the 2002 Regulations. However, the 2012 Proposed Regulations renumbered, restructured, and revised the 2002 Regulations to minimize the circumstances under which the identity of the agent would not be clear. The 2012 Proposed Regulations also increased the number of situations in which the identity of the agent would be determined without action by taxpayers or the Commissioner. The proposed changes are described in the following paragraphs 4.A. through 4.G.

#### A. Default Successors

The 2002 Regulations generally permitted a terminating agent to designate the substitute agent. However, the IRS observed that terminating agents, to the extent they designated at all, tended to designate their successors rather than another member of their group. To simplify the procedures and align them with taxpayers' practices, the 2012 Proposed Regulations provided that if an agent had a sole successor (default successor), the default successor would automatically become the group's agent when the prior agent ceased to exist, such as in a merger. The terminating agent would not be permitted to designate an agent unless there was no default successor, in which case the agent could only designate an entity that was a member of the group for the consolidated return year (or a successor of such a member). The 2012 Proposed Regulations also prescribed limited circumstances under which the Commissioner could replace a default successor.

#### B. Entities Eligible to Be an Agent

The 2012 Proposed Regulations included disregarded entities and partnerships among the entities permitted to be agents for prior years in which they or their predecessors were not treated as disregarded. Thus, if a common parent converted or merged into a disregarded entity

or partnership, whether by reason of a state law merger, a state law conversion, or a federal tax election, the continuing or successor juridical entity (whether a disregarded entity or partnership) would continue as the agent for the prior periods.

#### C. TEFRA Partnerships

In general, the Code and regulations governing the treatment of TEFRA partnerships provide that the Commissioner will deal with the TMP regarding specified matters for the partners in a TEFRA partnership. See generally, sections 6221 through 6234. The 2002 Regulations provided two TEFRA specific rules relating to members that were partners in a TEFRA partnership. Under the first rule, a subsidiary that was the TMP of a TEFRA partnership would act in its own name regarding partnership matters, without requiring any action by the agent. Under the second rule, the Commissioner would deal with a subsidiary that was a partner in a TEFRA partnership in the performance of an examination of the TEFRA partnership. This second rule, however, appeared to create some confusion in the context of other provisions of the 2002 Regulations.

To provide more clarity with respect to the second rule, the 2012 Proposed Regulations provided that: (1) the agent will generally act as agent for a member that is a partner in a TEFRA partnership regarding all matters related to the partnership, including execution of a settlement agreement under section 6224(c) (as illustrated in *Example 12* in § 1.1502-77(g) of the 2012 Proposed Regulations) and extension of the statute of limitations with respect to items other than the items of the TEFRA partnership (as illustrated in *Example 11* in § 1.1502-77(g) of the 2012 Proposed Regulations); and (2) the Commissioner, without having to deal with each member separately by "breaking agency" pursuant to § 1.1502-77(f)(2)(i) of the 2012 Proposed Regulations, may communicate directly with a subsidiary or a disregarded entity owned by a subsidiary that is a partner in a TEFRA partnership whenever the Commissioner determines that such direct communication will facilitate the conduct of an examination, appeal, or settlement with respect to the partnership. However, like the 2002 Reg-

ulations, the 2012 Proposed Regulations provided that any member of the group designated as the TMP of a TEFRA partnership will act in its own name and perform its responsibilities with respect to the partnership without requiring any action by the agent.

#### *D. Commissioner's Approval of Substitute Agent*

Although the 2002 Regulations required the Commissioner to approve any designation, in practice, designation approval requests were denied only rarely. To simplify procedures, and thereby conserve resources and enhance efficiency, the 2012 Proposed Regulations eliminated the requirement. However, to ensure that IRS records accurately reflect the identity of an agent, the 2012 Proposed Regulations provided that a default successor, or a terminating agent that has no default successor, must notify the IRS (in writing in the manner prescribed by the Commissioner) when the default successor or an entity designated by a terminating agent becomes the group's new agent.

#### *E. Commissioner's Authority to Designate Agent*

The 2012 Proposed Regulations provided several limited circumstances in which the Commissioner could designate or replace an agent, either on its own initiative or at the request of other members. Examples were included in the 2012 Proposed Regulations to illustrate the circumstances in which an agent may be designated.

The 2012 Proposed Regulations did not provide the Commissioner with the ability to replace a domestic default successor under circumstances in which it could not replace the common parent.

#### *F. Foreign Entity as Agent*

As previously noted, the 2002 Regulations did not preclude foreign entities from acting as agent, but provided that the Commissioner could designate a domestic substitute agent. The IRS and the Treasury Department recognize that such an entity may have the best access to information, but also that these situations present unique logistical issues. Accordingly, the

2012 Proposed Regulations did not preclude a foreign entity from being the agent and preserved the Commissioner's discretion to replace a foreign entity.

#### *G. Post-Dissolution Winding Up Period*

Questions arose under the 2002 Regulations with respect to the actions that could be performed by a terminating agent during the "winding up" period following its dissolution. Because winding up statutes vary widely among the states, the IRS and the Treasury Department determined that no single rule for post-dissolution terminating agents would be appropriate in all cases. The 2012 Proposed Regulations resolved the issue by providing that an entity that has dissolved or otherwise ceased to exist under applicable law can no longer be the agent, irrespective of its powers under state or local law during its post-dissolution winding up period.

#### *5. Final Regulations*

The rules adopted in these Final Regulations are consistent with those set forth in the 2012 Proposed Regulations. The Final Regulations, however, make several revisions to the 2012 Proposed Regulations. First, as further described in section 5.A. of this preamble, the Final Regulations expand the circumstances under which the Commissioner may replace an agent on the Commissioner's own accord. Second, the Final Regulations clarify that a terminating agent without a default successor may only designate an agent with respect to a completed year. See section 5.A.iii. of this preamble. Third, the Final Regulations organize the provisions that permit the Commissioner to designate an agent into two categories: (1) those provisions that authorize the Commissioner to replace an agent on the Commissioner's own accord, with or without a written request from a member; and (2) a provision described in section 5.B. of this preamble permitting the Commissioner to replace an agent pursuant to a member's written request. Fourth, as described in section 5.C. of this preamble, the Final Regulations allow an agent to resign under certain circumstances. Fifth, the Final Regulations clarify that an agent other than the common parent generally serves

as agent under the same terms and with the same rights as the common parent. A significant exception to this general rule discussed in section 5.A.iii. of this preamble applies in the case of an agent designated by the Commissioner, in that such an agent may not designate an agent upon its termination unless the Commissioner designated the agent solely because a prior agent terminated without a default successor and without designating an agent (other than in the case of a group structure change as defined in § 1.1502-33(f)(1)).

In addition, the Final Regulations contain clarifying and non-substantive changes to the text of the 2012 Proposed Regulations and redesignate the 2002 Regulations as § 1.1502-77B (§ 1.1502-77A continues to apply for consolidated return years beginning before June 28, 2002).

#### *A. Designation On Commissioner's Own Accord*

The Final Regulations prescribe four circumstances in which the Commissioner may designate an agent on the Commissioner's own accord. Three of the circumstances are adopted from the 2012 Proposed Regulations: the Commissioner may designate an agent if (1) a terminating agent has no default successor and fails to designate an agent; (2) the Commissioner believes that the agent or its default successor exists but such entity fails to timely respond to notices properly sent by the Commissioner; or (3) the agent is or becomes a foreign entity (for example, through the agent's continuance into a foreign jurisdiction or certain transactions subject to the inversion rules of section 7874). The Final Regulations add an additional situation to the second circumstance so that the Commissioner may designate an agent where the agent either fails to timely respond to notices or fails to perform its obligations as agent. Finally, the Final Regulations add a fourth circumstance: the Commissioner may designate a new agent for a current year if a previously designated agent ceases to be a member of the group.

*i. Replacing agent that fails to perform its obligations*

The IRS and the Treasury Department recognize that there may be situations in which an agent is failing to perform its obligations as agent under the Code or regulations. Neither the 2002 Regulations nor the 2012 Proposed Regulations provided a remedy to designate an agent in such situations. As a result, members would not be able to accurately file a return, determine their federal tax liability, or obtain refunds, and the Commissioner might have to deal with each member separately by “breaking agency” pursuant to § 1.1502-77(f)(2)(i) of the 2012 Proposed Regulations. This could, in turn, result in significant uncertainty and undue burden for group members as well as the Commissioner. For example, assume the Commissioner breaks agency for a consolidated return year that has ended (completed year) and then one or more members files a claim for refund of income taxes paid for that year. Because of the uncertainty as to which member(s) would be entitled to all or a portion of the refund, the Government would likely be forced to interplead all potential member-claimants in an ensuing refund case.

The preamble to the 2012 Proposed Regulations requested comments with respect to this issue, but no comments were received. Nevertheless, the IRS and the Treasury Department have considered this issue and determined that the best interests of all concerned would be served by providing the Commissioner the authority to replace an agent that fails to perform its obligations as agent as prescribed by federal tax law. Accordingly, the Final Regulations provide that the Commissioner may, with or without a written request from a member, designate an agent to replace any agent that fails to perform its obligations as agent as prescribed by the Code or regulations promulgated thereunder.

*ii. Replacing agent that ceases to be a member for current year*

The 2012 Proposed Regulations did not provide guidance for situations in which an agent previously designated by the Commissioner ceases to be a member during a consolidated return year that is

not a completed year (current year). Thus, under the 2012 Proposed Regulations, there could be situations in which a group would have a non-member agent or no agent at all. The Final Regulations address these issues by requiring that the agent for the current year be a member of the group. An agent designated by the Commissioner will generally continue as the agent in successive consolidated return years except in three circumstances: (1) if the Commissioner specifies a limited or specific period of agency in the designation; (2) if the agent ceases to be a member of the group; or (3) if the agent is replaced pursuant to the Final Regulations.

The Final Regulations also provide an additional circumstance in which the Commissioner may designate an agent on the Commissioner’s own accord. Specifically, the Final Regulations permit the Commissioner, with or without a written request from a member, to designate an agent for the current year if an agent previously designated by the Commissioner ceases to be a member of the group without leaving a default successor in the group. In that situation, a member of the group should request that the Commissioner designate an agent.

*iii. Effect of certain designations on the Commissioner’s own accord*

The Proposed Regulations permitted an agent that terminates without a default successor to designate an agent. If a terminating agent had no default successor and failed to designate an agent, the Commissioner could designate an agent with or without the request of any member. The Final Regulations generally adopt these rules with one significant modification. If a terminating agent was itself designated by the Commissioner on the Commissioner’s own accord and the terminating agent does not have a default successor, the Final Regulations provide that the terminating agent is not permitted to designate an agent if it was designated because the agent it replaced (1) ceased to be a member of the group in a current year; (2) failed to timely respond to notices or failed to fulfill its obligations under the Code or regulations; or (3) became a foreign entity. Because the Commissioner’s ability to administer the tax law is im-

paired under these circumstances, the IRS and the Treasury Department determined that the interests of tax administration would be best served by monitoring of designated agents and groups in these limited cases. Accordingly, the IRS and the Treasury Department determined that the Commissioner, rather than the terminating agent, should designate the agent in these situations. In such cases, any member (including the terminating agent) of the group is permitted to request that the Commissioner designate a new agent. The Final Regulations permit other categories of agents previously designated by the Commissioner to designate an agent upon termination provided the terminating agent does not (1) have a default successor or (2) terminate in a group structure change. The Final Regulations clarify that a terminating agent that is permitted to designate an agent may only do so with respect to completed years.

Finally, to prevent groups from nullifying a designation made by the Commissioner, the Final Regulations provide that a designating agent may not designate as an agent any entity that the Commissioner previously replaced as agent. The designating agent may, however, submit a request that the Commissioner designate as agent the entity previously replaced as agent.

*B. Designation Upon Written Request by a Member*

The 2002 Regulations and the 2012 Proposed Regulations provided a mechanism whereby upon the written request from a member, the Commissioner could, but was not required to, replace an agent previously designated by the Commissioner. The Final Regulations retain this provision to permit a member to request that the Commissioner designate a new agent in circumstances other than the specifically enumerated circumstances in which the Commissioner may designate an agent on the Commissioner’s own accord.

*C. Resignation of Agent*

Under the 2002 Regulations, a common parent remained the agent for any year for which it was the common parent, with only a termination of the common

parent terminating that agency. However, the IRS and the Treasury Department recognize that there could be circumstances in which an agent would want to resign and have another entity take its place as agent. For example, assume P, the common parent of the P consolidated group, becomes a subsidiary of the group in a transaction under § 1.1502-75(d) (resulting in a group structure change described in § 1.1502-33(f)(1)), and the group continues with N as the new common parent and agent. If unrelated X acquires the stock of P, P would leave the group but would still be the agent for the years during which it was the group's common parent. In that situation, it might be more efficient for all concerned if P were to resign as agent in favor of another member. Although the 2012 Proposed Regulations did not include a mechanism for an existing agent to resign, the preamble to the 2012 Proposed Regulations requested comments with respect to this issue. No comments were received. Nevertheless, the IRS and the Treasury Department have considered the issue and determined that it would be in the best interests of all concerned and sound tax administration for agents to have the ability to resign, at least in limited situations.

Accordingly, the Final Regulations provide a mechanism for agents to resign with respect to completed years. However, there are four conditions that must be met. First, the agent must provide written notice to the Commissioner that it no longer intends to be the agent for a completed year. Second, an entity that could have been designated by the resigning agent upon its termination must consent, in writing, to be the agent for that year. Third, immediately after its resignation takes effect, the resigning agent must not be the agent for the current year. Fourth, the Commissioner must not object to the agent's resignation. If these conditions are satisfied, the new agent must notify each member of the group that it has become the agent.

#### Effective/Applicability Date

The Final Regulations apply to consolidated return years beginning on or after April 1, 2015. The 2002 Regulations, redesignated as § 1.1502-77B,

and Rev. Proc. 2002-43 continue to apply with respect to consolidated return years beginning on or after June 28, 2002, and before April 1, 2015. However, the new rules permitting the resignation of agents may be relied upon for completed years otherwise governed by the 2002 Regulations (or any predecessor regulations).

#### Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

#### Drafting Information

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

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.1502-77B also issued under 26 U.S.C. 1502 and 6402(j).

\*\*\*\*\*

§ 1.338-1 [Amended]

Par. 2. Section 1.338-1 is amended by removing the language “§ 1.1502-77(e)(4)” in the last sentence of paragraph (b)(2)(viii) and adding the language “§ 1.1502-77(c)(8)” in its place.

Par. 3. Section 1.1502-77A is amended as follows:

1. Paragraph (e)(2) is amended by removing every occurrence of the language “(a)(4)” and adding “(e)(4)” in its place.

2. In paragraph (e)(2), the first sentence is amended by removing the language “§ 1.1502-77” and adding “§ 1.1502-77A” in its place.

3. In paragraph (e)(2), the second sentence is amended by removing the language “§ 1.1502-77(d)” and adding “§ 1.1502-77A(d)” in its place.

4. Paragraph (e)(3) is amended by removing the language “(a)(4)” and adding “(e)(4)” in its place.

5. Paragraph (e)(4) is amended by removing the language “(a)(2)” and adding “(e)(2)” in its place.

6. Paragraph (e)(4)(iii) is amended by removing the language “§ 1.1502-77(d)” and adding “§ 1.1502-77A(d)” in its place.

7. The heading for paragraph (g) is revised.

The revision reads as follows:

§ 1.1502-77A Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

\*\*\*\*\*

(g) *Effective/applicability dates.* \* \* \*

§ 1.1502.77 [Redesignated as § 1.1502-77B]

Par. 4. Add an undesignated center heading under § 1.1502.77A, redesignate § 1.1502-77 as § 1.1502-77B and, in newly redesignated § 1.1502-77B, revise the section heading and paragraph (h)(1)(i) to read as follows:

REGULATIONS APPLICABLE TO  
TAXABLE YEARS BEGINNING ON  
OR AFTER JUNE 28, 2002, AND  
BEFORE APRIL 1, 2015.

§ 1.1502-77B Agent for the group  
applicable for consolidated return years  
beginning on or after June 28, 2002,  
and April 1, 2015.

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(h) *Effective/applicability date*—(1) *Application*—(i) *In general*. This section applies to consolidated return years beginning on or after June 28, 2002, and before April 1, 2015. For instructions regarding communications relating to the determination of a substitute agent and other matters under this section, see Rev. Proc. 2002-43, 2002-2 CB 99 (see § 601.601(d)(2)(ii)(b) of this chapter). For rules governing the resignation of certain agents for the group subject to this section, see § 1.1502-77(c)(7) and (j)(2).

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Par. 5. Section 1.1502-77 is added to read as follows:

§ 1.1502-77 Agent for the group.

(a) *Agent for the group*—(1) *Sole agent*. Except as provided in paragraphs (e) and (f)(2) of this section, one entity (the agent) is the sole agent that is authorized to act in its own name regarding all matters relating to the federal income tax liability for the consolidated return year for each member of the group and any successor or transferee of a member (and any subsequent successors and transferees thereof). The identity of that agent is determined under the rules of paragraph (c) of this section.

(2) *Agent for each consolidated return year*. Agency for the group is established for each consolidated return year and is not affected by the status or membership of the group in later years. Thus, subject to the rules of paragraph (c) of this section, the agent will generally remain agent for that consolidated return year regardless of whether one or more subsidiaries later cease to be members of the group, whether the group files a consolidated return for any subsequent year, whether the agent ceases to be the agent or a member of the group in any subsequent year, or whether the group continues pursuant to

§ 1.1502-75(d) with a new common parent in any subsequent year.

(3) *Communications under this section*. Any designation, notification, objection, request, or other communication made to or by the Commissioner pursuant to paragraphs (c) and (f)(2) of this section must be made in accordance with procedures prescribed by the Commissioner in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter), forms, instructions, or other appropriate guidance.

(b) *Definitions*. The following definitions apply for purposes of this section only—

(1) *Successor*. A *successor* is an individual or entity (including a disregarded entity as defined in paragraph (b)(3) of this section) that is primarily liable, pursuant to applicable law (including, for example, by operation of a state or federal merger statute), for the tax liability of a corporation that was a member of the group but is no longer in existence under applicable law. The determination of tax liability is made without regard to § 1.1502-1(f)(4) or § 1.1502-6(a). (For inclusion of a successor in references to a subsidiary or member, see paragraph (b)(5)(iii) of this section.)

(2) *Entity*. The term *entity* includes any corporation, limited liability company, or partnership formed under any state, federal, or foreign jurisdiction. The term *entity* includes a disregarded entity (as defined in paragraph (b)(3) of this section). The term *entity* does not include an entity that has terminated even if it is in a winding up period under the law under which it is organized.

(3) *Disregarded entity*. The term *disregarded entity* includes any of the following types of entities that are disregarded as separate from their owners—

(i) Qualified real estate investment trust subsidiaries (within the meaning of section 856(i)(2));

(ii) Qualified subchapter S subsidiaries (within the meaning of section 1361(b)(3)(B)); and

(iii) Eligible entities with a single owner (within the meaning of § 301.7701-3 of this chapter).

(4) *Default successor*. A successor to the agent is the *default successor* if it is an entity (whether domestic or foreign) that

is the sole successor to the agent. A partnership is treated as a sole successor with primary liability notwithstanding that one or more partners may also be primarily liable by virtue of being partners.

(5) *Member or subsidiary*. All references to a member or subsidiary for a consolidated return year include—

(i) Each corporation that was a member of the group during any part of such year (except that any reference to a subsidiary does not include the common parent);

(ii) Each corporation whose income was included in the consolidated return for such year, notwithstanding that the tax liability of such corporation should have been computed on the basis of a separate return, or as a member of another consolidated group, under the provisions of § 1.1502-75; and

(iii) Except as indicated otherwise, a successor of any of the foregoing corporations.

(6) *Completed year*. A *completed year* is a consolidated return year that has ended, or will end at the time of the referenced event.

(7) *Current year*. A *current year* is a consolidated return year that is not a completed year.

(c) *Identity of the agent*—(1) *In general*. Except as otherwise provided in this section, the agent for a current year is the common parent and the agent for a completed year is the common parent at the close of the completed year or its default successor, if any. Except as specifically provided otherwise in this paragraph (c), any entity that is an agent pursuant to paragraph (c)(3) of this section (agent following group structure change), paragraph (c)(5) of this section (agent designated by agent terminating without default successor), paragraph (c)(6) of this section (agent designated by Commissioner), or paragraph (c)(7) of this section (agent designated by resigning agent), or any entity subsequently serving as agent following such agent, acts as an agent for and under the same terms and conditions that apply to a common parent. For example, such an agent would generally be able to designate an agent if it terminates without a default successor; however, an entity that became agent pursuant to a designation by the Commissioner under paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section is not

permitted to designate an agent if it terminates without a default successor. Other special rules described in this paragraph (c) apply.

(2) *Purported agent.* If any entity files a consolidated return, or takes any other action related to the tax liability for the consolidated return year, purporting to be the agent but is subsequently determined not to have been the agent with respect to the claimed group, that entity is treated, to the extent necessary to avoid prejudice to the Commissioner, as if it were the agent.

(3) *New common parent after a group structure change.* If the group continues in existence after a group structure change (as described in § 1.1502-33(f)(1)), the former common parent is the agent until the group structure change, and the new common parent becomes the agent after the group structure change. Following the group structure change, the new common parent is the agent with respect to the entire current year (including the period before the group structure change) and the former common parent is no longer the agent for that year. However, actions taken by the former common parent as the agent before the group structure change are not nullified when the new common parent becomes the agent with respect to the entire consolidated return year. Following the group structure change, the new common parent continues as the agent for succeeding years subject to the rules of this section.

(4) *Notification by default successor—*  
(i) *In general.* Failure to provide notice to the Commissioner pursuant to this paragraph (c)(4)(i) does not invalidate an entity's status as the default successor. However, until the Commissioner receives notification in writing that an entity is the default successor—

(A) Any notice of deficiency or other communication mailed to the predecessor agent, even if no longer in existence, is considered as having been properly mailed to the agent; and

(B) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person (including the default successor) other than the predecessor agent.

(ii) *Conversions and continuances.* For purposes of the notice requirements under

paragraph (c)(4)(i) of this section, any entity that results from the agent's conversion or continuance by operation of state law and that qualifies as a default successor under paragraph (b)(4) of this section is treated as a default successor for purposes of the notice provisions of paragraph (c)(4)(i) of this section, even if applicable state or local law may treat the converted or continued entity as not ceasing to exist.

(5) *Designation by terminating agent—*  
(i) *In general.* Prior to the termination of its existence without a default successor, an agent may designate an entity described in paragraph (c)(5)(ii) of this section to act as agent for any completed year. This designation is effective upon the termination of the designating agent's existence. However, this paragraph (c)(5) does not apply to, and no designation can be made by, an agent that was designated by the Commissioner under paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section, or any successor of such an agent; in such a case, the terminating agent should request that the Commissioner designate an agent pursuant to paragraph (c)(6)(i)(B) of this section.

(ii) *Permissible agents—*  
(A) The terminating agent may designate as agent a member of the group during any part of the completed year, or an entity (whether domestic or foreign) that is a successor of such a member, including an entity that will become a successor at the time the agent's existence terminates.

(B) The terminating agent may not designate as agent any entity that was previously replaced as agent by the Commissioner pursuant to paragraphs (c)(6)(i)(A)(2), (3), or (4) of this section, or any successor of such an agent. However, the terminating agent may submit a request pursuant to paragraph (c)(6)(i)(B) of this section that the Commissioner designate such an entity as agent.

(iii) *Notification of designation.* The terminating agent must notify the Commissioner in writing of its designation of an entity as agent pursuant to paragraph (c)(5)(i) of this section and provide a statement executed by the designated entity acknowledging that it will serve as the agent for each specified completed year for which it is designated as the agent. If the designated entity was not itself a

member of the group during any specified year (because it is a successor of a member), the notification must include a statement acknowledging that the designated entity is or will be primarily liable for the tax liability for the specified completed year as a successor of a member.

(iv) *Failure to designate an agent.* If the agent terminates without a default successor, and no agent is designated pursuant to this paragraph (c)(5)—

(A) Any notice of deficiency or other communication mailed to the agent, even if no longer in existence, is considered as having been properly mailed to the agent; and

(B) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person.

(6) *Designation by the Commissioner—*  
(i) *In general.* The Commissioner has the authority to designate an entity to act as the agent under the circumstances prescribed in this paragraph (c)(6)(i). The designated agent for a completed year must be an entity described in paragraph (c)(5)(ii)(A) of this section when the designation becomes effective. The designated agent for a current year must be a member of the group when the designation becomes effective. If, pursuant to this paragraph (c)(6), the Commissioner replaces the common parent or another entity as the agent, the common parent or other entity, or any successor thereof, may not later act as the agent unless so designated by the Commissioner.

(A) *On Commissioner's own accord.* With or without a request from any member of the group, the Commissioner may designate an entity to act as the agent if—

(1) The agent's existence terminates, other than in a group structure change, without there being a default successor and without any designation made under paragraph (c)(5)(i) of this section;

(2) An agent previously designated by the Commissioner is no longer a member of the group in the current year and does not have a default successor that is a member of the group;

(3) The Commissioner believes that the agent or its default successor exists but such entity has either not timely responded to the Commissioner's notices (sent to the last known address on file for

the entity or left at the usual place of business for such entity) or has failed to perform its obligations as agent as prescribed by the Internal Revenue Code (Code) or regulations promulgated thereunder; or

(4) The agent is or becomes a foreign entity as a result of any action or transaction (including, for example, a continuance into a foreign jurisdiction or certain inversion transactions subject to section 7874 in which a foreign parent is treated as a domestic corporation).

(B) *Written request from any member.* At the request of any member, in a circumstance not described in paragraph (c)(6)(i)(A) of this section, the Commissioner may, but is not required to, replace an agent previously designated under this paragraph (c)(6).

(ii) *Notification by Commissioner.* The Commissioner will notify the designated entity in writing of the Commissioner's designation of the entity as agent pursuant to paragraph (c)(6)(i) of this section, and the designation will be effective as prescribed by the Commissioner. The designated entity should give notice of the designation by the Commissioner pursuant to paragraph (c)(6)(i) of this section to each member of the group during any part of the consolidated return year. However, a failure by the designated entity to notify any such member of the group does not invalidate the designation by the Commissioner.

(iii) *Term and effect of designation.* Unless otherwise provided by the Commissioner in the designation, any agent designated by the Commissioner pursuant to paragraph (c)(6)(i) of this section (new agent) is the agent with respect to the entire consolidated return year for which it is designated and successive years, subject to the rules of this section. An agent immediately preceding a new agent (former agent) ceases to be the agent for a particular consolidated return year once the new agent has been designated for that year, but the designation of the new agent does not nullify actions taken on behalf of the group by the former agent while it was agent. If there is more than one new agent designated by the Commissioner for a consolidated return year, the new agent that is designated last in time by the Commissioner is the agent with respect to the

entire consolidated return year. A designation pursuant to this paragraph (c)(6) is effective as prescribed by the Commissioner in such designation or the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter), forms, instructions, or other appropriate guidance.

(iv) *Request by member of the group where agent previously designated by the Commissioner is no longer a member.* If an agent at any time after it is designated as agent by the Commissioner pursuant to paragraph (c)(6)(i) of this section is no longer a member of the group for any current year, and its default successor, if any, is not a member of the group at that time, a member of the group, including the agent that will cease to be a member, should request, in writing, that the Commissioner designate a member of the group to be the new agent pursuant to paragraph (c)(6)(i)(A)(2) of this section. Until such a request is made—

(A) Any notice of deficiency or other communication mailed to the agent, even if no longer a member, is considered as having been properly mailed to the agent; and

(B) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person.

(7) *Agent resigns—(i) In general.* The agent may resign for a completed year if—

(A) It provides written notice to the Commissioner that it no longer intends to be the agent for that completed year;

(B) An entity described in paragraph (c)(5)(ii)(A) of this section consents, in writing, to be the agent with respect to that completed year;

(C) Immediately after its resignation takes effect, the resigning agent will not be the agent for the current year; and

(D) The Commissioner does not object to the agent's resignation.

(ii) *Notification by agent that replaces agent that resigns.* If the Commissioner does not object to the agent's resignation, the agent that replaces the agent that resigns should give written notice that it is the new agent to each member of the group for any part of the completed year for which it is designated the agent.

(8) *Transactions under the Code.* Notwithstanding section 338(a)(2), a target

corporation for which an election is made under section 338 is not deemed to terminate for purposes of this section.

(d) *Examples of matters subject to agency.* With respect to any consolidated return year for which it is the agent—

(1) The agent makes any election (or similar choice of a permissible option) that is available to a subsidiary in the computation of its separate taxable income, and any change in an election (or similar choice of a permissible option) previously made by or for a subsidiary, including, for example, a request to change a subsidiary's method or period of accounting;

(2) All correspondence concerning the income tax liability for the consolidated return year is carried on directly with the agent;

(3) The agent files for all extensions of time, including extensions of time for payment of tax under section 6164, and any extension so filed is considered as having been filed by each member;

(4) The agent gives waivers, gives bonds, and executes closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, is considered as having also been given or executed by each member;

(5) The agent files claims for refund, and any refund is made directly to and in the name of the agent and discharges any liability of the Government to any member with respect to such refund;

(6) The agent takes any action on behalf of a member of the group with respect to a foreign corporation including, for example, elections by, and changes to the method of accounting of, a controlled foreign corporation in accordance with § 1.964-1(c)(3);

(7) Notices of claim disallowance are mailed only to the agent, and the mailing to the agent is considered as a mailing to each member;

(8) Notices of deficiencies are mailed only to the agent (except as provided in paragraph (f)(3) of this section), and the mailing to the agent is considered as a mailing to each member;

(9) Notices of final partnership administrative adjustment under section 6223 with respect to any partnership in which a

member of the group is a partner may be mailed to the agent, and, if so, the mailing to the agent is considered as a mailing to each member that is a partner entitled to receive such notice (for other rules regarding partnership proceedings, see paragraph (f)(2)(iii) of this section);

(10) The agent files petitions and conducts proceedings before the United States Tax Court, and any such petition is considered as also having been filed by each member;

(11) Any assessment of tax may be made in the name of the agent, and an assessment naming the agent is considered as an assessment with respect to each member; and

(12) Notice and demand for payment of taxes is given only to the agent, and such notice and demand is considered as a notice and demand to each member.

(e) *Matters reserved to subsidiaries.* Except as provided in this paragraph (e) and paragraph (f)(2) of this section, no subsidiary (unless it is or becomes an agent pursuant to paragraph (c) of this section) has authority to act for or to represent itself in any matter related to the tax liability for the consolidated return year. The following matters, however, are reserved exclusively to each subsidiary—

(1) The making of the consent required by § 1.1502-75(a)(1);

(2) Any action with respect to the subsidiary's liability for a federal tax other than the income tax imposed by chapter 1 of the Code (including, for example, employment taxes under chapters 21 through 25 of the Code, and miscellaneous excise taxes under chapters 31 through 47 of the Code); and

(3) The making of an election to be treated as a Domestic International Sales Corporation under § 1.992-2.

(f) *Dealings with members*—(1) *Identifying members in notice of a lien.* Notwithstanding any other provisions of this section, any notice of a lien, any levy, or any other proceeding to collect the amount of any assessment, after the assessment has been made, must name the entity from which such collection is to be made.

(2) *Direct dealing with a member*—(i) *Several liability.* The Commissioner may, upon issuing to the agent written notice that expressly invokes the authority of this

provision, deal directly with any member of the group with respect to its liability under § 1.1502-6 for the consolidated tax of the group, in which event such member has sole authority to act for itself with respect to that liability. However, if the Commissioner believes or has reason to believe that the existence of the agent has terminated without an agent being identified under this section, the Commissioner may, if the Commissioner deems it advisable, deal directly with any member with respect to that member's liability under § 1.1502-6 without issuing notice to any other entity.

(ii) *Information requests.* The Commissioner may, upon issuing to the agent written notice, request information relevant to the consolidated tax liability from any member of the group. However, if the Commissioner believes or has reason to believe that the existence of the agent has terminated without an agent being identified under this section, the Commissioner may request such information from any member of the group without issuing notice to any other entity.

(iii) *Members as partners in partnerships subject to the provisions of the Code.* Except as otherwise provided in this paragraph (f)(2)(iii), the general rule of paragraph (a)(1) of this section applies so that the agent is the agent for any subsidiary member that for any part of the consolidated return year is a partner in a partnership subject to the provisions of sections 6221 through 6234 of the Code (as originally enacted by the Tax Equity and Fiscal Responsibility Act of 1982 and subsequently amended) and the accompanying regulations (TEFRA partnership). However—

(A) Any subsidiary or any disregarded entity owned by a subsidiary that is designated as tax matters partner of a TEFRA partnership will act in its own name and perform its responsibilities under sections 6221 through 6234 and the accompanying regulations without requiring any action by the agent (but see paragraph (d)(9) of this section regarding the mailing of a final partnership administrative adjustment to the agent); and

(B) The Commissioner may at any time communicate directly with a subsidiary or a disregarded entity owned by a subsidiary that is a partner in a TEFRA

partnership, without having to deal with each member separately pursuant to paragraph (f)(2)(i) of this section, whenever the Commissioner determines that such direct communication will facilitate the conduct of an examination, appeal, or settlement with respect to the partnership.

(3) *Copy of notice of deficiency to entity that has ceased to be a member of the group.* A subsidiary that ceases to be a member of the group during or after a consolidated return year may file a written notice of that fact with the Commissioner and request a copy of any notice of deficiency with respect to the tax for a consolidated return year during which it was a member, or a copy of any notice and demand for payment of such deficiency, or both. Such filing does not limit the scope of the agency of the agent provided for in this section. Any failure by the Commissioner to comply with such request does not limit the subsidiary's tax liability under § 1.1502-6.

(g) *Examples.* Unless otherwise indicated, all entities are domestic and have a calendar year taxable year, and each of P, S, S-1, S-2, S-3, T, U, V, W, W-1, Y, Z, and Z-1 is a corporation. For none of the consolidated return years at issue does the Commissioner exercise the authority under paragraph (f)(2) of this section to deal with any member separately. Any surviving entity in a merger is either a successor as described in paragraph (b)(1) of this section, or a default successor as described in paragraph (b)(4) of this section, as the case may be. Except as otherwise indicated, no agent will be replaced under paragraph (c)(6) of this section or will resign under paragraph (c)(7) of this section, and all communications to and from the Commissioner are made in accordance with procedures prescribed by the Commissioner.

*Example 1. Disposition of all group members where the agent remains the agent.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group, consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. On December 31 of Year 1, P sells all the stock of S-1 to X. On December 31 of Year 2, P distributes all the stock of S to P's shareholders. P files a separate return for Year 3.

(ii) *Analysis.* Although the consolidated group terminates after Year 2 under § 1.1502-75(d)(1) and P is no longer the common parent nor the agent for years after Year 2, P remains the agent for the P

group for Years 1 and 2 under paragraph (a)(2) of this section. Accordingly, for as long as P remains in existence, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2.

*Example 2. Acquisition of the agent by another group where the agent remains the agent.* (i) *Facts.* The facts are the same as in *Example 1*, except on January 1 of Year 3, all of the outstanding stock of P is acquired by Y, which is the common parent and agent of the Y consolidated group. P thereafter joins in the Y group's consolidated return as a member of the Y group.

(ii) *Analysis.* Although P is a member of the Y group in Year 3 and succeeding years, P remains the agent for the P group for Years 1 and 2 under paragraph (a)(2) of this section. Accordingly, for as long as P remains in existence, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2.

*Example 3. Reverse triangular merger of the agent where the agent remains the agent.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. On March 1 of Year 3, W-1, a subsidiary of W, merges into P in a reverse triangular merger qualifying as a reorganization under section 368(a)(1)(A) and (a)(2)(E). P survives the merger with W-1. The transaction constitutes a reverse acquisition under § 1.1502-75(d)(3)(i) because P's shareholders receive more than 50 percent of W's stock in exchange for all of P's stock. The transaction is therefore a group structure change as described in paragraph (c)(3) of this section.

(ii) *Analysis.* Because the transaction constitutes a reverse acquisition that results in a group structure change, the P group is treated as remaining in existence with W as its common parent and agent. Under paragraphs (a)(1) and (2) and (c)(1) of this section, P remains the agent for the P group for Years 1 and 2 for as long as P remains in existence, even though the P group continues with W as its new common parent pursuant to § 1.1502-75(d)(3)(i). Until the merger of W-1 and P on March 1 of Year 3, P is the agent for the P group for Year 3. From the time of that merger, W, as common parent of the P group, becomes the agent for the P group with respect to all of Year 3 (including the period through March 1) and succeeding consolidated return years. The actions taken by P before the merger as agent for the P group for Year 3 are not nullified by the fact that W becomes the agent for all of Year 3.

*Example 4. Reverse triangular merger of the agent—subsequent distribution of agent where the agent remains the agent.* (i) *Facts.* The facts are the same as in *Example 3*, except that on April 1 of Year 4, in a transaction unrelated to the March 1, Year 3 reverse acquisition, P distributes the stock of its subsidiaries S and S-1 to W, and W then distributes the stock of P to the W shareholders.

(ii) *Analysis.* Although P is no longer a member of the P group after the Year 4 distribution, P remains the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 and 2 for as long as P remains in existence.

*Example 5. Agent Resigns.* (i) *Facts.* The facts are the same as in *Example 4*, except that on August 1 of Year 4, P provides written notice to the Commissioner that it resigns as the agent for Years 1 and 2. Included with the written notice is a statement executed by either S or S-1 consenting to be the agent for the P group for Years 1 and 2.

(ii) *Analysis.* Pursuant to paragraph (c)(7) of this section, because P is not the agent in Year 4, the current year, it will not be the agent immediately after its resignation takes effect. Accordingly, if the Commissioner does not object to P's resignation, P may resign with respect to Years 1 and 2, both of which are completed years, and either S or S-1, each an entity described in paragraph (c)(5)(ii)(A) of this section, can be the agent for the P group for Years 1 and 2 if it consents in writing. W cannot be the agent for the P group for Years 1 and 2 because it is not an entity described in paragraph (c)(5)(ii)(A) of this section with respect to the P group for Years 1 and 2.

*Example 6. Qualified stock purchase and section 338 election where the agent remains the agent.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 and 2. On March 31 of Year 2, V purchases the stock of P in a qualified stock purchase (within the meaning of section 338(d)(3)), and V makes a timely election pursuant to section 338(g) with respect to P.

(ii) *Analysis.* Although section 338(a)(2) provides that P is treated as a new corporation as of the beginning of the day after the acquisition date for purposes of subtitle A, paragraph (c)(8) of this section provides that P's existence is not deemed to terminate for purposes of this section notwithstanding the general rule of section 338(a)(2). Accordingly, new P is the agent for the P group for Year 1 and the period ending March 31 of Year 2 regardless of the election under section 338(g).

*Example 7. Change in the agent's federal income tax classification to a partnership and the resulting partnership continues as the agent.* (i) *Facts.* P, a State M limited liability partnership with two partners that is formed on January 1 of Year 1, elects pursuant to § 301.7701-3(c) of this chapter to be an association taxable as a corporation for federal income tax purposes effective on the date of formation. P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files consolidated returns for the P group in Years 1 through 6. On January 1 of Year 7, P elects pursuant to § 301.7701-3(c) of this chapter to be treated as a partnership. P remains in existence under applicable law.

(ii) *Analysis.* The P group terminates and P is no longer the common parent of a consolidated group after its election to be treated as a partnership for federal income tax purposes. Because P remains in existence under applicable law, P is the agent for the P group under paragraphs (a)(1) and (2) and (c)(1) of this section for Years 1 through 6. If P merged into a foreign partnership instead of converting to a partnership, the foreign partnership would be P's default successor and agent for the P group for Years 1 through 6. See paragraphs (b)(4) and (c)(1) of this section.

*Example 8. Forward triangular merger of agent—successor as default successor.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files a consolidated return for the P group for Year 1. On January 1 of Year 3, P merges with and into Z-1, a subsidiary of Z, in a forward triangular merger qualifying as a reorganization under section 368(a)(1)(A) and (a)(2)(D). The transaction constitutes a reverse acquisition under § 1.1502-75(d)(3)(i) resulting in a group structure change as described in paragraph (c)(3) of this section because P's shareholders receive more than 50 percent of Z's stock in exchange for all of P's stock. Z-1, the corporation that survives the merger and the successor of P, is the default successor for the P group for Years 1 and 2.

(ii) *Analysis.* Although Z is the new common parent for the P group (which continues pursuant to § 1.1502-75(d)(3)(i)) for consolidated return years after the merger, and, as a consequence, Z is the new agent as a result of this group structure change, P may not designate an agent for Years 1 or 2 because Z-1 is P's default successor and the agent for the P group for Years 1 and 2. Z-1 must file the P group's consolidated return for Year 2. See paragraphs (b)(4) and (c)(1) of this section.

*Example 9. Merger of the agent into a disregarded entity in exchange for stock of owner in a transaction qualifying as a reorganization under the Code where successor is the default successor.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. P files a consolidated return for the P group in Year 1. On January 1 of Year 2, the shareholders of P form Y, a State M corporation. On the same date, Y forms Y-1, a State M limited liability company that is a disregarded entity (as defined in paragraph (b)(3) of this section) for federal income tax purposes, and P merges into Y-1 under State M law. In the merger, the P shareholders receive all of the Y stock. Y (through Y-1) is treated as acquiring the assets of P in a transaction qualifying as a reorganization of P into Y under section 368(a)(1)(F), and the P group continues under § 1.1502-75(d)(2) with Y as the common parent and, as a consequence, the transaction is treated as a group structure change as described in paragraph (c)(3) with Y as the P group's agent for Year 2. In Year 4, the Commissioner seeks to extend the period of limitations on assessment with respect to Year 1 of the P group. In Year 5, the Commissioner seeks to extend the period of limitations on assessment with respect to Year 2 of the Y group (formerly the P group).

(ii) *Analysis.* (A) *Year 1 extension.* As a result of the January 1, Year 2 merger, Y-1 is the default successor of P, and the agent for the P group for Year 1. See paragraphs (b)(4) and (c)(1) of this section. Therefore, Y-1 is the only party that can sign the extension with respect to the P group for Year 1.

(B) *Year 2 extension.* Because the January 1, Year 2 merger qualified as a reorganization under section 368(a)(1)(F), the P group remains in existence with Y as the common parent. Therefore, Y, the common parent of the P group after the merger, is the P group's agent for all of Year 2 (see paragraph (c)(3) of this section) and is the only party that

can sign the extension with respect to the P group for that year and in succeeding years. See paragraphs (a)(1) and (2) and (c)(1) of this section.

*Example 10. Designation of agent where there is no default successor.* (i) *Facts.* P is incorporated under the laws of State X. Fifty percent of its stock is owned at all times by A, an individual, and 50 percent by BCD, a partnership. On January 1 of Year 1, P forms two subsidiaries, S and T, and becomes the common parent of the P group. P files consolidated returns for the P group beginning in Year 1 and is the agent for the P consolidated group beginning on January 1 of Year 1. On November 30 of Year 3, P dissolves under X law. Under X law, A and BCD are primarily liable for the federal income tax liability of dissolved corporation P. State X law allows the officers of a dissolved corporation to perform certain actions incident to the winding up of its affairs after its dissolution, including the filing of tax returns.

(ii) *Analysis.* Upon P's dissolution, there is no default successor to P, pursuant to paragraph (b)(4) of this section, because there are two successors. Prior to its dissolution on November 30 of Year 3, pursuant to paragraph (c)(5)(i) of this section, P may designate an agent for the P group for Years 1 and 2 and the short taxable year ending on November 30 of Year 3, to be effective upon P's dissolution. P may designate S or T, pursuant to paragraph (c)(5)(ii)(A) of this section (because they are members of the former group), or BCD (because it is an entity that is a successor to P pursuant to paragraph (b)(1) of this section). P cannot designate A pursuant to paragraph (c)(5)(ii) of this section, because A is not an entity. Under paragraph (b)(2) of this section, the officers of P cannot designate an agent for the P group after P dissolves on November 30 of Year 3, notwithstanding the winding up provisions of State X law. Accordingly, P should designate an agent prior to its dissolution to ensure that there is an agent authorized to file the short Year 3 consolidated return. If P does not designate an agent prior to dissolution under paragraph (c)(5)(i) of this section, the Commissioner may designate an agent under paragraph (c)(6)(i)(A)(I) of this section from among S, T, or BCD, upon their request or otherwise. If any of S, T, A, or BCD realizes that P has dissolved without designating an agent, it should request, in writing, a designation of an agent by the Commissioner as soon as possible.

*Example 11. Commissioner designates a new agent.* (i) *Agent fails to fulfill its obligations.* (A) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S-1 and S-2, each a State Y corporation. P files a consolidated return for the P group in Year 1. In Year 2, S-3, also a State Y corporation, joins the P group. The P group continues as a consolidated group in Years 2, 3, and 4. As of Year 4, P has failed to file the P group consolidated returns for Years 2 and 3.

(B) *Analysis.* (I) *Scope of designation.* Because P failed to perform its obligations as agent as prescribed by federal tax law, the Commissioner may, under the authority of paragraph (c)(6)(i)(A)(3) of this section, on his own accord, with or without a written request from a member, designate another entity described in paragraph (c)(6)(i) of this section to act as the agent for not just Years 2 and 3, but any of Years 1 through 4.

(2) *Year 1 designation.* The Commissioner may designate either S-1 or S-2, both of which are entities

described in paragraphs (c)(6)(i) and (c)(5)(ii)(A) of this section, to act as the agent for the P group for Year 1. Because S-3 was not a member of the group in Year 1, it is not an entity described in paragraphs (c)(6)(i) and (c)(5)(ii)(A) of this section for Year 1 and therefore cannot be the agent for Year 1. Unless otherwise provided in the designation, the designation of either S-1 or S-2 will also be effective for Years 2, 3, and 4 and all succeeding consolidated return years of the group.

(3) *Year 2 designation.* The Commissioner may designate either S-1, S-2, or S-3, all of which are entities described in paragraph (c)(5)(ii)(A) of this section, to act as the agent for the P group for Year 2. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for Years 3 and 4 and all succeeding consolidated return years of the group.

(4) *Year 3 designation.* The Commissioner may designate any of S-1, S-2, or S-3 as the agent for Year 3. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for Year 4 and all succeeding consolidated return years of the group.

(5) *Year 4 designation.* The Commissioner may designate any of S-1, S-2, or S-3 as the agent for Year 4. Unless otherwise provided in the designation, the designation of either S-1, S-2, or S-3 will also be effective for all succeeding consolidated return years of the group.

(ii) *Member requests replacement of designated agent.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 11*, except that in Year 4 the Commissioner designates S-1 as agent for Years 1 and succeeding years to replace P for P's failure to fulfill its obligations. After receiving notification that S-1 has been designated, S-3 submits a request in Year 4, pursuant to paragraph (c)(6)(i)(B) of this section, that the Commissioner designate S-2 as the agent because S-1 does not have ready access to the group's books and records, which are located in another state and are in the possession of S-2.

(B) *Analysis.* In light of S-3's request, the Commissioner may, under the authority of paragraph (c)(6)(i)(B) of this section, designate either S-2 (for all or any years) or S-3 (for any year or years other than Year 1) as agent in lieu of the previously designated agent, S-1. However, notwithstanding S-3's request, the Commissioner is not required to replace S-1 as agent for any of the consolidated return years for which S-1 was designated.

*Example 12. Designated agent ceases to be a member of the group.* (i) *Facts.* The facts are the same as in paragraph (ii)(A) of *Example 11*, except that in Year 4 no member requests that the Commissioner replace S-1, which accordingly continues to be the agent for the P group in Year 5 pursuant to paragraph (c)(6)(iii) of this section. On May 2 of Year 5, S-1 converts under State Y law into S-1 LLC, a limited liability company that is an entity that is treated as a disregarded entity (as defined in paragraph (b)(3) of this section) and, as a consequence, is no longer a member of the P group after the conversion.

(ii) *Analysis for completed years.* S-1 LLC, the disregarded entity resulting from the conversion, becomes S-1's default successor. As such, S-1 LLC is the agent for Years 1-4.

(iii) *Analysis for current and succeeding years.* S-1 is an agent designated by the Commissioner pursuant to paragraph (c)(6)(i)(A)(3) of this section. Because S-1 is no longer a member of the P group after May 2 of Year 5, S-1 is the agent for the P group for Year 5 only while it remains a member (see paragraphs (c)(6)(i) and (iii) of this section). According to paragraph (c)(6)(i) of this section, although S-1 LLC is S-1's default successor, it is not a member of the group for the current year and therefore cannot be its agent. Furthermore, S-1 cannot designate an agent for Year 5 under paragraph (c)(5)(i) of this section because that paragraph pertains only to designations for completed years for which there is no default successor. In addition, S-1 cannot designate an agent for Year 5 under paragraph (c)(5)(i) of this section because S-1 was previously designated by the Commissioner under paragraph (c)(6)(i)(A)(3) of this section.

(iv) *Member's notice to Commissioner for Commissioner to designate a member of the group for a current year.* A member of the group in Year 5 should request that the Commissioner designate, pursuant to paragraphs (c)(6)(i)(A)(2) and (c)(6)(iv) of this section, another member of the P group to be the agent of the group for Year 5. The Commissioner may then, pursuant to paragraph (c)(6)(i)(A)(2) of this section, designate either S-2, S-3, or P to be the agent for the P group and, once so designated, that member will be, effective on May 3 of Year 5, the agent for all of Year 5 and for succeeding years (subject to the rules of this section) pursuant to paragraph (c)(6)(iii) of this section. No actions taken by S-1 on behalf of the P group through May 2, Year 5, are nullified by the Commissioner's designation of another agent even though the agent so designated will be the agent for all of Year 5.

*Example 13. Fraudulent conveyance of assets.* (i) *Facts.* As of January 1 of Year 1, P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. On March 15 of Year 2, P files a consolidated return that includes the income of S and S-1 for Year 1. On December 1 of Year 2, S-1 transfers assets having a fair market value of \$100x to U in exchange for \$10x. This transfer of assets for less than fair market value constitutes a fraudulent conveyance under applicable state law. On March 1 of Year 5, P executes a waiver extending to December 31 of Year 6 the period of limitations on assessment with respect to the P group's Year 1 consolidated return. On February 1 of Year 6, the Commissioner issues a notice of deficiency to P asserting a deficiency of \$30x for the P group's Year 1 consolidated tax liability. P does not file a petition for redetermination in the Tax Court, and the Commissioner makes a timely assessment against the P group. P, S, and S-1 are all insolvent and are unable to pay the deficiency. On February 1 of Year 8, the Commissioner sends a notice of transferee liability to U, which does not file a petition in the Tax Court. On August 1 of Year 8, the Commissioner assesses the amount of the P group's deficiency against U. Under section 6901(c), the Commissioner may assess U's transferee liability within one year after the expiration of the period of limitations against the transferor, S-1. By operation of section 6213(a) and 6503(a), the issuance of the notice of deficiency to P and the expiration of the

90-day period for filing a petition in the Tax Court have the effect of further extending by 150 days the P group's limitations period on assessment from the previously extended date of December 31 of Year 6 to May 30 of Year 7.

(i) *Analysis.* Pursuant to paragraph (a)(1) of this section, the waiver executed by P on March 1 of Year 5 to extend the period of limitations on assessment to December 31 of Year 6 and the further extension of the P group's limitations period to May 30 of Year 7 (by operation of sections 6213(a) and 6503(a)) have the derivative effect of extending the period of limitations on assessment of U's transferee liability to May 30 of Year 8. By operation of section 6901(f), the issuance of the notice of transferee liability to U and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending the limitations period on assessment of U's liability as a transferee by 150 days, from May 30 of Year 8 to October 27 of Year 8. Accordingly, the Commissioner may send a notice of transferee liability to U at any time on or before May 30 of Year 8 and assess the unpaid liability against U at any time on or before October 27 of Year 8. The result would be the same even if S-1 ceased to exist before March 1 of Year 5, the date P executed the waiver.

*Example 14. Consent to extend the statute of limitations for a partnership where a member of the consolidated group is a partner of such partnership subject to the provisions of the Code and the tax matters partner is not a member of the group.* (i) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. The P group has a November 30 fiscal year end and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S-1 is a partner in the PRS partnership, which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. On January 10, Year 5, A, as the tax matters partner for the PRS partnership, executes a consent to extend the period for assessment of partnership items of PRS for all partners, and the Commissioner co-executes the consent on the same day for the year ending December 31, Year 1.

(ii) *Analysis.* A's consent to extend the statute of limitations for the partnership items of PRS partnership for the year ending December 31, Year 1, extends the statute of limitations with respect to the partnership items for all members of the P group, including P, S, and S-1 for the consolidated return year ending November 30, Year 2. This is because S-1 is a partner in the PRS partnership for which A, the tax matters partner for the PRS partnership, consents, pursuant to section 6229(b)(1)(B), to extend the statute of limitations for the year ending December 31, Year 1. However, under paragraph (f)(2)(iii) of this section, such agreement with respect to the statute of limitations for the PRS partnership for the year ending December 31, Year 1 does not obviate the need to obtain a consent from P, the agent for the P consolidated group, to extend the statute of limitations for the P consolidated group for the P group's consolidated return years ending November 30, Year

1 and November 30, Year 2 regarding any items other than partnership items or affected items of the PRS partnership.

*Example 15. Contacting subsidiary member in order to facilitate the conduct of an examination, appeal, or settlement where a member of the consolidated group is a partner of a partnership subject to the provisions of the Code.* (i) *Facts.* P is the common parent and agent for the P consolidated group consisting of P and its two subsidiaries, S and S-1. The P group has a November 30 fiscal year end, and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S-1 is a partner in the PRS partnership, which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. The Commissioner, on January 10, Year 4, in the course of an examination of the PRS partnership for the year ending December 31, Year 1, seeks to obtain information in the course of that examination to resolve the audit.

(ii) *Analysis.* Because the direct contact with a subsidiary member of a consolidated group that is a partner in a partnership subject to the provisions under sections 6221 through 6234 may facilitate the conduct of an examination, appeal, or settlement, the Commissioner, under paragraph (f)(2)(iii) of this section, may communicate directly with either S-1, P, or A regarding the PRS partnership without breaking agency pursuant to paragraph (f)(2)(i) of this section. However, if the Commissioner were instead seeking to execute a settlement agreement with respect to S-1 as a partner with respect to its liability as a partner in PRS partnership, P would need to execute such settlement agreement for all members of the group including the partner subsidiary.

(h) *Cross-reference.* For further rules applicable to groups that include insolvent financial institutions, see § 301.6402-7 of this chapter.

(i) [Reserved]

(j) *Effective/applicability date—(1) In general.* The rules of this section apply to consolidated return years beginning on or after April 1, 2015. For prior years beginning before June 28, 2002, see § 1.1502-77A. For prior years beginning on or after June 28, 2002, and before April 1, 2015, see § 1.1502-77B.

(2) *Application of this section to prior years.* Notwithstanding paragraph (j)(1) of this section, an agent may apply the rules of paragraph (c)(7) of this section to resign as agent for a completed year that began before April 1, 2015.

§ 1.1502-78 [Amended]

Par. 6. Section 1.1502-78 is amended as follows:

1. Paragraph (a) is amended by removing every occurrence of the language “(or substitute agent designated under § 1.1502-

77(d) for the carryback year)” and adding “(or the agent determined under § 1.1502-77(c) or § 1.1502-77B(d) for the carryback year)” in its place.

2. Paragraph (b)(1) is amended by removing the language “(or substitute agent designated under § 1.1502-77(d) for the carryback year)” and adding “(or the agent determined under § 1.1502-77(c) or § 1.1502-77B(d) for the carryback year)” in its place.

3. Paragraph (c) is amended by removing each occurrence of the language “1966” and adding “2003” in its place; removing the language “1967” and adding “2004” in its place; removing each occurrence of the language “1968” and adding “2005” in its place; and removing each occurrence of the language “1969” and adding “2006” in its place.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, revise paragraph (b) by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502-77B . . . . .	1545-1699
* * * * *	

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

Approved: February 23, 2015.

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

(Filed by the Office of the Federal Register on March 31, 2015, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2015, 80 F.R. 17314)

## T.D. 9716

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

Certain Employee Remuneration in Excess of \$1,000,000 under Internal Revenue Code Section 162(m)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the deduction limitation for certain employee remuneration in excess of \$1,000,000 under the Internal Revenue Code (Code). These regulations affect publicly held corporations.

DATES: *Effective Date:* These regulations are effective on April 1, 2015.

*Applicability Date:* For dates of applicability, see § 1.162–27(j)(2)(vi).

#### FOR FURTHER INFORMATION

CONTACT: Ilya Enkishev at (202) 317-5600 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 24, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (proposed regulations) in the **Federal Register** (76 FR 37034, corrected by 76 FR 55321 on September 7, 2011) under section 162(m) of the Internal Revenue Code (Code). The proposed regulations clarified § 1.162–27(e)(2)(vi)(A) by providing that the plan under which an option or stock appreciation right is granted must specify the maximum number of shares with respect to which options or rights may be granted to any individual employee during a specified period. The proposed regulations also clarified that the general transition rule under § 1.162–27(f)(1) for a corporation that becomes a publicly held corporation applies to all compensation other than compensation specifically identified in § 1.162–27(f)(3).

The Treasury Department and the IRS received written comments in response to the proposed regulations. All comments were considered and are available for public inspection at <http://www.regulations.gov> or upon request. No public hearing on the proposed regulations was requested or held. After consideration of the comments received, the Treasury Department and the IRS adopt the proposed regulations, with modifications, as final regulations.

##### Summary of Comments and Explanation of Provisions

###### *1. Maximum number of shares with respect to which options or rights may be granted to each individual employee.*

Section 162(m)(1) precludes a deduction under chapter 1 of the Code by any publicly held corporation for compensation paid to any covered employee to the extent that the compensation for the taxable year exceeds \$1,000,000. Section 162(m)(4)(C) provides that the deduction limitation does not apply to qualified performance-based compensation. Section 1.162–27(e)(1) provides that qualified performance-based compensation is compensation that meets all of the requirements of § 1.162–27(e)(2) through (e)(5).

The proposed regulations clarified § 1.162–27(e)(2)(vi)(A) by providing that the plan under which an option or stock appreciation right is granted must state “the maximum number of shares with respect to which options or rights may be granted during a specified period to any *individual* [emphasis added] employee” (per-employee limitation requirement). The existing regulations provide that the per-employee limitation applies to “any employee” during a specified period. The proposed regulations also provided a corresponding clarification of the shareholder approval requirement under § 1.162–27(e)(4). Specifically, the proposed regulations clarified § 1.162–27(e)(4)(iv) to provide that compensation is not adequately described for purposes of the shareholder approval requirement unless the maximum number of shares on which grants may be made to any individual employee during a specified period and the exercise price of those options is dis-

closed to the shareholders of the corporation. The proposed regulations provided that the clarifications to § 1.162–27(e)(2)(vi)(A) and (e)(4)(iv) apply to amounts that are otherwise deductible for taxable years ending on or after June 24, 2011.

Commenters suggested that these final regulations clarify that under § 1.162–27(e)(2)(vi)(A) a plan satisfies the per-employee limitation requirement if the plan specifies the maximum number of shares with respect to which any type of equity-based compensation may be granted to any individual employee during a specified period. Commenters explained that clarification is needed on whether the per-employee limitation may apply to all types of equity-based awards, not merely stock options and stock appreciation rights, which are the two types of equity-based awards described in § 1.162–27(e)(2)(vi)(A). In addition, commenters noted that a per-employee limitation on all types of equity-based awards would have the same effect as a per-employee limitation with respect to stock options and stock appreciation rights. In response to these comments, the final regulations modify § 1.162–27(e)(2)(vi)(A) to provide that a plan satisfies the per-employee limitation requirement if the plan specifies an aggregate maximum number of shares with respect to which stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards may be granted to any individual employee during a specified period under a plan approved by shareholders in accordance with § 1.162–27(e)(4). This clarification is not intended as a substantive change.

One commenter suggested that the clarification to § 1.162–27(e)(2)(vi)(A) apply only to compensation attributable to stock options and stock appreciation rights granted under a plan that was submitted for shareholder approval after August 8, 2011 (that is, forty-five days after the publication of the proposed regulations) and not to grants under plans submitted for shareholder approval before August 9, 2011 (even if the grant was made after that date). Another commenter suggested that the clarification apply only after the first shareholder meeting that occurs at least 12 months after the publica-

tion of these final regulations. These commenters reasoned that a transition period is appropriate because a plan providing for an aggregate share limit (but not an explicit per-employee share limitation) arguably satisfies the per-employee limitation requirement under the existing regulations because no individual employee may receive shares in excess of the aggregate limit.

These final regulations do not adopt either of these suggestions. The clarification to § 1.162–27(e)(2)(vi)(A) is not a substantive change. The transition rule in § 1.162–27(h)(3)(i) of the regulations provides that a plan providing for an aggregate limit, but not a per-employee limit, satisfies § 1.162–27(e)(2)(vi)(A) only if the plan was approved by shareholders before December 20, 1993, and only during a limited reliance period specified in § 1.162–27(h)(3)(i). Additionally, the legislative history to section 162(m) and the preamble to the 1993 Treasury Regulations (58 FR 66310) under section 162(m) provide for a limit on the maximum number of shares for which options or stock appreciation rights may be granted to individual employees. The preamble to the 1993 Treasury Regulations explains the reason for requiring a per-employee limitation: “Some have questioned why it would be necessary for the regulations to require an *individual* [emphasis added] employee limit on the number of the shares for which options or stock appreciation rights may be granted, where shareholder approval of an aggregate limit is obtained for securities law purposes. The regulations follow the legislative history, which suggests that a per-employee limit be required under the terms of the plan.” The preamble further explains that “a limit on the maximum number of shares for which individual employees may receive options or other rights is appropriate because it is consistent with the broader requirement that a performance goal include an objective formula for determining the maximum amount of compensation that an individual employee could receive.” Accordingly, these final regulations provide that the clarification to § 1.162–27(e)(2)(vi)(A) applies to compensation attributable to stock options and stock appreciation rights that are granted

on or after June 24, 2011 (the date of publication of the proposed regulations).

## *2. Compensation payable under restricted stock units paid by companies that become publicly held.*

In general, § 1.162–27(f)(1) provides that when a corporation becomes publicly held, the section 162(m) deduction limitation “does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held.” Pursuant to § 1.162–27(f)(2), a corporation may rely on § 1.162–27(f)(1) until the earliest of: (i) the expiration of the plan or agreement; (ii) a material modification of the plan or agreement; (iii) the issuance of all employer stock and other compensation that has been allocated under the plan or agreement; or (iv) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which an initial public offering (IPO) occurs or, in the case of a privately held corporation that becomes publicly held without an IPO, the first calendar year following the calendar year in which the corporation becomes publicly held. Section 1.162–27(f)(3) provides that the relief provided under § 1.162–27(f)(1) applies to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in § 1.162–27(f)(1) if the grant occurs on or before the earliest of the events specified in § 1.162–27(f)(2). The proposed regulations clarified that the transition rule in § 1.162–27(f)(1) applies to all compensation other than compensation specifically identified in § 1.162–27(f)(3). Specifically, the proposed regulations identified compensation payable under a restricted stock unit arrangement (RSU) or a phantom stock arrangement as being ineligible for the transition relief in § 1.162–27(f)(3). Therefore, the effect of the proposed regulations is that compensation payable under a RSU is eligible for transition relief only if it is paid, and not merely granted, before the earliest of the events specified in § 1.162–27(f)(2).

Commenters suggested that compensation payable under a RSU should qualify for the transition relief in § 1.162–27(f)(3) because a RSU is economically similar to restricted stock. These final regulations do not adopt this suggestion. A RSU provides a right to receive an amount of compensation based on the value of stock that is payable in cash, stock, or other property (as defined in § 1.83–3(e)) upon the satisfaction of a vesting condition (such as a period of service). Restricted stock, by contrast, is property that has been transferred to the service provider on the date of grant subject to the satisfaction of a specified vesting condition. Restricted stock and RSU’s are treated differently under the Code. RSU’s generally are treated as nonqualified deferred compensation and may be subject to the rules under section 409A, whereas restricted stock is treated as property and is governed by the rules under section 83. Because compensation attributable to a RSU is in the nature of nonqualified deferred compensation (unlike restricted stock), compensation attributable to a RSU is not sufficiently similar to restricted property to receive the transition relief provided under § 1.162–27(f)(3). Accordingly, these final regulations adopt the proposed clarification to § 1.162–27(f)(3) without change.

The proposed regulations provided that the clarification to § 1.162–27(f)(3) would apply on or after the date of publication of the Treasury decision adopting the proposed regulations as final regulations. Commenters suggested that the clarification to § 1.162–27(f)(3) should apply to RSU’s granted after the publication of final regulations and not merely to remuneration payable under a RSU after the date of publication. These final regulations adopt this suggestion. Accordingly, these final regulations provide that the clarification to § 1.162–27(f)(3) applies to remuneration otherwise deductible under a RSU that is granted on or after April 1, 2015.

## **Proposed Effective/Applicability Date**

The clarifications to paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9*, and (e)(4)(iv) of this section apply to compensation attributable to stock options and stock appreciation rights that are granted

on or after June 24, 2011. The clarification to § 1.162-27(f)(3) applies to any remuneration that is otherwise deductible resulting from a stock option, stock appreciation right, restricted stock (or other property), restricted stock unit, or any other form of equity-based remuneration that is granted on or after April 1, 2015.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these final regulations is Ilya Enkishev, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). 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.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162-27 paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9*, (e)(4)(iv) and (f)(3) are revised and para-

graph (j)(2)(vi) is added to read as follows:

#### § 1.162-27 *Certain employee remuneration in excess of \$1,000,000.*

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(A) *In general.* Compensation attributable to a stock option or a stock appreciation right is deemed to satisfy the requirements of this paragraph (e)(2) if the grant or award is made by the compensation committee; the plan under which the option or right is granted states the maximum number of shares with respect to which options or rights may be granted during a specified period to any individual employee; and, under the terms of the option or right, the amount of compensation the employee may receive is based solely on an increase in the value of the stock after the date of the grant or award. A plan may satisfy the requirement to provide a maximum number of shares with respect to which stock options and stock appreciation rights may be granted to any individual employee during a specified period if the plan specifies an aggregate maximum number of shares with respect to which stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards that may be granted to any individual employee during a specified period under a plan approved by shareholders in accordance with § 1.162-27(e)(4). If the amount of compensation the employee may receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (for example, in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation under this paragraph (e)(2)(vi)(A). Whether a stock option grant is based solely on an increase in the value of the stock after the date of grant is determined without regard to any dividend equivalent that may be payable, provided that payment of the dividend equivalent is not made contingent on the

exercise of the option. The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

\* \* \* \* \*

(vii) \* \* \*

*Example 9.* Corporation V establishes a stock option plan for salaried employees. The terms of the stock option plan specify that no individual salaried employee shall receive options for more than 100,000 shares over any 3-year period. The compensation committee grants options for 50,000 shares to each of several salaried employees. The exercise price of each option is equal to or greater than the fair market value of a share of V stock at the time of each grant. Compensation attributable to the exercise of the options satisfies the requirements of paragraph (e)(2)(vi) of this section. If, however, the terms of the options provide that the exercise price is less than fair market value of a share of V stock at the date of grant, no compensation attributable to the exercise of those options satisfies the requirements of this paragraph (e)(2) unless issuance or exercise of the options was contingent upon the attainment of a pre-established performance goal that satisfies this paragraph (e)(2). If, however, the terms of the plan also provide that Corporation V could grant options to purchase no more than 900,000 shares over any 3-year period, but did not provide a limitation on the number of shares that any individual employee could purchase, then no compensation attributable to the exercise of those options satisfies the requirements of paragraph (e)(2)(vi) of this section.

\* \* \* \* \*

(4) \* \* \*

(iv) *Description of compensation.* Disclosure as to the compensation payable under a performance goal must be specific enough so that shareholders can determine the maximum amount of compensation that could be paid to any individual employee during a specified period. If the terms of the performance goal do not provide for a maximum dollar amount, the disclosure must include the formula under which the compensation would be calculated. Thus, if compensation attributable to the exercise of stock options is equal to the difference between the exercise price and the current value of the stock, then disclosure of the maximum number of shares for which grants may be made to any individual employee during a specified period and the exercise price of those options (for example, fair market value on

date of grant) would satisfy the requirements of this paragraph (e)(4)(iv). In that case, shareholders could calculate the maximum amount of compensation that would be attributable to the exercise of options on the basis of their assumptions as to the future stock price.

\* \* \* \* \*

(f) \* \* \*

(3) *Stock-based compensation.* Paragraph (f)(1) of this section will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(1) of this section if the grant occurs on or before the earliest of the events specified in paragraph (f)(2) of this section. This paragraph does not apply to any form of stock-based compensation other than the forms listed in the immediately preceding sentence. Thus, for example, compensation payable under a restricted stock unit arrangement or a phantom stock arrangement must be paid, rather than merely granted, on or before the occurrence of the earliest of the events specified in paragraph (f)(2) of this section in order for paragraph (f)(1) of this section to apply.

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(vi) The modifications to paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9*, and (e)(4)(iv) of this section concerning the maximum number of shares with respect to which a stock option or stock appreciation right that may be granted and the amount of compensation that may be paid to any individual employee apply to compensation attributable to stock options and stock appreciation rights that are granted on or after June 24, 2011. The last two sentences of § 1.162-27(f)(3) apply to remuneration that is otherwise deductible resulting from a stock option, stock appreciation right, restricted stock (or other property), restricted stock unit, or any other form of equity-based remuneration that is granted on or after April 1, 2015.

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

Approved: March 9, 2015.

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

(Filed by the Office of the Federal Register on March 30, 2015, 8:45 a.m., and published in the issue of the Federal Register for March 31, 2015, 80 F.R. 16970)

26 CFR 301.6501(c)-1(g): *Exceptions to general period of limitations on assessment and collection—Listed Transactions*

**T.D. 9718**

**DEPARTMENT OF THE  
TREASURY  
Internal Revenue Service  
26 CFR Part 301**

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These final regulations affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES: *Effective date:* These regulations are effective March 31, 2015.

*Applicability date:* For dates of applicability, see § 301.6501(c)-1(g)(9).

**FOR FURTHER INFORMATION**

CONTACT: Danielle Pierce of the Office of Chief Counsel (Procedure and Administration), at (202) 317-6845 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control

number 1545-1940. The collection of information in these final regulations is in § 301.6501(c)-1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer's applicable period of limitations. The collection of information in these final regulations is the same as the collection of information in Revenue Procedure 2005-26 (2005-1 CB 965), which was previously reviewed and approved by the Office of Management and Budget under control number 1545-1940. The collection of information in § 301.6501(c)-1(g)(6) is the same as the collection of information required under section 6112. See § 601.601(d)(2)(ii)(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

**Background**

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (A) the

date on which the taxpayer furnishes the information required under section 6011, or (B) the date that the material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term “material advisor” is defined in § 301.6111-3(b). Section 6112 and § 301.6112-1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors. Under this provision, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and the tax with respect to the listed transaction may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

Section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011. Taxpayers are required under section 6011 and the regulations thereunder (collectively referred to as the “section 6011 disclosure rules”) to disclose certain information regarding each reportable transaction in which the taxpayer participated. See Treas. Reg. § § 1.6011-4; 20.6011-4; 25.6011-4; 31.6011-4; 53.6011-4; 54.6011-4; and 56.6011-4. Among the transactions that are reportable are “listed transactions.” See Treas. Reg. § 1.6011-4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. § 1.6011-4(b)(2). For a list of transactions the IRS has identified as listed transactions, see Notice 2009-59, 2009-31 IRB 1. See § 601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance

with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, “Reportable Transaction Disclosure Statement” (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached to the taxpayer’s original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. § 1.6011-4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer’s application for tentative refund or amended tax return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer’s participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005-26 (2005-1 CB 965) on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed transactions that were not properly disclosed under section 6011 in order to

start the one-year period under section 6501(c)(10).

On October 7, 2009, a notice of proposed rulemaking (REG-160871-04) relating to the section 6501(c)(10) exception to the general three-year period of limitations on assessment that applies if a taxpayer fails to disclose a listed transaction as required under section 6011 was published in the **Federal Register** (74 FR 51527). The preamble of the notice of proposed rulemaking provided that taxpayers may continue to rely on the rules in Rev. Proc. 2005-26 until temporary or final regulations are issued under section 6501(c)(10). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted as revised by this Treasury decision.

### Explanation of Revisions

These final regulations adopt the proposed regulations with four substantive clarifications. First, § 301.6501(c)-1(g)(1) is clarified with respect to the interaction of the one-year period of limitations on assessment after disclosure of a listed transaction under section 6501(c)(10) and the general three-year period of limitations on assessment under section 6501(a) (or other applicable limitations period under section 6501). The one-year period in section 6501(c)(10) serves only to extend the existing limitations period. For example, if the general section 6501(a) three-year period of limitations on assessment applies and the one-year period under section 6501(c)(10) ends prior to the expiration of the section 6501(a) three-year period, the assessment period for the tax year remains open until the expiration of the general three-year period. Proposed section 301.6501(c)-1(g)(8), Example 5 (renumbered as Example 6 in the final regulations) and Example 9, illustrated this point. However, the text of the proposed regulations did not specifically provide that in no case will the period of limitations be shorter than the period of limitations that would apply without regard to application of section 301.6501(c)-1(g). A sentence was added to the end of § 301.6501(c)-1(g)(1) to clarify this point.

Second, the final regulations revise § 301.6501(c)-1(g)(6) to clarify when a

disclosure will be considered a disclosure by a material advisor for purposes of section 6501(c)(10)(B) so that the one-year period of limitations on assessment will begin. Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction, the time to assess tax will end no earlier than one year after the date that “a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.” This means that unless a material advisor furnishes the information with respect to the taxpayer in response to an IRS written request for the list under section 6112(b) and in accordance with section 6112, the one-year period under section 6501(c)(10)(B) will not begin. Accordingly, receipt of information from a person other than the material advisor with respect to the taxpayer will not satisfy the requirements of a disclosure for purposes of section 6501(c)(10)(B). The final regulations add § 301.6501(c)-1(g)(6)(ii)(A) to clarify that, consistent with the statutory language, except in limited circumstances related to dissolution or liquidation of an entity that is a material advisor or in the case of a designation agreement, only receipt of information furnished by the material advisor will satisfy the requirements for disclosure under § 301.6501(c)-1(g)(6).

Third, the final regulations clarify that information received by the IRS in circumstances other than in response to a section 6112 request, such as in response to an Information Document Request in a section 6700 investigation or as a result of a summons enforcement proceeding, will not begin the one-year period under § 301.6501(c)-1(g)(6). Proposed section 301.6501(c)-1(g)(8), Example 10, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add § 301.6501(c)-1(g)(6)(ii)(B) to provide that information not furnished in response to a section 6112 request will not satisfy the requirements under § 301.6501(c)-1(g)(6) even if provided by the material advisor, unless furnished to OTSA in accordance with § 301.6112-1(d) in the case of material advisors that are liquidated or dissolved.

Fourth, the final regulations clarify that if a material advisor furnishes information described in § 301.6112-1(e), but does not furnish information identifying the taxpayer as a person who entered into the listed transaction, the requirements of section 6501(c)(10)(B) will not have been satisfied for that taxpayer. Proposed section 301.6501(c)-1(g)(8), Example 11, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add § 301.6501(c)-1(g)(6)(ii)(C) for clarification.

In addition to the revisions described above, other minor clarifying changes have been made that are not intended to be substantive.

These final regulations apply to taxable years for which the period of limitation on assessment under section 6501, including the period of limitation set forth in section 6501(c)(10) and § 301.6510(c)-1(g), did not expire before March 31, 2015, the date these final regulations are published in the **Federal Register**.

#### **Effect on Other Documents**

Upon the publication of these final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005-26 (2005-1 CB 965), is superseded for taxable years with respect to which the period of limitations on assessment under section 6501 (including section 6501(c)(10)) did not expire before March 31, 2015. Rev. Proc. 2005-26 (2005-1 CB 965) will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before March 31, 2015, although as provided in the proposed regulations, taxpayers could rely on the rules in the notice of proposed rulemaking (REG-160871-04) under section 6501(c)(10) published in the **Federal Register** (74 FR 51527) on October 7, 2009, until these final rules are published in this Treasury decision.

#### **Special Analyses**

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assess-

ment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply with the reporting requirements set forth under section 6011 with respect to listed transactions. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-through entities. Therefore, the Treasury Department and the IRS have determined that these final regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these final regulations will not be significant. Most of the information required under these final regulations is already required by other regulations or forms, namely, § 1.6011-4, § 301.6112-1, and Form 8886, “Reportable Transaction Disclosure Statement.” The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these final regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to sec-

tion 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Danielle Pierce of the Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6501(c)-1 is amended by adding paragraph (g) to read as follows:

§ 301.6501(c)-1 *Exceptions to general period of limitations on assessment and collection.*

\* \* \* \* \*

(g) *Listed transactions*—(1) *In general.* If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations thereunder and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section. In no case will the operation of this paragraph (g) cause the period of limitations on assessment to expire any earlier than the period that would have otherwise applied under this section determined without regard to this paragraph (g)(1).

(2) *Limitations period if paragraph (g)(5) or (g)(6) is satisfied.* If one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) *Definitions*—(i) *Listed transaction.* The term *listed transaction* means a transaction described in section 6707A(c)(2) of the Code and § 1.6011-4(b)(2) of this chapter.

(ii) *Material advisor.* The term *material advisor* means a person described in section 6111(b)(1) of the Code and § 301.6111-3(b) of this chapter.

(iii) *Taxable year(s) to which the failure to disclose relates.* The *taxable year(s) to which the failure to disclose relates* are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) *Application of paragraph with respect to pass-through entities.* In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations thereunder, paragraph (g)(1) of this section will apply to a

particular partner, shareholder, or beneficiary if that particular partner, shareholder, or beneficiary does not disclose within the time and in the form and manner provided by section 6011 and § 1.6011-4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations thereunder. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and that does not disclose within the time or in the form and manner provided by § 1.6011-4(d) and (e) will not cause paragraph (g)(1) of this section to apply to a partner, shareholder or beneficiary of the entity. Instead, the application of paragraph (g)(1) of this section to a partner, shareholder, or beneficiary will be determined based on whether the particular partner, shareholder, or beneficiary satisfied their disclosure obligation under section 6011 and the regulations thereunder.

(5) *Taxpayer's disclosure of a listed transaction that the taxpayer did not properly disclose under section 6011*—(i) *In general*—(A) *Method of disclosure.* The taxpayer must complete the most current version of Form 8886, "Reportable Transaction Disclosure Statement" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph (g)(5) in accordance with § 1.6011-4(d) and the instructions to the Form in effect on that date. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. Disclosure under this paragraph (g)(5) will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies on the Form 8886 that he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose, then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "*Section 6501(c)(10) Disclosure*" followed by the tax return(s) and taxable year(s) for which the

taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "*Section 6501(c)(10) Disclosure; 2005 Form 1040*" on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) *Cover letter.* (1) A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete.

(2) If the Form 8886 is prepared by a paid preparer, in addition to the statement under penalties of perjury signed by the taxpayer, the Form 8886 must also include the following statement signed under penalties of perjury by the paid preparer.

Under penalties of perjury, I declare that I have examined this reportable

transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. This declaration is based on all information of which I, as paid preparer, have any knowledge.

(C) *Taxpayer under examination or Appeals consideration.* A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under this paragraph (g) relates.

(D) *Date the one-year period will begin to run if paragraph (g)(5) satisfied.* Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under this paragraph (g) will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of this paragraph (g)(5). For purposes of this paragraph (g)(5), the information is deemed furnished on the date the IRS receives the information.

(ii) *Exception for returns other than annual returns.* The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) *Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011—(i) In general.* In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and § 301.6112-1(b) in the form and manner prescribed by sec-

tion 6112 and § 301.6112-1(e). If the information the material advisor furnishes identifies the taxpayer as a person who entered into the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) *Paragraph (g)(6) not satisfied—(A) Information not furnished by a material advisor or a person permitted to act on behalf of the material advisor.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information is furnished by—

(1) A person who is a material advisor (as defined in paragraph (g)(3)(ii) of this section) with respect to the taxpayer,

(2) A person who is providing the information pursuant to § 301.6112-1(d) on behalf of a dissolved or liquidated material advisor with respect to the taxpayer, or

(3) a person who is providing the information on behalf of a material advisor with respect to the taxpayer under a designation agreement in accordance with § 301.6112-1(f).

(B) *No written request by IRS.* The requirements of this paragraph (g)(6) are not satisfied unless the information is furnished in response to a written request made by the IRS to the material advisor under section 6112 (except as provided in § 301.6112-1(d) with respect to a list furnished to OTSA within 60 days after dissolution or liquidation of a material advisor).

(C) *Information furnished does not identify the taxpayer.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information furnished identifies the taxpayer as a person who entered into the listed transaction.

(iii) *Date the one-year period will begin if paragraph (g)(6) is satisfied.* Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under this paragraph (g) will expire one year after the date on which the material

advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of this paragraph (g)(6), information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) *Tax assessable under this section.* If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

*Example 1. No requirement to disclose under section 6011.* P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000-44 (2000-2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961), which were effective for any transaction entered into before January 1, 2001 and any transaction entered into on or after January 1, 2001 that was reported on a return of the taxpayer filed on or before June 14, 2002. Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to cor-

porations, not individuals. Accordingly, section 6501(c)(10) does not apply.

*Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation and the transaction must be disclosed with the return next filed.* (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004-31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), which were effective for transactions entered into before August 3, 2007, Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

*Example 3. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after the first year of participation and the transaction must be disclosed 90 days after the transaction became a listed transaction.* (i) In January 2015, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2015 timely filed on April 15, 2016. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2015 taxable year would expire on April 15, 2019. A only participated in the transaction in 2015. On March 7, 2017, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by June 5, 2017.

(ii) The period of limitations on assessment for A's 2015 taxable year was open on the date the transaction was identified as a listed transaction. Under the current section 6011 regulations (TD 9350) which are effective for transactions entered into on or after August 3, 2007, A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before June 5, 2017, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2015 even though the obligation to disclose did not arise until 2017. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2015 taxable year with respect to the listed transaction

until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

*Example 4. Requirements of paragraph (g)(6) satisfied.* Same facts as *Example 3*, except that on April 5, 2019, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and § 301.6112-1, including all the information required with respect to A, to the IRS on May 8, 2019. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2015 will end on May 8, 2020, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

*Example 5. Requirements of paragraph (g)(5) also satisfied.* Same facts as *Examples 3 and 4*, except that on May 23, 2019, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2015. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2019. Because the requirements of paragraph (g)(6) were satisfied first as described in *Example 4*, under section 6501(c)(10) the period of limitations will end on May 8, 2020 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2020 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

*Example 6. Period to assess tax remains open under another exception.* Same facts as *Examples 3, 4, and 5*, except that on April 1, 2019, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2015 under section 6501(c)(4) until July 15, 2020. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 8, 2020, the IRS may assess tax with respect to the listed transaction (as well as any other item on the return covered by the Form 872 extension) at any time up to and including July 15, 2020, pursuant to section 6501(c)(4). Section 6501(c)(10) operates to extend the assessment period but not to shorten any other applicable assessment period.

*Example 7. Requirements of (g)(5) not satisfied.* In 2015, X, a corporation, enters into a listed transaction. On March 15, 2016, X timely files its 2015 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2015 return. The failure to disclose relates to taxable year 2015. On February 13, 2017, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the

transaction for taxable year 2015 remains open under section 6501(c)(10).

*Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open.* T and S are partners in a partnership, TS, that enters into a listed transaction in 2015. T and S each receive a Schedule K-1 from TS on April 11, 2016. On April 15, 2016, TS, T and S each file their 2015 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2015 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2016. On May 17, 2016, T timely files a completed Form 8886 with OTSA pursuant to § 1.6011-4(e)(1). T's disclosure is timely because T received the Schedule K-1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2015. The time to assess tax with respect to the transaction against S for 2015 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

*Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a).* Same facts as *Example 8*, except that on August 26, 2016, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 26, 2016. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 26, 2017, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2019, the IRS will have until that date to assess any tax with respect to the listed transaction.

*Example 10. No section 6112 request.* B, a calendar year taxpayer, entered into a listed transaction in 2015. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2016, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

*Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B.* Same facts as *Example 10*, except that on January 9, 2017, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and § 301.6112-1 to the IRS for inspection on January 17, 2017. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

*Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction.* Advisor M, who is a material advisor, advises C, an individual, in 2015 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2016. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2015 taxable year would expire on April 15, 2019. The IRS identifies the transaction as a listed transaction on November 3, 2017. On December 7, 2017, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 29, 2017. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before February 1, 2018, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 29, 2018 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

*Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose.* D, a calendar year taxpayer, entered into a listed transaction in 2015. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2017, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2015.

*Example 14. Taxes assessed with respect to the listed transaction.* (i) F, an individual, enters into a listed transaction in 2015. F files its 2015 Form 1040 on April 15, 2016, but does not disclose his participation in the listed transaction in accordance with

section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2015. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2015 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 2, 2020, the IRS completes an examination of F's 2015 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) *Effective/applicability date.* The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment under section 6501 (including subsection (c)(10)) did not expire before March 31, 2015.

John Dalrymple  
Deputy Commissioner for  
Services and Enforcement

Approved: March 10, 2015

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

(Filed by the Office of the Federal Register on March 30, 2015, 8:45 a.m., and published in the issue of the Federal Register for March 31, 2015, 80 F.R. 16973)

## Part III. Administrative, Procedural, and Miscellaneous

### Health Insurance Providers Fee; Procedural and Administrative Guidance

#### Notice 2015–29

##### SECTION 1. PURPOSE

This notice provides guidance on how the special rule for expatriate health plans for the 2014 and 2015 fee years under the Expatriate Health Coverage Clarification Act of 2014 applies for purposes of the fee imposed by § 9010 of the Affordable Care Act. This notice obsoletes Notice 2014–24, 2014–16 IRB 942.

##### SECTION 2. BACKGROUND

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by § 10905 of PPACA, and as further amended by § 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA), imposes an annual fee on covered entities engaged in the business of providing health insurance for United States health risks. The fee is a fixed amount allocated among all covered entities in proportion to their relative market share as determined by each entity's net premiums written for the data year, which is the year immediately preceding the year in which the fee is paid (the year in which the fee is paid is the fee year).

Section 9010(b)(3) requires the Secretary to calculate the amount of each covered entity's annual fee. For this purpose, § 9010(g)(1) requires each covered entity to report to the Secretary its net premiums written for health insurance for any United States health risk for the data year. Section 9010(d) defines United States health risk to mean a health risk of any individual who is: (1) a United States citizen; (2) a resident of the United States

(within the meaning of § 7701(b)(1)(A)); or (3) located in the United States, during the period such individual is so located.

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published final Health Insurance Provider Fee regulations (T.D. 9643, 78 FR 71476) on November 26, 2013, to provide guidance regarding the § 9010 fee. The regulations require each covered entity to annually report its net premiums written for health insurance of United States health risks by April 15th of the fee year on Form 8963, *Report of Health Insurance Provider Information*. For covered entities that file the Supplemental Health Care Exhibit (SHCE) with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus medical loss ratio (MLR) rebates with respect to the data year, subject to any applicable exclusions under § 9010.<sup>1</sup> Form 8963 accordingly requires reporting of direct premiums written for purposes of determining net premiums written. Section 57.4(b)(2) of the Health Insurance Providers Fee regulations provides that the entire amount reported as direct premiums written on the SHCE (including direct premiums written for expatriate health plans) will be considered to be for United States health risks unless the covered entity can demonstrate otherwise.

The Health Insurance Providers Fee regulations do not provide specific rules for expatriate health plans. The SHCE includes separate reporting for expatriate health plans, which are defined by reference to the definition of expatriate policies in the MLR final rule issued by the Department of Health and Human Services (MLR final rule definition). The MLR final rule definition defines expatriate policies as predominantly group health insurance policies that provide coverage to employees, substantially all of whom are: (1) working outside their country of citi-

zenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country. 45 CFR 158.120(d)(4). On March 29, 2014, Treasury and the IRS issued Notice 2014–24, which provided a temporary safe harbor for a covered entity that reports expatriate health plans on its SHCE. Notice 2014–24 allowed a covered entity to exclude 50% of its direct premiums written for expatriate health plans reported on the SHCE in reporting total direct premiums written to the IRS for purposes of determining the fee for the 2014 and 2015 fee years. Certain covered entities applied this temporary safe harbor in reporting their direct premiums written for purposes of determining their 2014 fee, which was due on September 30, 2014.

On December 16, 2014, Congress enacted the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) as part of the Consolidated and Further Continuing Appropriations Act, 2015, Division M, Public Law 113–235 (128 Stat. 2130 (2014)). Section 3(a) of the EHCCA provides that the ACA generally does not apply to expatriate health plans. Section 3(c)(1) of the EHCCA specifically excludes expatriate health plans from the § 9010 fee by providing that, for calendar years after 2015, a qualified expatriate (and any spouse, dependent, or any other individual enrolled in the plan) enrolled in an expatriate health plan is not considered a United States health risk. These rules are generally effective for expatriate health plans issued or renewed on or after July 1, 2015, unless otherwise specified.

Section 3(c)(2) of the EHCCA provides a special rule that applies solely for purposes of determining the fee under § 9010 for fee years 2014 and 2015. The special rule does not affect the calculation of the fee generally for all covered entities. Instead, after the fees are calculated, the special rule proportionally reduces the fee of a covered entity with expatriate health plans to account for its net premi-

<sup>1</sup>References to the SHCE are solely for the covered entity's convenience in identifying the premium information required for Form 8963. If the entity does not file an SHCE with NAIC, the entity is still required to file Form 8963 and provide direct premiums written for health insurance of United States health risks on Form 8963 and any other information required by the form. Other sources of information for determining direct premiums written include the MLR Annual Reporting Form filed with the Center for Consumer Information and Insurance Oversight or any equivalent form required by the state of domicile of the entity or by federal law. If no single form contains all of the relevant data for determining all of the direct premiums written for health insurance for United States health risks of an entity, then direct premiums written must be determined using aggregated data from multiple sources.

ums written for those plans. Thus, for fee years 2014 and 2015, a covered entity with net premiums written for expatriate health plans will pay a lower fee but this reduction will have no impact on the fee for the remaining covered entities.

Section 3(d)(2) of the EHCCA provides a definition of the term expatriate health plan that is more detailed than the MLR final rule definition of expatriate health policies. Treasury and the IRS, in consultation with the Department of Labor and the Department of Health and Human Services, expect to publish guidance on the definition of expatriate health plan in § 3(d)(2) of the EHCCA as applied to the ACA generally and to § 9010 specifically. However, for purposes of the special rule that applies solely to the 2014 and 2015 fee years, Treasury and the IRS have determined that the MLR final rule definition of expatriate policies also used on the SHCE and in Notice 2014–24 is broad enough to cover all potential expatriate health plans described in § 3(d)(2) of the EHCCA. Therefore, because guidance is urgently needed to implement this special rule, this notice uses the MLR final rule definition to define expatriate health plan solely for this limited purpose. No inference is intended regarding the definition of expatriate health plan under § 3(d)(2) of the EHCCA for any other purpose.

### SECTION 3. PROCEDURES FOR SHCE FILERS

To claim the benefit of the special rule for expatriate health plans for fee years 2014 and 2015 under the EHCCA, a covered entity that satisfies the requirements in § 3.01 of this notice must report its direct premiums written for expatriate health plans as reported on its SHCEs on a statement attached to its 2015 Form 8963 that includes the certifications described in § 3.02 of this notice. For this limited purpose, an expatriate health plan means an expatriate policy under the MLR final rule definition described in § 2 of this notice.

#### .01 Filing Prerequisites.

A covered entity must satisfy the following requirements:

(1) The covered entity (including controlled group members, if any) filed SHCEs for 2014, 2015, or both with the NAIC in which it reported direct premiums written for expatriate health plans (defined by reference to the MLR final rule definition of expatriate policies, which is used for purposes of the SHCE); and

(2) The covered entity included some or all of those direct premiums written for expatriate health plans in column (f), *Direct premiums written*, on its Form 8963 for 2014 or 2015 (or both), as applicable.

#### .02 Certification.

A covered entity described in § 3.01 must attach a statement to its 2015 Form 8963 certifying the following:

(1) The covered entity (or designated entity, in the case of a controlled group) filed the SHCE for 2014, 2015, or both, as the case may be;

(2) The covered entity is filing the statement pursuant to Notice 2015–29;

(3) (a) The aggregate dollar amount of direct premiums written for expatriate health plans reported on its SHCE(s) for 2014 for that covered entity (including the amounts for all members of the controlled group, if applicable) and (b) the amount of direct premiums written for expatriate health plans the covered entity excluded in determining the amount of direct premiums written reported in column (f), *Direct premiums written*, on its 2014 Form 8963 (see § 3.01 of Notice 2014–24, which permitted an entity to exclude 50% of this aggregate amount); and

(4) The aggregate dollar amount of direct premiums written for expatriate health plans that is reported on the SHCE(s) for 2015 for the covered entity (including the amounts for all members of the controlled group, if applicable) and included in direct premiums written reported in column (f), *Direct premiums written*, on the covered entity's 2015 Form 8963.

#### .03 Example.

The following example illustrates the application of this section 3:

Company X, the designated entity of a controlled group, and X's controlled group members (collectively, X Group)

reported \$1 million in direct premiums written for expatriate health plans, in the aggregate, on their SHCEs for 2014. Pursuant to Notice 2014–24, X Group excluded 50% of this aggregate amount, or \$500,000, from its 2014 Form 8963. In 2015, X Group members reported \$2 million in direct premiums written for expatriate health plans, in the aggregate, on their SHCEs and X Group included that amount in direct premiums written on its 2015 Form 8963. Company X must attach the following statement to its 2015 Form 8963:

Company X hereby certifies that: (1) X Group filed SHCEs with the NAIC reporting direct premiums written for expatriate health plans in the 2014 and 2015 fee years; (2) X Group is filing this statement pursuant to Notice 2015–29; (3)(a) X Group reported an aggregate of \$1,000,000 in direct premiums written for expatriate health plans on its 2014 SHCEs and (b) X Group excluded 50% of this aggregate amount, or \$500,000, in determining the amount of direct premiums written reported on its 2014 Form 8963 pursuant to § 3.01 of Notice 2014–24; and (4) X Group is reporting an aggregate of \$2,000,000 in direct premiums written for expatriate health plans on its 2015 SHCEs and has included that amount in direct premiums written on the attached 2015 Form 8963.

### SECTION 4. PROCEDURES FOR NON-SHCE FILERS

To claim the benefit of the special rule for expatriate health plans for fee years 2014 and 2015 under the EHCCA, a covered entity that satisfies the requirements in § 4.01 of this notice must report its direct premiums written for expatriate health plans on a statement attached to its 2015 Form 8963 that includes the certifications described in § 4.02 of this notice. For this limited purpose, an expatriate health plan means an expatriate policy under the MLR final rule definition described in § 2 of this notice.

#### .01 Filing Prerequisites.

A covered entity must satisfy the following requirements:

(1) The covered entity (including controlled group members, if any) did not file

SHCEs for either 2014 or 2015 with the NAIC.

(2) The covered entity (including controlled group members, if any) included direct premiums written for expatriate health plans as defined by the MLR final rule definition described in § 2 of this notice in column (f), *Direct premiums written*, on its Form 8963 for 2014 or 2015 (or both).

### .02 Certification.

A covered entity described in § 4.01 must attach a statement to its 2015 Form 8963 certifying the following:

(1) The covered entity is filing the statement pursuant to Notice 2015–29;

(2) The aggregate dollar amount of direct premiums written for expatriate health plans that it included in column (f), *Direct premiums written*, on its 2014 Form 8963 (including the amounts for all members of the controlled group, if applicable);

(3) The aggregate dollar amount of direct premiums written for expatriate health plans that it included in column (f), *Direct premiums written*, on its 2015 Form 8963 (including the amounts for all members of the controlled group, if applicable); and

(4) The source of information that the covered entity has available on request for determining direct premiums written for expatriate health plans for 2014 and 2015, such as the Accident and Health Policy Experience filed with the NAIC, the MLR Annual Reporting Form filed with the Center for Consumer Information and Insurance Oversight of the Department of Health and Human Services, or any similar statements filed with the NAIC, with any state government, or with the federal government pursuant to applicable state or federal requirements.

### .03 Example.

The following example illustrates the application of this section 4:

Company Y, the designated entity of a controlled group, and Y's controlled group members (collectively, Y Group) reported \$20,000 in direct premiums writ-

ten for expatriate health plans, in the aggregate, on its 2014 Form 8963. Y Group reported \$15,000 in direct premiums written for expatriate health plans, in the aggregate, on its 2015 Form 8963. Company Y must attach the following statement to its 2015 Form 8963.

Company Y hereby certifies that:

(1) Company Y is filing this statement pursuant to Notice 2015–29; (2) Y Group reported an aggregate of \$20,000 in direct premiums written for expatriate health plans that met the MLR final rule definition on its 2014 Form 8963; (3) Y Group is reporting an aggregate of \$15,000 in direct premiums written for expatriate health plans that met the MLR final rule definition on its 2015 Form 8963; and (4) Y Group reported for 2014 and expects to report for 2015 direct premiums written for expatriate plans on Y Group's MLR Annual Reporting Form filed with the Center for Consumer Information and Insurance Oversight in the amounts described in (2) and (3) above, which Y Group will supply upon request.

### SECTION 5. APPLICATION OF SPECIAL RULE BY ADJUSTMENT TO 2015 FEE

The IRS will apply the special rule for both the 2014 and 2015 fee years by adjusting the 2015 fee rather than by issuing refunds.<sup>2</sup> The IRS will first calculate the 2015 fee for all covered entities as described in § 57.4. Second, for a covered entity with premiums for expatriate health plans included in total direct premiums written reported for the 2015 fee year, the IRS will adjust the covered entity's 2015 fee by (a) multiplying its 2015 fee amount by a fraction, the numerator of which is the amount of its expatriate health plan premiums taken into account that is included in net premiums written taken into account for the 2015 fee year and the denominator of which is the covered entity's total net premiums written taken into account for the 2015 fee year; and (b) subtracting this amount from the 2015 fee. Third, for a covered entity with net premiums written for expatriate health plans

included in total direct premiums written reported for the 2014 fee year, the IRS will further adjust the entity's 2015 fee by (a) multiplying its 2014 fee amount by a fraction, the numerator of which is the amount of its expatriate health plan premiums taken into account that is included in net premiums written taken into account for the 2014 fee year and not previously excluded in determining the 2014 fee and the denominator of which is the covered entity's total net premiums written taken into account for the 2014 fee year; and (b) subtracting this amount from the 2015 fee.

### SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2014–24 is obsolete.

### SECTION 7. EFFECTIVE/APPLICABILITY DATES

This notice is effective March 30, 2015 and applies only to fee years 2014 and 2015.

### SECTION 8. DRAFTING INFORMATION

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

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

(Also Part I, § 1502; 1.1502–77)

## Rev. Proc. 2015–26

### SECTION 1. PURPOSE

This revenue procedure provides instructions for all communications relating to the identification of the agent to act on behalf of the consolidated group pursuant to § 1.1502–77(c) of the Income Tax Regulations. This revenue procedure is the exclusive procedure under § 1.1502–77(c) for making the communications identified in section 3 of this revenue procedure.

<sup>2</sup>If this computation reduces the covered entity's 2015 fee below zero and results in an amount due to the covered entity for the 2015 fee year, the IRS will pay the amount due to the covered entity.

## SECTION 2. GENERAL BACKGROUND

In general, the corporation that is the common parent of a consolidated group for a consolidated return year is the sole agent (agent) with regard to the group's income tax liability. See §§ 1.1502-77(a)(1)-(2) and (c)(1). The common parent generally remains the agent for a consolidated return year that has ended (a *completed year* within the meaning of § 1.1502-77(b)(6)), even if in a later year another corporation becomes the common parent or the group terminates. However, the common parent cannot act as agent for that completed year or any subsequent completed years if it ceases (or will cease) to exist or resigns pursuant to § 1.1502-77(c)(7) (permitting certain agents to resign). In that case, the group may need an agent to function with respect to those completed years. Alternatively, the Commissioner may, if the Commissioner deems it advisable, deal directly with any member with respect to that member's liability under § 1.1502-6 for the consolidated tax of the group for any completed year. The group may also need an agent for a consolidated return year that has not ended (generally a *current year* within the meaning of § 1.1502-77(b)(7)).

Section 1.1502-77(c) provides rules regarding the identity of the agent in circumstances in which: (1) the common parent or agent ceases to exist; (2) a terminating agent or the Commissioner designates an agent; (3) a common parent is replaced by a new common parent as a result of a group structure change; or (4) the agent resigns. Section 1.1502-77(f)(2)(i) provides procedures for the Commissioner to deal directly with any member of the group with respect to its liability under § 1.1502-6 for the consolidated tax of the group. This revenue procedure sets forth procedures for communications necessary under the rules of § 1.1502-77(c) and (f)(2)(i). In this revenue procedure, references to a terminating, terminated, or resigning common parent include an agent whose existence is terminating or terminated or that is resigning.

## SECTION 3. SPECIFIC BACKGROUND INFORMATION REGARDING DIFFERENT MEANS OF IDENTIFYING AN AGENT

.01 *In general.* Section 1.1502-77(c) provides for several different means of identifying an agent to act on behalf of a consolidated group. Each method is described below and applies to consolidated return years beginning on or after April 1, 2015. For consolidated return years beginning prior to April 1, 2015, see Rev. Proc. 2002-43.

.02 *Terminating agent's default successor is the agent.* See § 1.1502-77(c)(1). The general rule is that if a terminating agent has a sole successor (within the meaning of § 1.1502-77(b)(1)), that successor is the default successor and automatically becomes the agent. In such cases, approval of the Commissioner is not required before the default successor is the agent, but the Commissioner is not required to send communications to, or act on communications from, the default successor until the default successor provides the notification required under § 1.1502-77(c)(4) (notification to Commissioner of status as a default successor) in the manner prescribed in section 6 of this revenue procedure.

.03 *Terminating agent's designation of an agent.* See § 1.1502-77(c)(5). In general, if an agent's existence terminates and there is no default successor for a completed year, the terminating agent may designate as the agent any member of the consolidated group during any part of that completed year, or any entity that is a successor of such a member as provided under § 1.1502-77(c)(5)(ii). A terminating agent previously designated by the Commissioner under § 1.1502-77(c)(6)(i)(A)(2)-(4) cannot make a designation under § 1.1502-77(c)(5). The notification by the terminating agent to the Commissioner required under § 1.1502-77(c)(5)(iii) must be provided in the manner prescribed in section 7 of this revenue procedure.

.04 *Commissioner's designation of an agent.* See § 1.1502-77(c)(6). The Commissioner can designate an agent: (1) on the Commissioner's own accord under four circumstances pursuant to § 1.1502-77(c)(6)(i)(A), or (2) upon a request from a member of the group pursuant to § 1.1502-77(c)(6)(i)(B).

More specifically, the Commissioner may designate any member or successor of a member as the agent on the Commissioner's own accord if: (1) the terminating agent does not have a default successor and does not designate an agent under § 1.1502-77(c)(5)(i) (see § 1.1502-77(c)(6)(i)(A)(1)); (2) an agent previously designated by the Commissioner is no longer a member of the group in a current year and does not have a default successor that is a member of the group (see § 1.1502-77(c)(6)(i)(A)(2)); (3) the Commissioner believes that an agent or its default successor exists but such entity has not timely responded to Internal Revenue Service (IRS) notices sent to the entity's last known address or left at the entity's usual place of business or in situations in which the agent fails to perform its obligations as agent as prescribed by the Code or regulations promulgated thereunder (see § 1.1502-77(c)(6)(i)(A)(3)); or (4) the agent is or becomes a foreign entity (see § 1.1502-77(c)(6)(i)(A)(4)).

In addition, the Commissioner may designate an agent to replace an agent previously designated by the Commissioner if a member submits a written request to replace such agent (see § 1.1502-77(c)(6)(i)(B)). Any written request to the Commissioner to designate an agent, whether under § 1.1502-77(c)(6)(i)(A) or § 1.1502-77(c)(6)(i)(B), must be provided in the manner prescribed in section 8 of this revenue procedure.

.05 *Resignation of an agent.* See § 1.1502-77(c)(7). An agent may resign for a completed year in the following circumstances: (i) the agent provides written notice to the Commissioner that it no longer intends to be the agent for the completed year, (ii) an entity that will replace the resigning agent consents in writing to be the agent with respect to the completed year for which the agent wishes to resign, (iii) the agent that is resigning is not the agent for any year other than a completed year immediately after its resignation takes effect, and (iv) the Commissioner does not object to the agent's resignation. The written notice by the resigning agent and the consent of the agent that will replace the resigning agent, under § 1.1502-77(c)(7), must be provided in the manner prescribed in section 9 of this revenue procedure.

.06 *Certain communications by the Commissioner.* See § 1.1502-77(c)(6)(ii) and (iv); § 1.1502-77(c)(7)(i)(D); § 1.1502-77(f)(2)(i). The Commissioner will notify, in writing, an agent designated by the Commissioner pursuant to § 1.1502-77(c)(6) in the manner prescribed in section 10.02 of this revenue procedure. In addition, the Commissioner will object to an agent's resignation request pursuant to § 1.1502-77(c)(7) in the manner prescribed in section 10.03 of this revenue procedure. The Commissioner will also provide written notice to the agent under § 1.1502-77(f)(2)(i) that the Commissioner will deal with a member separately with regard to its income tax liability under § 1.1502-6 in the manner prescribed in section 10.04 of this revenue procedure.

.07 *Documentation to the Commissioner.* All documentation to be provided to the Commissioner should be submitted in the manner prescribed by section 5 of this revenue procedure.

#### SECTION 4. SCOPE

.01 *In general.* This revenue procedure applies to any notification of the existence of a default successor under § 1.1502-77(c)(4), a designation of an agent by an agent under § 1.1502-77(c)(5), a designation of an agent by the Commissioner under § 1.1502-77(c)(6), or a designation by an agent that is resigning under § 1.1502-77(c)(7).

.02 *References to Commissioner.* References in this revenue procedure to the Commissioner include any IRS official to whom the Commissioner's authority under § 1.1502-77 has been duly delegated.

#### SECTION 5. WHERE TO FILE

.01 *In general.* Except as provided in section 5.02 of this revenue procedure, all documents to be provided to the Commissioner in accordance with this revenue procedure must be filed at the following address:

Ogden Submission Processing Center  
P.O. Box 9941  
Mail Stop 4912  
Ogden, UT 84409

.02 *Request that Commissioner replace any agent previously designated by Com-*

*missioner.* To the extent an agent has been previously designated by the Commissioner, a member that requests the Commissioner to designate an agent under § 1.1502-77(c)(6)(i)(B) must file such request in accordance with the requirements described in section 8 of this revenue procedure with the IRS office that previously designated the agent that the request seeks to replace.

#### SECTION 6. NOTIFICATION BY A DEFAULT SUCCESSOR UNDER § 1.1502-77(c)(4)

.01 *In general.* If a terminating agent has a default successor (as defined in § 1.1502-77(b)(4)), such default successor is the agent. Such default successor must provide notification to the Commissioner pursuant to the requirements set forth in this section 6 to insure that the default successor will receive communications from the Commissioner to the group and to insure that the Commissioner will act on the default successor's communications to the Commissioner on behalf of the group.

.02 *When to file.* The appropriate time for the default successor to file the notification is after the terminating agent ceases to exist.

.03 *Contents.* The notification by the default successor under § 1.1502-77(c)(4) must be in writing and contain the following information:

(1) The heading "REV. PROC. 2015-26: NOTIFICATION BY DEFAULT SUCCESSOR UNDER § 1.1502-77(c)(4)" must be typed or legibly printed at the top of the notification;

(2) Name, address, and employer identification number of the terminated agent;

(3) Name, address, and employer identification number of the default successor and the consolidated return year(s) for which it is the agent;

(4) The name and employer identification number of the common parent under which the return(s) for which the default successor is the agent was (were) filed, if different from the agent named in section 6.03(2) of this revenue procedure;

(5) The Internal Revenue Service Center (Service Center) where the consolidated return(s) was (were) or will be filed, as the case may be, for the consolidated

return year(s) for which the default successor is the agent;

(6) The date of termination of the prior agent;

(7) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the default successor is the agent; and

(8) A statement in which the default successor, if it was not a member of the group during the consolidated return year(s) for which it is the default successor, acknowledges that it is primarily liable as a successor of the former agent of the group for the consolidated tax liability for such consolidated return year(s).

.04 *Signature requirements.* The notification by a default successor must contain the following declaration, signed by a person duly authorized to sign on behalf of the default successor: **Under penalties of perjury, I declare that I am authorized to submit this notification on behalf of the default successor and that, to the best of my knowledge, the information provided is true, correct, and complete.**

.05 *No approval required.* Commissioner approval is not required for a default successor, but the Commissioner is not required to send communications to, or act on communications from, a default successor until it provides notification under this section 6.

#### SECTION 7. DESIGNATION BY A TERMINATING AGENT

.01 *In general.* A terminating agent (including an agent previously designated by the Commissioner under § 1.1502-77(c)(6)(i)(A)(I)) may designate an agent if it has no default successor. Designation by a terminating agent is available for any and all taxable years that are subject to this revenue procedure and for which the terminating agent is agent. However, a terminating agent may only designate an agent for a completed year, and no designation can be made by an agent that was designated by the Commissioner under § 1.1502-77(c)(6)(i)(A)(2)-(4), or any successor of such an agent; in those cases, the terminating agent should request that the Commissioner designate an agent pur-

suant to § 1.1502-77(c)(6)(i)(B). Provided the terminating agent's designation complies with the requirements set forth in this section 7, that designation is automatically approved without further communication from the Commissioner, and no written approval will be provided. Such designation will be effective upon the termination of the designating agent. A designation by a terminating agent, before its existence terminates, must be filed in accordance with the requirements set forth in this section 7. The terminating agent may designate an entity meeting these two requirements:

(1) Any member of the group during any part of the consolidated return year for which the designation is made or an entity that is a successor of such member or will become a successor at the time the agent's existence terminates; and

(2) An entity that was not replaced as agent by the Commissioner under § 1.1502-77(c)(6)(i)(A)(2)-(4) (although the terminating agent may submit a request pursuant to § 1.1502-77(c)(6)(i)(B) that the Commissioner designate such entity previously replaced).

.02 *When to file.* (1) *In general.* Except as provided in section 7.02(2) of this revenue procedure, a terminating agent's designation of an agent must be executed and filed by the terminating agent before its existence terminates.

(2) *Special rule.* If the agent designated by the terminating agent under this section 7 does not come into existence before the designating agent's existence terminates, the designating agent must still execute the designation before its existence terminates, and the designated agent must promptly complete the designation after it comes into existence by executing the statement required in section 7.03(8) of this revenue procedure and filing the designation.

.03 *Contents.* The terminating agent's designation of an agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2015-26: TERMINATING AGENT'S DESIGNATION OF AGENT UNDER § 1.1502-77(c)(5)" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the terminating agent making the designation;

(3) Name, address, and employer identification number of the designated agent

and the consolidated return year(s) for which the designation applies (or a statement that it applies to all completed year(s) ending on or before the date of termination of the agent);

(4) The name and employer identification number of the common parent under which the return(s) for which the designation applies was (were) filed, if different from the agent named in section 7.03(2) of this revenue procedure;

(5) The Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the year(s) for which the designation applies;

(6) The expected date of termination of the designating agent;

(7) The name, address, and phone number of any Examination Team Manager, Appeals Officer or Counsel Attorney who currently has jurisdiction of consolidated return year(s) for which the designation applies; and

(8) A statement on behalf of the designated agent in which it:

(a) Agrees to serve as the group's agent pursuant to the terminating agent's designation; and

(b) If it was not a member of the group during the consolidated return year(s) for which it is designated, acknowledges that it is or will be primarily liable as a successor of the terminating agent for the consolidated tax liability for such consolidated return year(s).

.04 *Signature requirements.* (1) The terminating agent's designation of an agent must contain the following declaration, signed by a duly authorized officer of the terminating agent: **Under penalties of perjury, I declare that I am authorized to make this designation on behalf of the terminating agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

(2) The statement required under section 7.03(8) of this revenue procedure must contain the following declaration, signed by a duly authorized officer of the designated agent: **Under penalties of perjury, I declare that I am authorized to sign this statement on behalf of the designated agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

## SECTION 8. REQUEST FOR THE COMMISSIONER TO DESIGNATE AN AGENT UNDER § 1.1502-77(c)(6)

.01 *In general.* Any written request to the Commissioner to designate an agent pursuant to § 1.1502-77(c)(6) should be made in the manner prescribed in this section 8. Such request may (but is not required to) propose a member (or a successor of a member) for the Commissioner to designate as agent.

.02 *When to file.* A request that the Commissioner designate an agent under § 1.1502-77(c)(6)(i)(A)(1) may be filed at any time after the agent's existence terminates and before the Commissioner designates an agent in the manner prescribed in section 10.02 of this revenue procedure. Other written requests that the Commissioner designate another agent under § 1.1502-77(c)(6) can be filed at any time.

.03 *Contents.* A request for designation of an agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2015-26: REQUEST FOR DESIGNATION OF AGENT UNDER § 1.1502-77(c)(6)" must be typed or legibly printed at the top of the designation;

(2) Name, address, and employer identification number of the agent to be replaced;

(3) Name, address, and employer identification number of the proposed agent, if any, and the consolidated return year(s) for which the designation is requested;

(4) The name and employer identification number of the common parent under which the return(s) for which the designation is requested was (were) filed, if different from the agent named in section 8.03(2) of this revenue procedure;

(5) The Service Center where the consolidated return(s) was (were) or will be filed, as the case may be, for the year(s) for which the designation is requested;

(6) If relevant, the date the agent's existence terminated and the circumstances under which it terminated (for example, dissolution under state law or merger into a limited liability company) or the date that the agent ceased (or will cease) to be a member of the group and the circumstances under which it ceased (or will cease) to be a member of the group;

(7) The reason for the written request for the Commissioner to designate an agent;

(8) The name and address of the corporation(s) (or other person(s)) that has (have) custody of the books and records with respect to the consolidated return year(s) for which the designation is requested, if different from any proposed agent named in section 8.03(3) of this revenue procedure, and if so, a description of the arrangements available to the proposed agent for access to the books and records; and

(9) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the designation is requested.

*.04 Signature requirement.* A request under this section 8 must contain the following declaration, signed by a duly authorized officer of at least one of the requesting members that was a member of the group for the consolidated return year(s) for which the designation is requested: **Under penalties of perjury, I declare that I am authorized to make this request on behalf of the named member of the group and that, to the best of my knowledge, the information provided is true, correct, and complete.**

*.05 Designation by the Commissioner.* (1) In response to a request under this section 8, the Commissioner may, in the Commissioner's sole discretion, designate as the agent the member (or successor of the member) proposed by the request, if any, or another member (or successor of another member). In determining whether to make the requested designation, the Commissioner may request information from, or communicate information relating to the designation request to, any member of the group. Thus, for example, in the case of a request by a member that the Commissioner designate another agent to replace the existing agent of a group, the Commissioner may request information from, or communicate information to, the agent the request seeks to replace.

(2) The Commissioner will notify any designated agent by providing the notice described in section 10.02 of this revenue procedure.

## SECTION 9. RESIGNATION OF AN AGENT

*.01 In general.* If the agent requests to resign as agent for a completed year pur-

suant to § 1.1502-77(c)(7), the request to resign as agent must be made in the manner set forth in this section 9. Such request must propose a member, or successor of a member, to serve as an agent to replace the resigning agent and include a signed statement by the proposed agent consenting to serve as agent.

*.02 When to file.* A request by an agent to resign as agent for a completed year may be filed at any time after the completed year has ended.

*.03 Contents.* A request by an agent to resign as agent must be in writing and contain the following information:

(1) The heading "REV. PROC. 2015-26: AGENT'S REQUEST TO RESIGN UNDER § 1.1502-77(c)(7)" must be typed or legibly printed at the top of the request;

(2) Name, address, and employer identification number of the agent that wishes to resign;

(3) Name, address, and employer identification number of the entity that has consented to replace the resigning agent and the consolidated return year(s) for which the agent's resignation is requested;

(4) The name and employer identification number of the common parent that filed the return(s) for the consolidated return year(s) for which the agent's resignation is requested;

(5) The Service Center where the consolidated return(s) was (were) filed for the year(s) for which approval of the agent's resignation is requested;

(6) The name and address of the corporation(s) (or other person(s)) that have custody of the books and records with respect to the consolidated return years for which the resignation is requested, if different from the proposed replacement agent named in section 9.03(3) of this revenue procedure, and if so, a description of the arrangements available to the proposed replacement agent for access to the books and records;

(7) The name, address, and phone number of the Examination Team Manager, Appeals Officer or Counsel Attorney, if any, who currently has jurisdiction of the consolidated return year(s) for which the agent's resignation is requested;

(8) The reason(s) for the request to resign as agent;

(9) A disclosure confirming that immediately after its resignation takes effect, the resigning agent will not be the agent for any year other than a completed year (see § 1.1502-77(c)(7)(i)(C)); and

(10) A statement on behalf of the replacement agent in which it:

(a) Agrees to serve as the group's agent pursuant to the resigning agent's designation; and

(b) If it was not a member of the group during the consolidated return year(s) for which it is designated, acknowledges that it is or will be primarily liable as a member, or a successor of a member, for the consolidated tax liability for such consolidated return year(s).

*.04 Signature requirement.* (1) A request under this section 9 must contain the following declaration, signed by a duly authorized officer of the agent for the completed year(s) for which the resignation is requested: **Under penalties of perjury, I declare that I am authorized to make this request on behalf of the resigning agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

(2) The statement required under section 9.03(10) of this revenue procedure must contain the following declaration, signed by a duly authorized officer of the designated agent: **Under penalties of perjury, I declare that I am authorized to sign this statement on behalf of the designated agent and that, to the best of my knowledge, the information provided is true, correct, and complete.**

*.05 Process for Commissioner objections.* The Commissioner shall have 90 days from the date of the postmark of the agent's request to object to the agent's request to resign and be replaced by another agent (that is a member or a successor of a member). If the Commissioner does not object to the agent's resignation in writing within 90 days of the postmark of the agent's request, the agent's request will be deemed granted, the agent will be permitted to resign, and the resigning agent shall be replaced by the designated replacement agent as set forth in the request. During the 90-day period, the Commissioner may, but is not required to, send a written notification advising that the Commissioner has no objection to the requested resignation. The agent that re-

places the agent that resigned should give written notice that it is the new agent to each member of the group during any part of the completed year.

.06 *Effective date of requested resignation.* If the Commissioner does not object to the resignation in writing within 90 days of the postmark of the request, the resignation will become effective the earlier of:

(1) The date of the Commissioner's written notification of no objection, if any; or

(2) Ninety (90) days from the postmark of the request.

## SECTION 10. NOTIFICATIONS BY THE COMMISSIONER

.01 *In general.* The Commissioner, or the Commissioner's duly authorized delegate, will notify, in writing, an entity that it has been designated as the agent by the Commissioner pursuant to § 1.1502-77(c)(6) in the manner prescribed in section 10.02 of this revenue procedure. If the Commissioner objects to the resignation of an agent, the Commissioner, or the Commissioner's duly authorized delegate, will notify, in writing, the agent seeking to resign pursuant to § 1.1502-77(c)(7), in the manner prescribed in section 10.03 of this revenue procedure. The Commissioner will notify, in writing, the agent in the manner prescribed by section 10.04 of this revenue procedure when expressly invoking the authority of § 1.1502-77(f)(2)(i) to deal directly with any member of the group with respect to its liability under § 1.1502-6 for the consolidated tax of the group.

.02 *Commissioner designations.* The Commissioner will notify an entity that pursuant to § 1.1502-77(c)(6) the Commissioner has designated it to be the agent by providing a written notice that contains the following information (see Appendix A for a sample letter that incorporates this information):

(1) Name, address, and employer identification number of the agent to be designated;

(2) Name, address, and employer identification number of the agent, or member, if any, requesting the designation;

(3) The consolidated return year(s) for which the designation applies, and, to the

extent applicable, the date the designation is effective;

(4) The name and employer identification number of the common parent that filed the return(s) for the consolidated return year(s) for which the designation applies;

(5) Unless otherwise specified in the notice, the effective date of the designation is the date of the notice described in this section 10.02.

(6) The Commissioner should inform the agent designated by the Commissioner that, pursuant to § 1.1502-77(c)(6)(ii), it should provide written notice to each member of the group that it is the new agent; and

(7) The Commissioner, or the Commissioner's duly authorized delegate, should include the title and name of the appropriate person executing the designation on behalf of the Commissioner. The written notice should be executed by signing (either manually, by imprint, or initials) and dating such written notice. The written notice should be sent via mail to the last known address of the designated agent, and a copy should be sent to the address specified in section 5.01 of this revenue procedure.

.03 *Commissioner's response to requested resignation.* (1) If the Commissioner objects to an agent's request to resign, pursuant to § 1.1502-77(c)(7)(i)(D), the Commissioner, within 90 days of the postmark of the request of the agent seeking to resign, must send a written notice to the agent containing the following information:

(a) Name, address, and employer identification number of the agent seeking to resign;

(b) The consolidated return year(s) for which the requested designation would apply;

(c) The name and employer identification number of the common parent under which the return(s) for which the designation is requested was (were) filed, if different from the agent named in section 10.03(1) of this revenue procedure;

(d) The reason(s) for the Commissioner's objection to the agent's resignation; and

(e) The title and name of the appropriate person executing the objection to the agent's resignation on behalf of the Com-

missioner or the Commissioner's duly authorized delegate. The written notice should be executed by signing (either manually, by imprint, or initials) and dating such written notice. The written notice should be sent via mail to the address of the agent seeking to resign as set forth in the resignation request, and a copy should be sent to the address specified in section 5.01 of this revenue procedure.

(2) If the Commissioner does not object to an agent's request to resign, the Commissioner may, but is not required to, provide a written notice to the agent before the expiration of the 90-day period from the date of the request. That notice may be in such form as the Commissioner may determine and should be sent to the agent seeking to resign, and a copy should be sent to the address specified in section 5.01 of this revenue procedure. The Commissioner's notice may contain any or all of the following information:

(a) Name, address, and employer identification number of the agent seeking to resign;

(b) Name, address, and employer identification number of the entity that has consented to replace the resigning agent;

(c) The consolidated return year(s) for which the requested designation would apply;

(d) The name and employer identification number of the common parent under which the return(s) for which the designation is requested was (were) filed, if different from the agent named in section 10.03(1) of this revenue procedure;

(e) A statement that the Commissioner does not object to the agent's resignation; and

(f) The title and name of the appropriate person executing the notice on behalf of the Commissioner or the Commissioner's duly authorized delegate.

.04 *Commissioner deals separately with a member.* The Commissioner, or a duly authorized delegate, should prepare a notice informing the agent in writing that the Commissioner will deal separately with a member of the group, and not the agent, pursuant to § 1.1502-77(f)(2)(i). The notice should contain the following information:

(1) Name, address, and employer identification number of the agent that will no longer be the agent for the member(s)

identified in section 10.04(2) of this revenue procedure as a result of the Commissioner's decision to deal separately with such member(s);

(2) Name, address and employer identification number of each member the Commissioner will be dealing with separately;

(3) The consolidated return year(s) for which the notification applies and, to the extent applicable, the effective date;

(4) The name and employer identification number of the common parent that filed the return(s) for the consolidated return year(s) for which the notification applies; and

(5) The Commissioner, or a delegated authority, should include the title and name of the appropriate person executing the notice on behalf of the Commissioner. The document should be executed by signing (either manually, by imprint, or initials) and dating such written notice and it should be sent via mail to the last known address of the agent.

## **SECTION 11. EFFECTIVE DATE, EFFECT ON OTHER DOCUMENTS**

This revenue procedure applies to designations of agents and notifications of the existence of default successors, to requests for designation of an agent or for replacement of a previously designated agent, and to resignations of agents with respect to consolidated return years beginning on or after April 1, 2015. For prior years beginning on or after June 28, 2002 and before April 1, 2015, see § 1.1502-77B and Rev. Proc. 2002-43, 2002-28 I.R.B. 99. However, pursuant to § 1.1502-77(c)(7) and (j)(2), sections 9 and 10.03 of this revenue procedure govern the resignation of an agent for the group for a completed year that began before April 1, 2015.

Rev. Proc. 2002-43 is modified by inserting “§ 1.1502-77B” for “§ 1.1502-77” each time it occurs and is obsoleted with respect to consolidated return years beginning on or after April 1, 2015.

## **SECTION 12. PAPERWORK REDUCTION ACT**

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of

Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1699.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 5 through 10, as well as in § 1.1502-77(f)(3). These collections of information are required in the following circumstances: (1) for the agent, upon becoming the default successor, to notify the Commissioner in writing that it is the default successor and, if the default successor was not a member of the group during the consolidated return year(s) for which it is the agent, to provide a statement acknowledging that it is primarily liable for the consolidated tax liability for such consolidated return year(s); (2) when the agent designates an agent under circumstances in which the designating agent's existence terminates without a default successor, the agent must notify the Commissioner, in writing, of the designation and provide a statement executed by the designated entity consenting to serve as the agent, and, if the designated entity was not a member of the group during the consolidated return year(s) for which it is designated to be the agent, the designated entity is required to provide a statement acknowledging that it is or will be primarily liable for the consolidated tax liability for such consolidated return year(s); (3) when a member of the group requests the Commissioner to designate an entity to act as the agent if the existing agent fails to perform its obligations as agent as prescribed by the Code or regulations promulgated thereunder, the agent for a current year ceases to be a member of the group, a terminating agent requests the designation of an agent previously replaced by the Commissioner, or in situations in which the Commissioner has previously designated another agent; (4) in situations for which an agent that has been designated by the Commissioner and must provide written notice to each member of the group when the Commissioner has designated a new agent; (5) if an agent serving after a designation by the Com-

missioner is no longer a member without a default successor that is a member, a member should request, in writing, that the Commissioner designate another member to be the agent for the current year; (6) for an agent that resigns to provide written notice to the Commissioner that it no longer intends to be the agent for a completed year, and the newly designated agent's consent, in writing, to be the new agent, and, if the newly designated agent was not a member of the group during the consolidated return year(s) for which it is designated to be the agent, it must provide a statement acknowledging that it is or will be primarily liable as a member, or a successor of a member, for the consolidated tax liability for such consolidated return year(s); (7) if the Commissioner does not object to the resignation of the agent, the agent that replaces the agent that resigned must give written notice that it is the new agent to each member of the group during any part of the completed year; and (8) under § 1.1502-77(f)(3), if an entity ceases to be a member of the group during or after a consolidated return year, that entity may file a written notice of that fact with the Commissioner and request a copy of any notice of deficiency with respect to the tax for a consolidated return year during which it was a member, or a copy of any notice and demand for payment of such deficiency, or both.

The collections of information are required to obtain a benefit in the case of a designation by the agent or default successor, or a request or notice by an agent to the Commissioner to designate another agent, or a notice to the Commissioner, or other members, that the agent will resign. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 400 hours.

The estimated annual burden per respondent varies from one hour to 3 hours, depending on individual circumstances, with an estimated average of two hours. The estimated number of respondents is 200.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become mate-

rial in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by section 6103.

### SECTION 13. INQUIRIES

Inquiries regarding this revenue procedure may be addressed to the Commis-

sioner of Internal Revenue, ATTN: CC: CORP:BO2, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

### SECTION 14. DRAFTING INFORMATION

The principal authors of this revenue procedure are Richard M. Heinecke and

Gerald B. Fleming of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Mr. Heinecke at (202) 317-6065 or Mr. Fleming at (202) 317-6975 (not toll-free numbers).

### APPENDIX A

Appendix A provides an example of a letter designating an agent. This sample letter is consistent with the guidelines specified in section 10.02 of this revenue procedure.

[Name of Designated Agent]

[Address]

Dear Sir or Madam:

Pursuant to Treasury Regulation § 1.1502-77(c)(6), [Name of Designated Agent] (EIN xx-xxxxxxx) is hereby designated as the agent for the members of the [Name of Common Parent] (EIN xx-xxxxxxx) and Subsidiaries consolidated group with respect to the group's consolidated tax liability for the consolidated return year ending [date].

This designation was generated based on a request for the Commissioner to designate an agent by [Name and address of Agent, or member, requesting the Commissioner designate an agent] (EIN xx-xxxxxxx). *[This paragraph may be omitted if no member requested the designation of an agent.]*

This designation is effective as of the date of this letter. In accordance with Treasury Regulation § 1.1502-77(c)(6)(ii), please give notice of this designation to each corporation that was a member of the group during any part of the consolidated return year for which this designation applies.

If you have any questions, please contact [Title – e.g., Revenue Agent], [Name of contact] at [phone number].

Sincerely,

[Authorized Official]\*

\* See Delegation Order 4-45 for the officials that are authorized to designate an agent on behalf of the Commissioner.

26 CFR 601.201: Rulings and determination letters. (Also Part I, § 45)

## Rev. Proc. 2015-29

### SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2015-3, 2015-1 I.R.B. 129, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue letter rulings or determination letters.

### SECTION 2. BACKGROUND

Section 3 of Rev. Proc. 2015-3 sets forth a list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial

Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Pass-throughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

### SECTION 3. PROCEDURE

Rev. Proc. 2015-3 is amplified by adding the following to section 3.01: Section 45. Electricity Produced From Certain Renewable Resources. Whether the taxpayer meets the requirements of § 45 or Notice 2010-54, 2010-40 I.R.B. 403 for refined coal.

### SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015-3 is amplified.

### SECTION 5. EFFECTIVE DATE

This revenue procedure applies to all ruling requests received on or after March 27, 2015.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Philip Tiegerman of the Office of Associate Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Tiegerman at (202) 317-6853 (not a toll-free number).

# Part IV. Items of General Interest

## Announcement 2015–11

ANNOUNCEMENT AND REPORT  
CONCERNING  
ADVANCE PRICING AGREEMENTS

March 27, 2015

This Announcement is issued pursuant to § 521(b) of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement (APMA) Program, formerly known as the Advance Pricing Agreement (APA) Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered separately each calendar year 2000 through 2013. This sixteenth report describes the experience, structure, and activities of the APMA Program during calendar year 2014. It does not provide guidance regarding the application of the arm's length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data for 2014; and Part III includes general descriptions of various elements of the APAs executed in 2014, including types of transactions covered, transfer pricing methods used, and completion time.

Hareesh Dhawale  
Director, Advance Pricing and Mutual Agreement Program

## **Part I. The APMA Program – Structure, Composition, and Operation**

### **[Pub. L. 106–170 § 521(b)(2)(A)]**

In February of 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations, Large Business and International Division of the IRS (TPO) and combined with the United States Competent Authority (USCA) staff responsible for transfer pricing cases, thereby forming the APMA Program.

After the formation of the APMA Program, the team that developed the IRS position in a bilateral or multilateral case and finalized the APA with the taxpayer also became responsible for discussing the case and obtaining an agreement with the treaty partner. This compression of functions into a single APA team has helped to eliminate inefficiencies and decreased the amount of time it takes to reach resolution once a case is set for discussion with the treaty partner.

As of December 31, 2014, the APMA Program was comprised of 59 team leaders, 22 economists, and 10 senior managers organized in 10 groups (7 team leader groups and 3 economist groups). The team leader groups are organized by country with each group having responsibility for multiple countries. Because of the large volume of cases with certain treaty partners, some countries are the responsibility of more than one group. The APMA Program's main office is located in Washington, DC, and it also has a significant presence in San Francisco and the Los Angeles area.

During the last quarter of 2013, new proposed revenue procedures governing APA applications and MAP applications were released for public comment in Notice 2013–79, 2013–50 I.R.B. 653, and Notice 2013–78, 2013–50 I.R.B. 633, respectively. These proposed revenue procedures reflect the changes in APMA's structure, and more importantly, were informed by the cumulative experience of more than 20 years of APA practice in the United States, which has produced more than eleven hundred unilateral, bilateral, and multilateral agreements since 1991. There are now over fourteen hundred agreements as indicated in this Report.

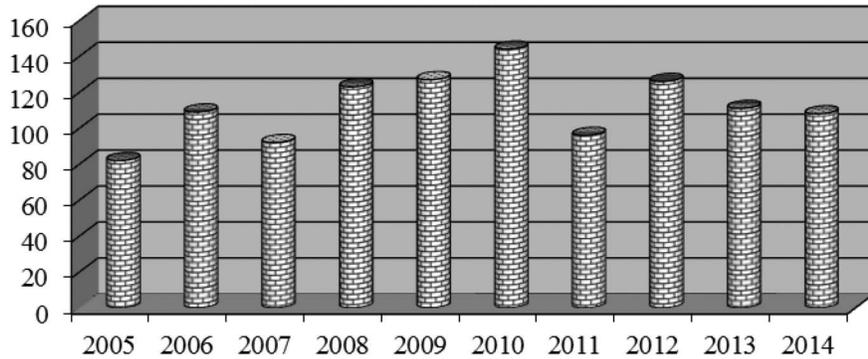
The model APA agreement, which was last revised significantly in 2009 and is currently under review for future changes, appears in this report as Appendix 1. *See* Pub. L. 106–170 § 521(b)(2)(B). A list of primary APMA contacts is included as Appendix 2.

**Part II. APMA Program Statistical Data**  
**[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]**

**Table 1: APA Applications Filed**  
**§ 521(b)(2)(C)(i)**

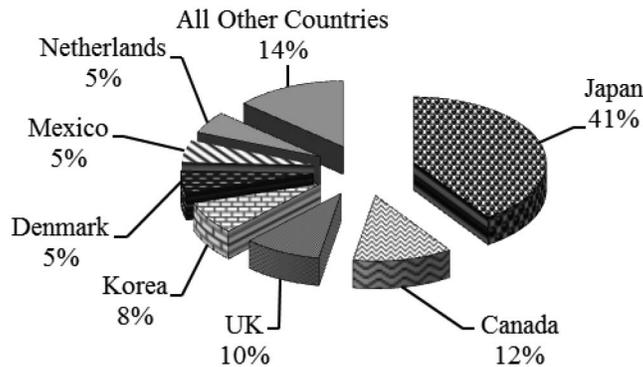
	<b>Unilateral</b>	<b>Bilateral</b>	<b>Multilateral</b>	<b>Total</b>
Filed 1991-1999 <sup>3</sup>				401
Filed 2000-2013	459	993	3	1455
Filed in 2014	31	74	3	108
<b>Total Filed 1991-2014</b>				1964

**Applications Filed**  
**2005-2014**



The table above illustrates the number of applications filed per year; however, the table does not include situations in which the taxpayer has paid a user fee but has not yet submitted a substantially complete APA request. As of December 31, 2014, APMA had received 33 user fee filings in addition to the 108 complete APA applications.

**Bilateral APAs**  
**Filed by Country 2014**

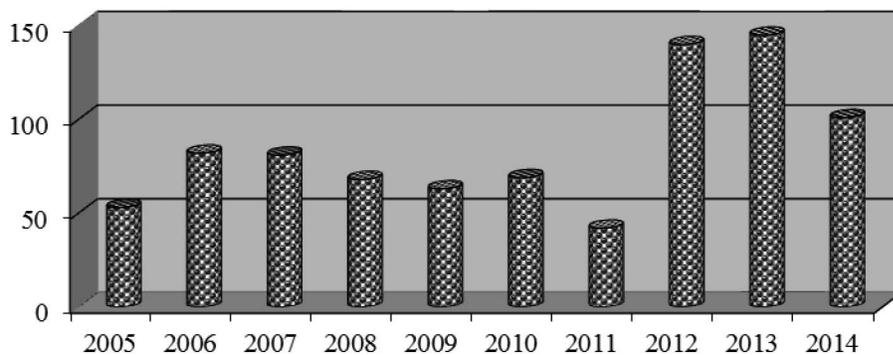


<sup>3</sup>The first APA Statutory Report, which compiled APA data from 1991-1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

**Table 2: Executed and Pending APAs**  
**§ 521(b)(2)(C)(ii-vi)**

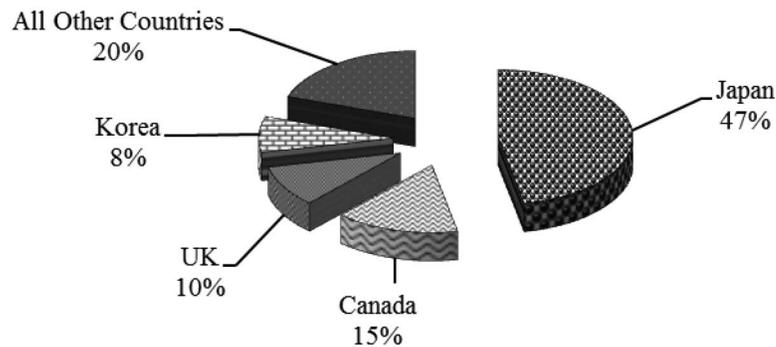
	Unilateral	Bilateral	Multilateral	Total
Total Executed 1991–2013	489	797	14	1300
Total Executed in 2014	20	81	0	101
<b>Total Executed 1991–2014</b>	<b>509</b>	<b>878</b>	<b>14</b>	<b>1401</b>
<b>Total Pending</b>	<b>62</b>	<b>268</b>	<b>6</b>	<b>336</b>
<i>Renewals Executed in 2014</i>	9	39	0	48
<i>Renewals Pending</i>	28	119	2	149

**APAs Executed**  
**2005-2014**



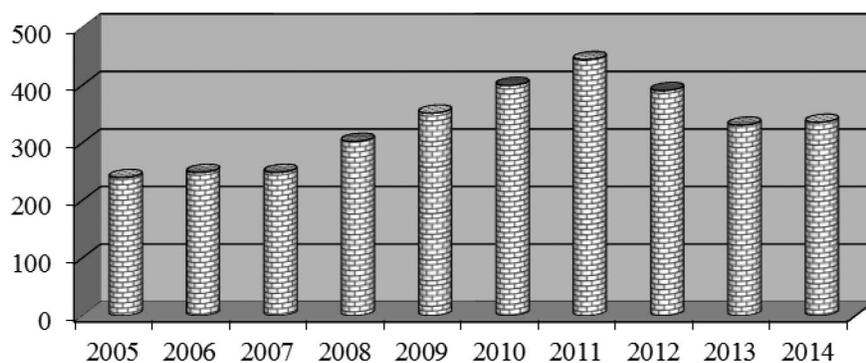
Of the 101 agreements executed in 2014, 52 of the agreements (51 percent) were new APAs (*i.e.*, not a renewal of a prior APA). This was an increase from the 45 (47 percent) new APAs executed in 2013.

**Bilateral APAs**  
**Executed by Country 2014**



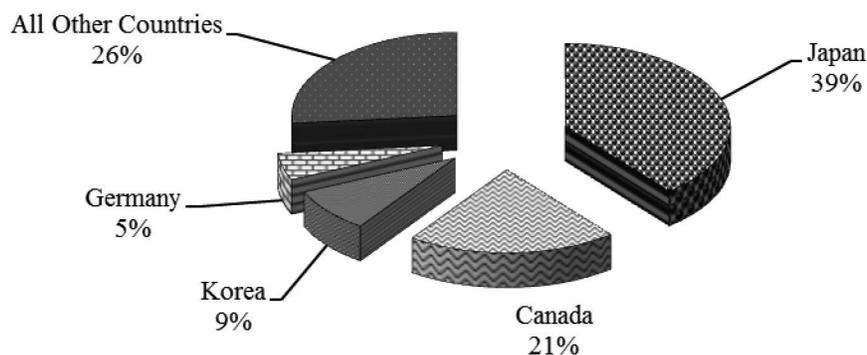
As the chart above illustrates, more than half of the total number of bilateral APAs executed in 2014 involved the United States entering into mutual agreements with Japan and Canada.

### Pending APAs 2005-2014



There was no material change in the number of pending APAs between 2013 and 2014. Japan and Canada continued to account for more than half of the pending bilateral APAs in 2014.

### Bilateral APAs Pending by Country 2014



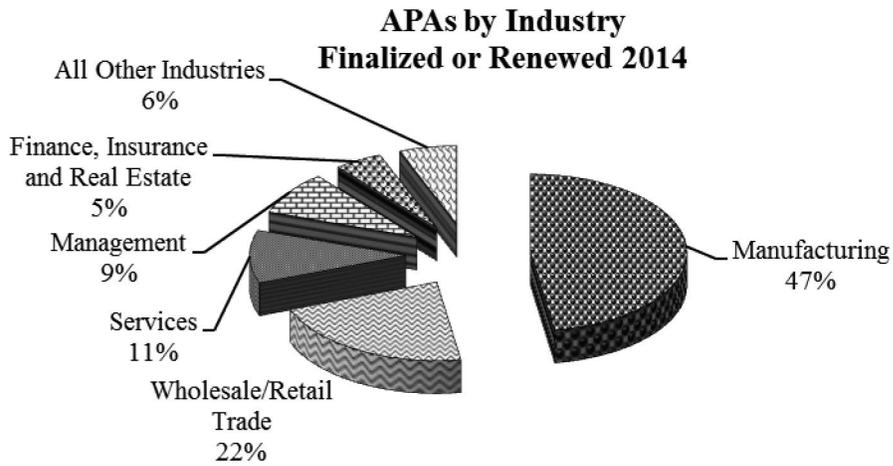
**Table 3: APAs Revoked or Cancelled and Applications Withdrawn  
§ 521(b)(2)(C)(vii)**

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled 2014	0	0	0	0
<b>Total Revoked or Cancelled 1991-2014</b>				<b>11</b>
Applications Withdrawn in 2014	0	1	0	1
<b>Total Applications Withdrawn 1991-2014</b>				<b>190</b>

**Table 4: APAs Finalized or Renewed<sup>4</sup> by Industry  
§ 521(b)(2)(C)(viii)**

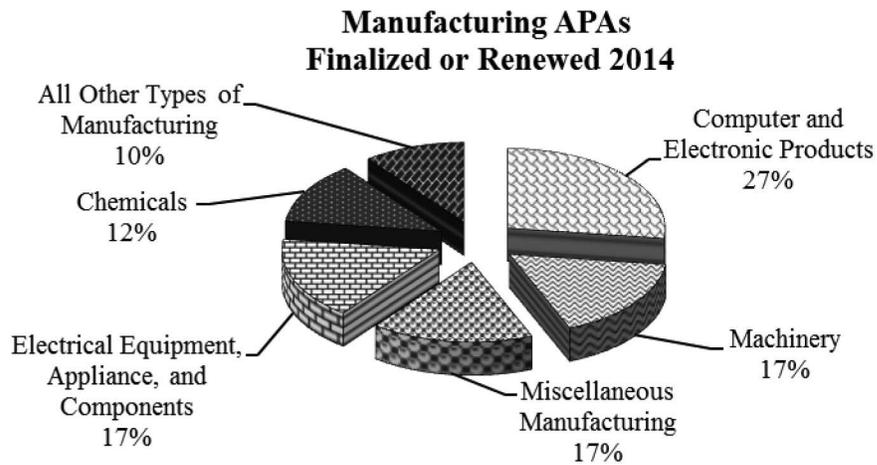
Industry	
Manufacturing	48
Wholesale/Retail Trade	22
Services	11
Management	9
Finance, Insurance and Real Estate	5
All Other Industries	6

<sup>4</sup>APAs finalized or renewed are the same as APAs executed.



**Table 4a: Manufacturing APAs Finalized or Renewed**

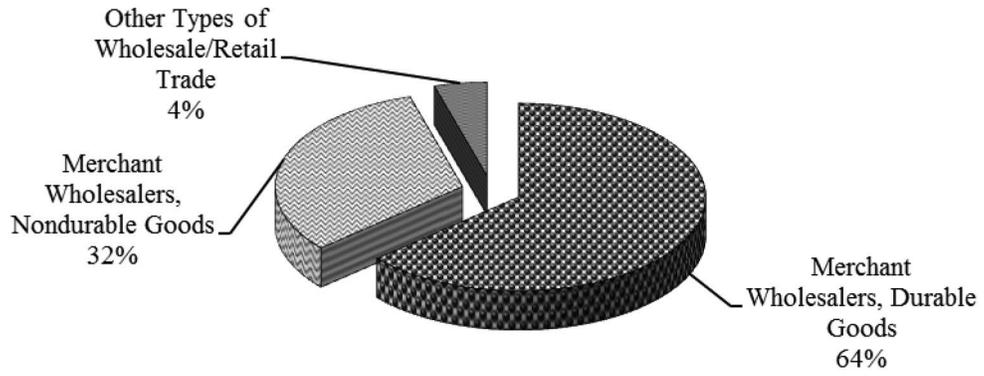
Manufacturing	
Computer and Electronic Products	13
Machinery	8
Miscellaneous Manufacturing	8
Electrical Equipment, Appliance and Components	8
Chemicals	6
All Other Types of Manufacturing	5



**Table 4b: Wholesale/Retail Trade APAs Finalized or Renewed**

Wholesale/Retail Trade	
Merchant Wholesalers, Durable Goods	14
Merchant Wholesalers, Nondurable Goods	7
All Other Types of Other Wholesale/Retail Trade	1

**Wholesale/Retail Trade APAs  
Finalized or Renewed 2014**

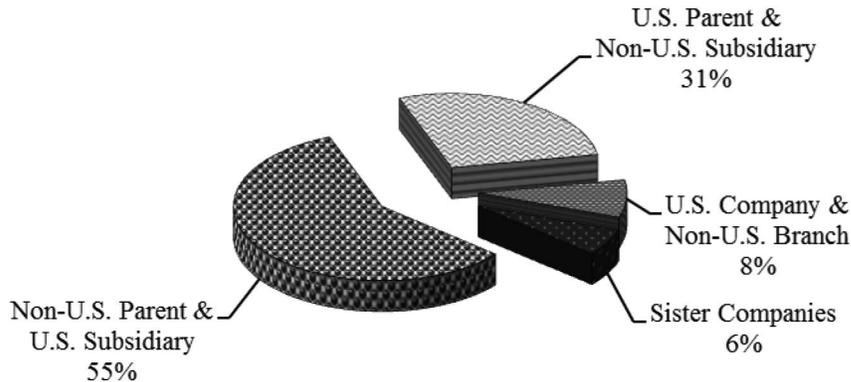


### Part III. General Descriptions of APAs Executed in 2014

[Pub. L. 106–170 § 521(b)(2)(D) and (E)]

#### Nature of the Relationships § 521(b)(2)(D)(i)

#### Relationships between Controlled Parties 2014

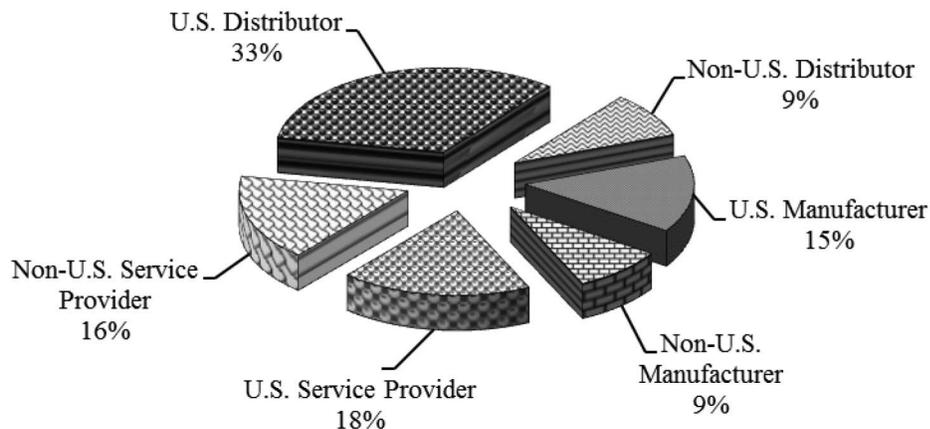


As in prior years, more than half of the APAs executed in 2014 involved transactions between non-U.S. parents and U.S. subsidiaries.

#### Covered Transactions, Functions and Risks, and Tested Parties § 521(b)(2)(D)(ii–iii)

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources services. Regarding risks, the controlled group may bear a variety of risks including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process a significant amount of time and effort is devoted to understanding how the functions and risks are allocated amongst the controlled group of companies that are party to the covered transactions. Generally, the tested party that is chosen will be the least complex of the controlled taxpayers that does not make nonroutine contributions.

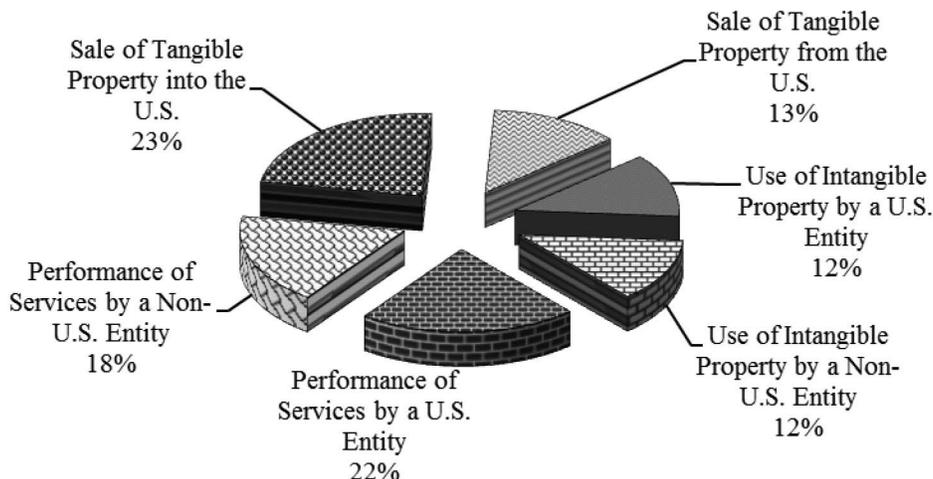
#### Types of Tested Parties 2014



Consistent with prior years, more than half of the tested parties of the APAs executed in 2014<sup>5</sup> fell into one of two categories, *i.e.*, U.S. distributors and U.S. service providers. Combined, these two types of tested parties represent over 50 percent of the total.

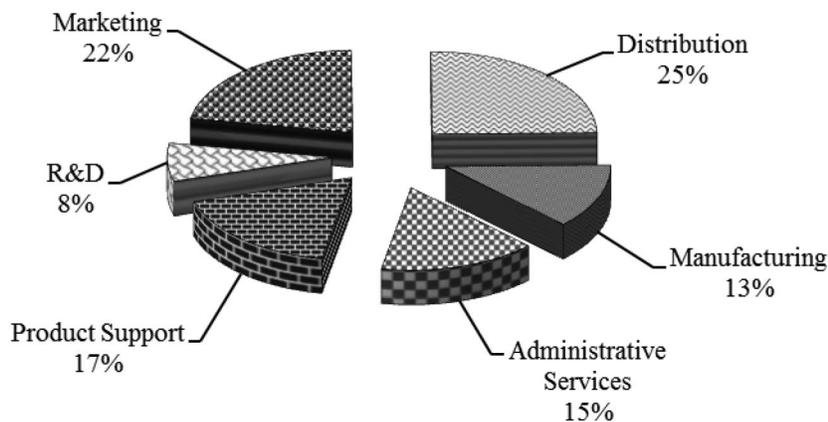
<sup>5</sup>Not all APAs executed in 2014 involved a tested party.

### Types of Covered Transactions 2014



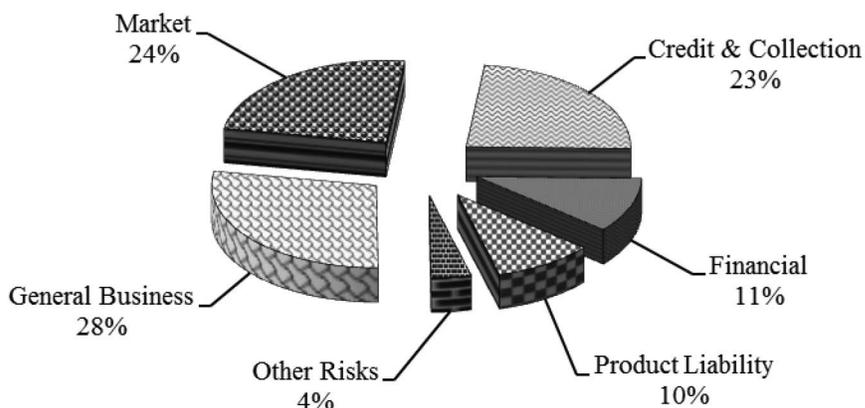
Although more than 75 percent of covered transactions involve tangible goods and services transactions, the IRS also has successfully completed numerous APAs involving transfers of intangibles. While complex transactions involving intangibles may be more challenging than other types of transactions and represent a smaller percentage of the APA inventory than other types of transactions, the IRS continues to seek opportunities to work with taxpayers and treaty partners to provide prospective certainty for such transactions wherever appropriate.

### Tested Party Functions 2014



More than 60 percent of the tested parties in the APAs executed in 2014 involved distribution or related functions, *i.e.*, marketing and product support.

### Tested Party Risks 2014

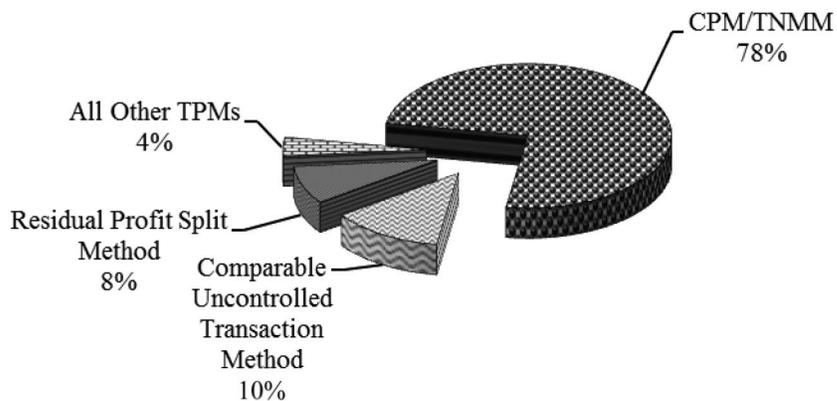


The risks borne by the tested parties were primarily general business risks, market risk, and credit and collection risks.

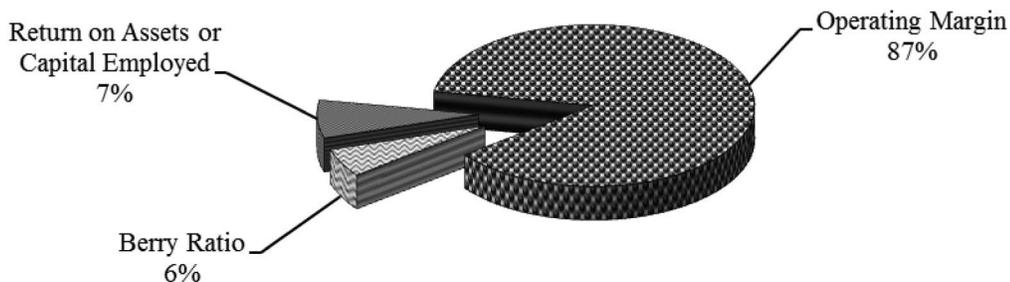
### Transfer Pricing Methods Used § 521(b)(2)(D)(iv)

As shown on the following graphs, and consistent with prior years, the primary transfer pricing method (TPM) used for transfers of both tangible and intangible property in APAs executed in 2014 was the comparable profits method/transactional net margin method (CPM/TNMM).

### Tangible and Intangible Property Transfer Pricing Methods 2014

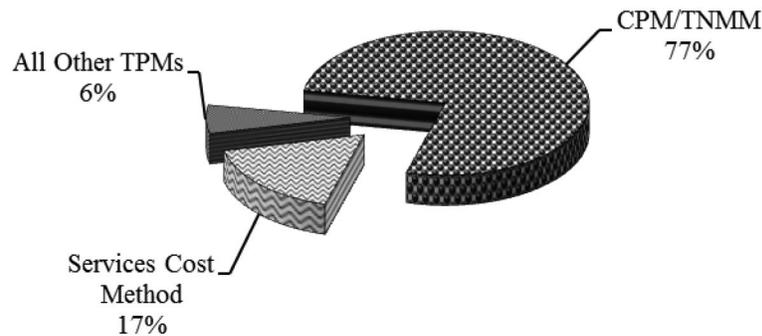


### Tangible and Intangible Property CPM/TNMM Profit Level Indicators 2014



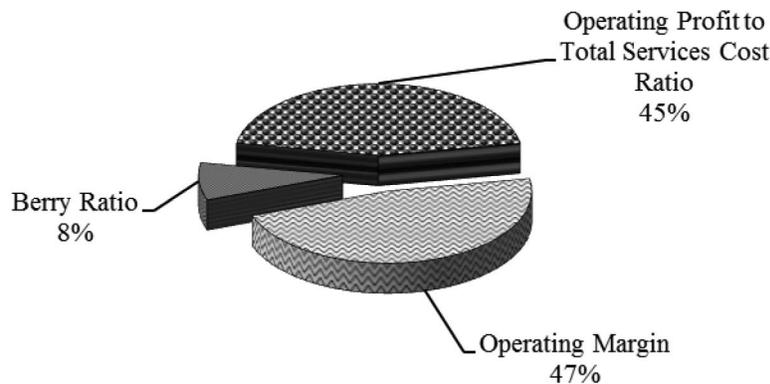
In controlled transactions using the CPM/TNMM, operating margin was the most common profit level indicator (PLI) used to benchmark results for transfers of tangible and intangible property. As used here, “operating margin” means the ratio of operating profits to sales<sup>6</sup> and “Berry Ratio” means the ratio of gross profit to operating expenses.<sup>7</sup>

### Services Transfer Pricing Methods 2014



For services transactions, the majority of cases applied the CPM/TNMM or the services cost method. The services cost method evaluates the amount charged for certain services with reference to the total services costs.<sup>8</sup>

### Services CPM/TNMM Profit Level Indicators 2014



When the CPM/TNMM is used to benchmark services transactions, the operating profit to total services cost ratio and operating margin are the most frequently used PLI.

### Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data

#### § 521(b)(2)(D)(v–vii)

For the APAs executed in 2014 that used external comparables data in the analysis, the most widely used data source for comparables was Standard and Poor’s Compustat/Capital IQ database. Other sources were also used in appropriate cases (*e.g.*, where the tested party was not the U.S. entity or transaction-based methods were applied). Other commonly used sources include the following databases.

<sup>6</sup>See Treas. Reg. § 1.482–5(b)(4)(ii)(A).

<sup>7</sup>See Treas. Reg. § 1.482–5(b)(4)(ii)(B).

<sup>8</sup>See Treas. Reg. § 1.482–9(b).

**Table 5: Commonly Used Sources of Comparable Data**

Avention (formerly known as OneSource)	Mergent
Bloomberg	Orbis
Disclosure	Recap
Global Vantage	RoyaltySource
ktMINE	RoyaltyStat
LoanConnector	Worldscope

In adjusting comparables, the standard balance sheet adjustments identified in Treas. Reg. § 1.482-1(d) and § 1.482-5(c), including adjustments to payables, receivables, and inventory, were made in the majority of cases. Where appropriate, accounting adjustments were made to convert from LIFO to FIFO inventory accounting, and a small number of cases also involved the accounting reclassification of expenses, *e.g.*, from COGS to operating expenses.

### Ranges, Targets, and Adjustment Mechanisms

#### § 521(b)(2)(D)(viii-ix)

The majority of transactions covered in APAs target an interquartile range as described in Treas. Reg. § 1.482-1(e)(2)(iii)(C). Where the transaction involves a royalty payment for the use of intangible property, both points and ranges have been used. In some cases where the covered transaction is the payment of a royalty based solely on external royalty agreements, a secondary method, *e.g.*, a test of the post-royalty operating margin, has been imposed. The testing periods of the APAs executed in 2014 included either: (1) a single year, (2) the term of the APA only, or (3) the term of the APA plus rollback years.

APAs executed in 2014 include a number of mechanisms for making adjustments to tested party results when the results fall outside the range or do not match the point required by the APA. The following are examples of the mechanisms used: an adjustment bringing the tested party's results to the closer edge of the range applied to the results of a single year; an adjustment to the closer edge of the range applied to the results over the APA term; an adjustment to the specified point or royalty rate; or an adjustment to the median of the range for a single year.

### Critical Assumptions

#### § 521(b)(2)(D)(v)

The model APA used by the IRS (included as Appendix 1 of this report) includes a standard critical assumption that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. Each of the APAs executed in 2014 included this standard critical assumption. A few bilateral cases have included critical assumptions tied to either the taxpayer's profitability in a certain year or over the term of the APA, or to the amount of non-covered transactions as a percentage of the taxpayer's revenue. Under § 11.03(2) of Rev. Proc. 2006-9, 2006-2 I.R.B. 278, the IRS may require the taxpayer to show compliance with all the critical assumptions included in the APA. If the taxpayer's results violate the critical assumption, then the taxpayer is required to report to the IRS the event or events creating the violation. Pursuant to § 11.06(3) of Rev. Proc. 2006-9, when a critical assumption is violated, the APMA Director may agree to modify the APA. However, if there is no agreement to modify the APA, then the APA may be cancelled.

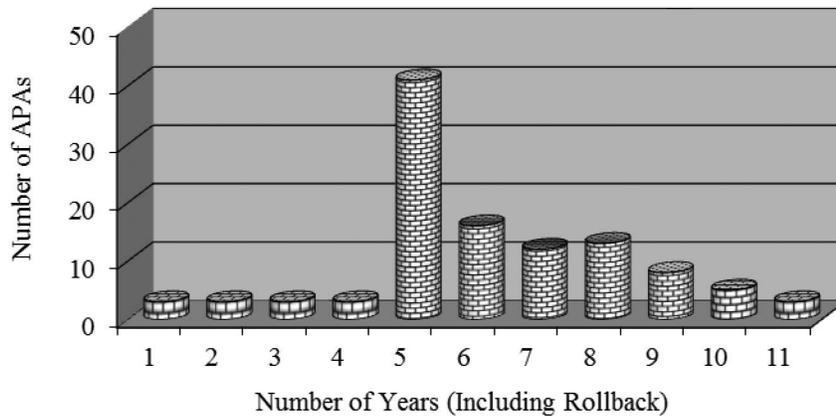
### Term Lengths for APAs

#### § 521(b)(2)(D)(x)

**Table 6: Term Lengths (Including Rollback Years)**

Term Length (years)	Number of APAs
1	≤3
2	≤3
3	≤3
4	≤3
5	41
6	16
7	12
8	13
9	8
10	5
11	≤3
Average	6 years

### Term Length of APAs 2014

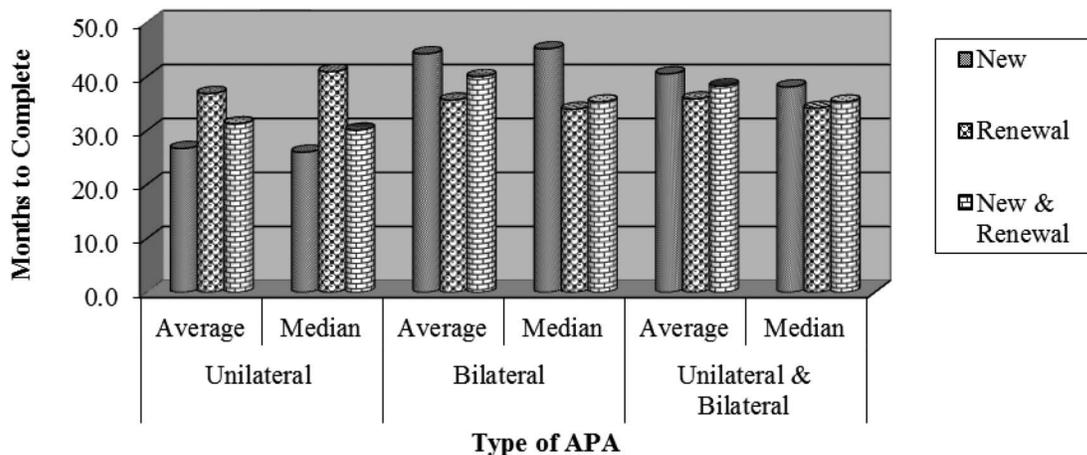


As described in § 4.07 of Rev. Proc. 2006–9, taxpayers should request at least a 5-year term in an APA submission, although the appropriate APA term is decided on a case-by-case basis. Of the APAs executed in 2014, 41% had a 5 year term. For APAs with terms of greater than 5 years, a substantial number of those were submitted as a request for a 5-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer’s request). In 2014, less than 10 percent of the executed APAs included terms of 10 years or longer. The longer terms were agreed to based on the particular circumstances of each individual case and were often granted to ensure a reasonable amount of prospectivity in the APA term.

### Amount of Time Taken to Complete New and Renewal APAs § 521(b)(2)(E)

**Table 7: Months to Complete New and Renewal APAs in 2014 § 521(b)(2)(E)**

	Unilateral		Bilateral		Unilateral & Bilateral	
	Average	Median	Average	Median	Average	Median
New	26.7	26.0	44.2	45.1	<b>40.5</b>	<b>38.1</b>
Renewal	36.9	40.9	35.7	33.9	<b>35.9</b>	<b>34.1</b>
<b>New &amp; Renewal</b>	<b>31.3</b>	<b>30.1</b>	<b>40.0</b>	<b>35.3</b>	<b>38.3</b>	<b>35.3</b>



The median time required to complete bilateral APAs executed in 2014 showed a small decrease whereas unilateral APAs executed in 2014 experienced a small increase in the median time to complete as compared with 2013.

**Efforts to Ensure Compliance with APAs**  
**§ 521(b)(2)(F)**

As described in § 11.01 of Rev. Proc. 2006–9, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Each report received by the APMA Program is assigned to a designated APMA team leader. Whenever possible, annual report reviews are assigned to the team leader who worked the case, or another staff member who is already familiar with the relevant facts and terms of the agreement. Other team leaders and economists may assist the assigned staff member as well. The annual report is also sent to the field personnel with exam jurisdiction over the taxpayer. The field personnel conduct a parallel compliance review and coordinate with APMA personnel to resolve any questions or problems that might arise.

Given the substantial increase in APAs executed during 2012–2014 relative to prior years, there has been a substantial increase recently in the number of annual reports filed and reviewed by the APMA program. In 2014, the APMA Program received 802 annual reports of which 438 were for APAs executed in either 2012 or 2013. This was a considerable increase from the 552 reports received in 2013 (441 of which were for APAs executed in 2012 or 2013). Of those reports received in 2014, 641 of them have been reviewed.

**Nature of Documentation Required in Annual Report**  
**§ 521(b)(2)(D)(xi)**

APAs executed in 2014 required taxpayers to provide various documents with their annual reports, depending on the specific facts of the case. While not every annual report will include each of the documents listed below (*e.g.*, where no compensating adjustment is made, no documentation is required) the documents listed below are required where the facts demonstrate a need for such documentation.

1.	Statement identifying all material differences between Taxpayer’s business operations during APA Year and description of Taxpayer’s business operations contained in Taxpayer’s request for APA. If there have been no such material differences, a statement to that effect.
2.	Statement of all material changes in the Taxpayer’s accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer’s request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect.
3.	Description of any failure to meet Critical Assumptions. If there has been none, a statement to that effect.
4.	Copy of the APA.
5.	Financial analysis demonstrating Taxpayer’s compliance with TPM.
6.	Organizational chart.
7.	Any change to the taxpayer notice information in section 14 of the APA.
8.	The amount, reason for, and financial analysis of any compensating adjustment under Paragraph 4 of Appendix A and Rev. Proc. 2006–9, § 11.02(3), for the APA Year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer’s group that is relevant to the APA.
9.	The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M–1 or Schedule M–3 of the U.S. return for the APA Year.
10.	Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent CPA or other documentation required by paragraph 5(f) of the APA.
11.	Where required by paragraph 5(f) of the APA, certified public accountant’s opinion that financial statements present fairly the financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP.
12.	Where applicable, financial statements as prepared in accordance with a foreign GAAP.
13.	Various work papers.
14.	Where applicable, a review of the financial statements by a certified public accountant.

**Approaches for Sharing of Currency or Other Risks**  
**§ 521(b)(2)(D)(xii)**

In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

**APPENDIX 1– Model APA (based on Rev. Proc. 2006–9)  
[§ 521(b)(2)(B)]**

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**ADVANCE PRICING AGREEMENT**  
**between**  
**[Insert Taxpayer’s Name]**  
**and**  
**THE INTERNAL REVENUE SERVICE**

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**PARTIES**

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer’s Name], EIN \_\_\_\_\_.

**RECITALS**

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as “Taxpayer”), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer’s principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties’ agreement on the best method for determining arm’s-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

[If renewal, add] [Taxpayer and IRS previously entered into an APA covering taxable years ending \_\_\_\_\_ to \_\_\_\_\_, executed on \_\_\_\_\_.]

**AGREEMENT**

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to the APA Term, as defined in Appendix A.
4. *Operation.*
  - a. Revenue Procedure 2006–9 governs the interpretation, legal effect, and administration of this APA.
  - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006–9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
  - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer’s timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
  - b. {Use or edit the following when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm’s-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
  - c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.
  - d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

- i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
- ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or
- iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

Taxpayer Corporation Attn: Jane Doe, Sr. Vice President (Taxes) 1000 Any Road Any City, USA 10000 (phone: _____)
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15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

**WITNESS,**

The Parties have executed this APA on the dates below.

**[Taxpayer Name in all caps]**

By: \_\_\_\_\_  
Jane Doe  
Sr. Vice President (Taxes)

Date: \_\_\_\_\_, 201\_\_

**IRS**

By: \_\_\_\_\_  
Hareesh Dhawale  
Director, Advance Pricing and Mutual Agreement Program

Date: \_\_\_\_\_, 201\_\_

## APPENDIX A

### COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

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#### 1. Covered Transactions.

[Define the Covered Transactions.]

#### 2. APA Term.

This APA applies to Taxpayer's taxable years ending \_\_\_\_\_ through \_\_\_\_\_ (APA Term).

#### 3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is \_\_\_\_\_.]

##### ● CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for \_\_\_\_\_ is between \_\_\_\_\_ and \_\_\_\_\_ per unit.

##### ● CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of \_\_\_\_\_ is between \_\_\_\_\_% and \_\_\_\_\_% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

##### ● Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between \_\_\_\_\_% and \_\_\_\_\_%, and the Median of the Arm's Length Range is \_\_\_\_\_%.

##### ● Cost Plus Method

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between \_\_\_\_\_% and \_\_\_\_\_%, and the Median of the Arm's Length Range is \_\_\_\_\_%.

##### ● CPM with Berry Ratio PLI

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between \_\_\_\_\_ and \_\_\_\_\_, and the Median of the Arm's Length Range is \_\_\_\_\_.

##### ● CPM using an Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between \_\_\_\_\_% and \_\_\_\_\_%, and the Median of the Arm's Length Range is \_\_\_\_\_%.

##### ● CPM using a Three-year Rolling Average Operating Margin PLI

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between \_\_\_\_\_% and \_\_\_\_\_%, and the Median of the Arm's Length Range is \_\_\_\_\_%.

● **Residual Profit Split Method**

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

*[Insert additional provisions as needed.]*

**4. Application of TPM.**

For any APA Year, if the results of Taxpayer’s actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm’s Length Range, then the amounts reported on Taxpayer’s U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer’s actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm’s Length Range, then amounts reported on Taxpayer’s U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party’s Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the “results of Taxpayer’s actual transactions” means the results reflected in Taxpayer’s and Tested Party’s books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party’s audited financial statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

**5. APA Revenue Procedure Treatment**

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a “primary adjustment”), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006–9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

*[Insert additional provisions as needed.]*

**APPENDIX B**  
**CRITICAL ASSUMPTIONS**

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This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

*[Insert additional provisions as needed.]*

**APPENDIX C**  
**APA RECORDS AND ANNUAL REPORT**

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**APA RECORDS**

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

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**ANNUAL REPORT**

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
  - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
  - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
  - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
  - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.
  - e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.
  - f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.
  - g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:
    - i. the amounts due or owed, and paid or received by each affected entity;
    - ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;
    - iii. the date(s) and means by which the payments are or will be made; and
    - iv. whether or not APA Revenue Procedure was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).
  - h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.
  - i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.
4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.
7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.
8. A copy of the APA and any amendment.
9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006-9, section 11.01(6) and (7).

**APPENDIX D**  
**DEFINITIONS**

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

<b>Term</b>	<b>Definition</b>
Annual Report	A report within the meaning of Revenue Procedure 2006–9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106–170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006–9	Rev. Proc. 2006–9, 2006–1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulation section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. <i>{Or substitute for partnership: For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.}</i>
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

**APPENDIX E**

**APA ANNUAL REPORT SUMMARY FORM**

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

<b>APA Annual Report SUMMARY</b>	<b>Department of the Treasury— Internal Revenue Service Large Business and International Division Transfer Pricing Operations Advance Pricing and Mutual Agreement Program</b>	APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____
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<b>APA Information</b>	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50–100 million <input type="checkbox"/> \$100–250 million <input type="checkbox"/> \$250–500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point
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**APA Annual Report Information**  
 (to be completed by the Taxpayer)

APA date executed: \_\_\_\_\_, 201\_\_  
 This APA Annual Report Summary is for APA Year(s) ending in 200\_\_ and was filed on \_\_\_\_\_, 201\_\_  
 Check here  if Annual Report was filed after original due date but in accordance with extension.  
 Has this APA been amended or changed?  yes  no      Effective Date: \_\_\_\_\_  
 Has Taxpayer complied with all APA terms and conditions?  yes  no  
 Were all the critical assumptions met?  yes  no  
 Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report?  
      yes  no      If yes, which year(s): 200\_\_  
 Have any necessary Secondary Compensating Adjustments been made?  yes  no  
 Did Taxpayer elect APA Revenue Procedure treatment?  yes  no  
 Any change to the entity classification of a party to the APA?  yes  no  
 Taxpayer notice information contained in the APA remains unchanged?  yes  no  
 Taxpayer's current US principal place of business: (City, State) \_\_\_\_\_

**APA Annual Report Checklist of Key Contents**  
 (to be completed by the Taxpayer)

Financial analysis reflecting TPM calculations  yes  no  
 Financial statements showing compliance with TPM(s)  yes  no  
 Schedule M-1 or M-3 book-tax differences  yes  no  
 Current organizational chart of relevant portion of world-wide group  yes  no  
 Attach copy of APA  yes  no  
 Other APA records and documents included:

**Contact Information**

Authorized Representative	Phone Number	Affiliation and Address

## APPENDIX 2 – APMA Contacts

<b>APMA LEADERSHIP</b>		
Director	Dhawale, Hareesh	202-515-4306
Deputy Director – Operations (Acting)	Francis, Tennille	202-515-4389
Deputy Director – Technical	McComber, Donna	202-515-4341
<b>ECONOMISTS</b>		
Senior Manager	Kwiat, Russell	202-515-4309
Senior Manager	Larson, Chuck	312-292-3663
Senior Manager	Lee, Ho Jin	213-833-1166
<b>AUSTRALIA, AUSTRIA, GERMANY, JAPAN, KAZAKHSTAN, NETHERLANDS, NEW ZEALAND, RUSSIA &amp; UKRAINE</b>		
Senior Manager	Cohen, Judith	202-515-4312
<b>CHINA, INDONESIA, JAPAN, SOUTH AFRICA &amp; THAILAND</b>		
Senior Manager	Rock, Peter	415-547-3776
<b>CANADA, ITALY &amp; LUXEMBOURG</b>		
Senior Manager	Mader, Burton	202-515-4319
<b>DENMARK, INDIA, IRELAND, NORWAY, SWEDEN, SWITZERLAND &amp; UK</b>		
Senior Manager	Hughes, John	202-515-4307
<b>ARGENTINA, CANADA, CARIBBEAN, JAMAICA, MEXICO, PORTUGAL, PUERTO RICO, SPAIN &amp; VENEZUELA</b>		
Senior Manager	Spring, Gregory	202-515-4340
<b>BELGIUM, CANADA, FRANCE, GREECE, HUNGARY, POLAND, ROMANIA &amp; TURKEY</b>		
Senior Manager	Fouts, Patricia	202-515-4740
<b>GUAM, JAPAN, KOREA, MOROCCO &amp; PHILIPPINES</b>		
Senior Manager	Bracken, Dennis	310-414-3617
<b>ISRAEL</b>		
Senior Manager	Kwiat, Russell	202-515-4309

### Reporting Airline Payment Amount Rollovers Under Public Law 113–243

#### Announcement 2015–13

##### PURPOSE

This announcement explains how taxpayers must report rollovers of airline payment amounts under recently enacted Public Law 113–243 (“P.L. 113–243”), which amended certain provisions of the FAA Modernization and Reform Act of 2012.

##### BACKGROUND

Section 1106 of the FAA Modernization and Reform Act of 2012, P.L. 112–95

(the “FAA Act”), permitted the rollover of an airline payment amount received by a qualified airline employee into a traditional IRA. An “airline payment amount” was defined in the FAA Act as any payment of money or other property payable by a commercial passenger airline, under the authority of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, to a qualified airline employee in respect of certain claims of the employee against the airline. A “qualified airline employee” was defined in the FAA Act as an employee or former employee of a commercial passenger airline who was a participant in a defined benefit plan maintained by the airline, which plan was either terminated or subject to certain restrictions

described in § 402(b)(2) and (3) of the Pension Protection Act of 2006, P.L. 109–280.

The FAA Act provided that a qualified airline employee could roll over up to 90 percent of the aggregate airline payment amounts received into a traditional IRA within 180 days of receipt or, if later, within 180 days of enactment of the FAA Act. The date 180 days after enactment of the FAA Act was August 13, 2012. Any amounts rolled over into traditional IRAs could be excluded from the employee’s gross income. In addition, the FAA Act provided that qualified airline employees who had previously rolled airline payment amounts into a Roth IRA pursuant to § 125 of the Worker, Retiree, and Employer Recovery Act of 2008, P.L. 110–

458 (“WRERA”), could transfer up to 90 percent of such amounts to a traditional IRA if the transfer was made within 180 days of enactment of the FAA Act. Similarly, any amounts so transferred from an employee’s Roth IRA to a traditional IRA could be excluded from the employee’s gross income for the year the airline payment amount was received from the airline. To accommodate employees wanting to exclude airline payment amounts from gross income for past years, § 1106(a)(3) of the FAA Act extended the limitation period for filing an amended return to reflect such exclusion to April 15, 2013.

Section 125(b)(3) of WRERA provided that a commercial passenger airline making one or more airline payment amounts must report such payments to the IRS and to the qualified airline employees within 90 days of the payment or, if later, within 90 days of enactment of WRERA. Form 8935, *Airline Payments Report*, was used for this purpose.

P.L. 113–243 amended the definition of “airline payment amount” in the FAA Act to include a payment made under the authority of a Federal bankruptcy court in a case filed on November 29, 2011. It also amended the definition of “qualified airline employee” in the FAA Act to include

an employee or former employee of a commercial passenger airline who was a participant in a defined benefit plan maintained by the airline, which plan was frozen effective November 1, 2012. Finally, P.L. 113–243 extended to April 15, 2015, the time for filing an amended return by a qualified airline employee who wants to exclude from gross income amounts rolled into a traditional IRA under § 1106(a)(1) or (2) of the FAA Act. P.L. 113–243 did not modify the provision of the FAA Act that specifies that rollover treatment is only available to amounts rolled over within 180 days of receipt, or if later, within 180 days of enactment of the FAA Act.

Thus, pursuant to the FAA Act as amended by P.L. 113–243, a qualified airline employee (as now defined) can roll over into a traditional IRA up to 90 percent of the aggregate airline payment amounts received, provided that the rollover of any airline payment amount is completed within 180 days of receipt of the amount.

Because P.L. 113–243 did not amend the definition of “airline payment amount” in WRERA, the reporting requirements contained in § 125(b)(3) of WRERA do

not apply to the additional airline payment amounts added by P.L. 113–243.

#### REPORTING

Qualified airline employees who received airline payment amounts should include the full amount on Form 1040 for the year of receipt. Up to 90 percent of the aggregate airline payment amounts may be excluded from income if rolled over to a traditional IRA within 180 days of receipt. To exclude these amounts for 2014, a qualified airline employee must file a paper Form 1040 and include the amount rolled over on line 21 of Form 1040 as a negative amount and write “airline payment” on the dotted line next to line 21. For example, if a qualified airline employee received a Form W–2 with airline payment amounts reported in box 1, the employee should include the full amount on line 7 of Form 1040. If the qualified airline employee rolled over those airline payment amounts to a traditional IRA (subject to the 90-percent limitation) within 180 days of receipt, the employee should report the rollover amount on line 21 as a negative number and write “airline payment” on the dotted line next to line 21. Future guidance will provide any changes to these filing and reporting instructions for tax years after 2014.

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
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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<sup>1</sup>A 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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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2014–27 through 2014–52 is in Internal Revenue Bulletin 2014–52, dated December 28, 2014.

# **Internal Revenue Service**

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