

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2015-26**  
**June 29, 2015**

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

## INCOME TAX

### **REG-101652-10, page 1197.**

These amendments would revise the rules concerning the use of a consolidated group's losses attributable to a subsidiary in a consolidated return year in which stock of that subsidiary is disposed of.

### **REG-138759-14, page 1209.**

Proposed regulations that would allow consolidated group members that are partners in the same partnership to aggregate their bases in stock distributed by the partnership for the purpose of limiting the application of rules that might otherwise cause basis reduction or gain recognition. The proposed regulations would also require certain corporations that engage in gain elimination transactions to reduce the basis of corporate assets or to recognize gain.

### **REG-149518-03, page 1213.**

Proposed regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. These regulations apply when a corporate partner acquires or increases its interest in its own stock held by a partnership in exchange for appreciated property, and also addresses partnership distributions of corporate partner stock to the corporate partner.

### **Rev. Rul. 2015-12, page 1080.**

Interest rates: underpayment and overpayments. The rates for interest determined under section 6621 of the code for the calendar quarter beginning July 1, 2015, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for the underpayments, and 5 percent for large corporation underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding \$10,000 will be 0.5 percent.

### **Rev. Proc. 2015-35, page 1142.**

This procedure provides specifications for the private printing of red-ink substitutes for the 2015 revisions of certain information returns. This procedure will be reproduced as the next revision of Publication 1179. Rev. Proc. 2014-44 is superseded.

### **Notice 2015-44, page 1140.**

2015 Section 45Q Inflation Adjustment Factor. This notice publishes the inflation adjustment factor for the carbon dioxide (CO<sub>2</sub>) sequestration credit under § 45Q for calendar year 2015. The notice also includes a statement of the amount of qualified CO<sub>2</sub> that has been taken into account for purposes of the § 45Q credit by taxpayers filing an annual report pursuant to section 6 of Notice 2009-83, 2009-2 C.B. 588.

### **Notice 2015-45, page 1140.**

2014 Section 45K(d)(2)(C) Reference Price. This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year 2014. The reference price applies in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit under § 45l, and the percentage depletion in case of oil and natural gas produced from marginal properties under § 613A.

### **T.D. 9722, page 1094.**

Final and temporary regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. These regulations apply when a corporate partner acquires or increases its interest in its own stock held by a partnership in exchange for appreciated property, and also addresses partnership distributions of corporate partner stock to the corporate partner.

**(Continued on the next page)**

## EMPLOYEE PLANS

### **Notice 2015–42, page 1137.**

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for June 2015 used under § 417(e)(3)(D), the 24-month average segment rates applicable for June 2015, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

### **T.D. 9724, page 1105.**

This document contains final regulations regarding disclosure of the summary of benefits and coverage and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act. These final rules amend the 2012 final regulations to incorporate guidance, concerning document requirements and safe harbors, that was issued by the Departments of Labor, HHS and IRS/Treasury subsequent to the publication of the 2012 final regulations.

## ESTATE TAX

### **Rev. Proc. 2015–37, page 1196.**

Revenue Procedure 2015–37 amplifies section 5.01 of Revenue Procedure 2015–3 and provides that, until the Service resolves the issue through publication of a revenue ruling, revenue procedure, regulations, or otherwise, the Service will not issue rulings to taxpayers concerning whether the assets in a grantor trust receive a § 1014 basis step-up at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

### **T.D. 9725, page 1122.**

These final regulations provide rules for determining the applicable credit amount and applicable exclusion amount allowed to the estate of a decedent against the gift or estate tax. In addition, these final regulations provide rules for electing portability of a deceased spousal unused exclusion amount to the surviving spouse and rules regarding the surviving spouse's use of this amount. Portability of a deceased spousal unused exclusion amount is available where the death of the first spouse to die occurs on or after January 1, 2011.

## GIFT TAX

### **T.D. 9725, page 1094.**

These final regulations provide rules for determining the applicable credit amount and applicable exclusion amount allowed to the estate of a decedent against the gift or estate tax. In addition, these final regulations provide rules for electing portability of a deceased spousal unused exclusion amount to the surviving spouse and rules regarding the surviving spouse's use of this amount. Portability of a deceased spousal unused exclusion amount is available where the death of the first spouse to die occurs on or after January 1, 2011.

## EXCISE TAX

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## ADMINISTRATIVE

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# 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.

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

## Section 6621.— Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

### Rev. Rul. 2015-12

#### ISSUE

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.”

See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section

301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during April 2015 is the rate published in Revenue Ruling 2015-8, 2015-18 IRB 945 to take effect beginning May 1, 2015. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of April 2015 is 0 percent. Accordingly, an overpayment rate of 3 percent (2 percent

in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning July 1, 2015. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning July 1, 2015 is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning July 1, 2015, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 3 percent rate also applies to estimated tax underpayments for the third calendar quarter in 2015.

Interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent and 5 percent are published in Tables 9, 11, and 15 of Rev. Proc. 95-17, 1995-1 C.B. 563, 565, and 569.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 317-3400 (not a toll-free number).

#### APPENDIX A

365 Day Year					
			0.5% Compound Rate 184 Days		
Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396

365 Day Year  
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957

366 Day Year  
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559

TABLE OF INTEREST RATES  
PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986  
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES  
FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623

TABLE OF INTEREST RATES  
FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PAGE
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	3%	11	565

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PAGE
Jan. 1, 2012—Mar. 31, 2012	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	3%	11	565
Apr. 1, 2015—Jun. 30, 2015	3%	11	565
Jul. 1, 2015—Sep. 30, 2015	3%	11	565

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	2%	9	563	3%	11	565

TABLE OF INTEREST RATES  
FROM JANUARY 1, 1999 — PRESENT  
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 2014—Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015—Jun. 30, 2015	2%	9	563	3%	11	565
Jul. 1, 2015—Sep. 30, 2015	2%	9	563	3%	11	565

TABLE OF INTEREST RATES FOR  
LARGE CORPORATE UNDERPAYMENTS  
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581

TABLE OF INTEREST RATES FOR  
LARGE CORPORATE UNDERPAYMENTS  
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 31, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623

TABLE OF INTEREST RATES FOR  
LARGE CORPORATE UNDERPAYMENTS  
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569
Apr. 1, 2011—Jun. 30, 2011	6%	17	571
Jul. 1, 2011—Sep. 30, 2011	6%	17	571
Oct. 1, 2011—Dec. 31, 2011	5%	15	569
Jan. 1, 2012—Mar. 31, 2012	5%	63	617
Apr. 1, 2012—Jun. 30, 2012	5%	63	617
Jul. 1, 2012—Sep. 30, 2012	5%	63	617
Oct. 1, 2012—Dec. 31, 2012	5%	63	617
Jan. 1, 2013—Mar. 31, 2013	5%	15	569
Apr. 1, 2013—Jun. 30, 2013	5%	15	569
Jul. 1, 2013—Sep. 30, 2013	5%	15	569
Oct. 1, 2013—Dec. 31, 2013	5%	15	569
Jan. 1, 2014—Mar. 31, 2014	5%	15	569
Apr. 1, 2014—Jun. 30, 2014	5%	15	569
Jul. 1, 2014—Sep. 30, 2014	5%	15	569
Oct. 1, 2014—Dec. 31, 2014	5%	15	569
Jan. 1, 2015—Mar. 31, 2015	5%	15	569
Apr. 1, 2015—Jun. 30, 2015	5%	15	569
Jul. 1, 2015—Sep. 30, 2015	5%	15	569

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000  
FROM JANUARY 1, 1995 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000  
FROM JANUARY 1, 1995 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570

TABLE OF INTEREST RATES FOR CORPORATE  
OVERPAYMENTS EXCEEDING \$10,000  
FROM JANUARY 1, 1995 — PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		
Apr. 1, 2011—Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—Dec. 31, 2011	0.5%*		
Jan. 1, 2012—Mar. 31, 2012	0.5%*		
Apr. 1, 2012—Jun. 30, 2012	0.5%*		
Jul. 1, 2012—Sep. 30, 2012	0.5%*		
Oct. 1, 2012—Dec. 31, 2012	0.5%*		
Jan. 1, 2013—Mar. 31, 2013	0.5%*		
Apr. 1, 2013—Jun. 30, 2013	0.5%*		
Jul. 1, 2013—Sep. 30, 2013	0.5%*		
Oct. 1, 2013—Dec. 31, 2013	0.5%*		
Jan. 1, 2014—Mar. 31, 2014	0.5%*		
Apr. 1, 2014—Jun. 30, 2014	0.5%*		
Jul. 1, 2014—Sep. 30, 2014	0.5%*		
Oct. 1, 2014—Dec. 31, 2014	0.5%*		
Jan. 1, 2015—Mar. 31, 2015	0.5%*		
Apr. 1, 2015—Jun. 30, 2015	0.5%*		
Jul. 1, 2015—Sep. 30, 2015	0.5%*		

\* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling.

## Section 337.—Effects on Corporation

§ 1.337(d)–3T Gain recognition upon certain partnership transactions involving a partner's stock (temporary).

### TD 9722

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

#### Partnership Transactions Involving Equity Interests of a Partner

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. These regulations affect partnerships and their partners. The text of these temporary regulations serves as the text of proposed regulations (REG–149518–03) published in the Proposed Rules section in this issue of the **Bulletin**.

**DATES:** *Effective Date:* These regulations are effective on June 12, 2015.

*Applicability Date:* For dates of applicability, see §§ 1.337(d)–3T(i) and 1.732–1T(c)(5).

#### FOR FURTHER INFORMATION

**CONTACT:** Concerning the final and temporary regulations, Kevin I. Babitz, (202) 317-6852 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *The General Utilities Doctrine and Its Repeal*

In *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935), the Supreme Court held that corporations generally could distribute appreciated property to their shareholders without the recognition of any corporate level gain (the *General Utilities* doctrine). Beginning in

1969, Congress enacted a series of exceptions to the *General Utilities* doctrine, starting with certain non-liquidating distributions of depreciable property. In the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324, Congress enacted current section 311(b) (originally designated as section 311(d)), which required a corporation to recognize gain on appreciated property distributed to a shareholder in redemption of shares. In 1984, Congress enacted legislation that required gain recognition for all non-liquidating distributions. Finally, as part of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, (the Act), Congress repealed what remained of the *General Utilities* doctrine by enacting section 336(a) of the Internal Revenue Code (Code) to apply gain and loss recognition to liquidating distributions. Under current law, sections 311(b) and 336(a) of the Code require a corporation that distributes appreciated property to its shareholders to recognize gain determined as if the property were sold to the shareholders for its fair market value. Additionally, section 631 of the Act added section 337(d) to the Code to permit the Secretary to prescribe regulations that are necessary or appropriate to carry out the purposes of the *General Utilities* repeal, “including regulations to ensure that [the repeal of the *General Utilities* doctrine] may not be circumvented through the use of any provision of law or regulations.”

##### *1992 Proposed Regulations*

After the enactment of sections 311(b) and 337(d), the Treasury Department and the IRS became aware of transactions in which taxpayers used a partnership to postpone or avoid completely gain generally required to be recognized under section 311(b). In one example of this transaction, a corporation entered into a partnership and contributed appreciated property. The partnership then acquired stock of that corporate partner, and later made a liquidating distribution of this stock to the corporate partner. Under section 731(a), the corporate partner did not recognize gain on the partnership's distribution of its stock. By means of this transaction, the corporation had disposed of the appreciated property it formerly held and

had acquired its own stock, permanently avoiding its gain in the appreciated property. If the corporation had directly exchanged the appreciated property for its own stock, section 311(b) would have required the corporation to recognize gain upon the exchange.

In response to this type of transaction, the Treasury Department and the IRS issued Notice 89–37, 1989–1 CB 679, on March 9, 1989. Notice 89–37 announced that future regulations under section 337(d) would address the use of partnerships to avoid the repeal of the *General Utilities* doctrine. Specifically, the Treasury Department and the IRS determined that, in certain circumstances, the acquisition (or ownership) by a partnership of stock in one of its corporate partners (or stock of any member of the affiliated group of which the partner is a member) results in avoidance of the repeal of the *General Utilities* doctrine. Such avoidance occurs to the extent that a corporate partner, in substance, relinquishes an interest in appreciated property in exchange for an interest in its stock (or the stock of an affiliate). The Notice provided that section 311(b), rather than section 731(a), would apply when a partner received a distribution of its own stock, and that the partner would recognize gain whenever a pre-distribution transaction has the economic effect of an exchange of appreciated property for the partner's own stock.

On December 15, 1992, the Treasury Department and the IRS published a notice of proposed rulemaking under section 337(d) (PS–91–90, REG–208989–90, 1993–1 CB 919) in the **Federal Register** (57 FR 59324) addressing partnership transactions involving stock of a partner (the 1992 proposed regulations). The 1992 proposed regulations adopted two rules to protect the repeal of the *General Utilities* doctrine: the deemed redemption rule (the 1992 deemed redemption rule) and the distribution rule (the 1992 distribution rule). The 1992 proposed regulations also provided de minimis and inadvertence exceptions to these two rules.

The 1992 deemed redemption rule addressed pre-distribution transactions involving corporate partner stock owned or acquired by the partnership. The Treasury Department and the IRS believed that certain of these transactions created the eco-

economic effect of an exchange of appreciated property for corporate partner stock. The 1992 deemed redemption rule provided that a corporate partner recognizes gain at the time of, and to the extent that, any transaction (or series of transactions) has the economic effect of an exchange by the partner of its interest in appreciated property for an interest in its stock (or the stock of any member of the affiliated group of which such partner is a member) owned, acquired, or distributed by the partnership.

The 1992 distribution rule provided that a partnership's distribution to a partner of the partner's stock is treated as a redemption or an exchange of the stock of the partner for a portion of the partner's partnership interest with a value equal to the distributed stock. Thus, the 1992 distribution rule applied section 311(b) principles to the distribution to trigger gain to the corporate partner, rather than applying section 731, which would not have required gain recognition. The 1992 distribution rule ensured that section 311(b) would apply to any acquisition by the corporate partner of its own stock where the 1992 deemed redemption rule had not applied. The preamble to the 1992 proposed regulations indicated that commenters on the Notice raised concerns that the 1992 distribution rule could duplicate gain recognition and suggested a modified approach. However, the 1992 proposed regulations rejected the modified approach as overly complex.

As noted previously, the 1992 proposed regulations applied to stock of a partner, to stock of a partner's affiliate, and to other equity interests in the partner or affiliate. The 1992 proposed regulations used a modified affiliation standard to determine whether a partner and another corporation were affiliates. The 1992 proposed regulations treated a corporation as an affiliate of a partner at the time of a deemed redemption or distribution by the partnership if, immediately thereafter, the partner and corporation were members of an affiliated group as defined in section 1504(a) without regard to section 1504(b) (section 337(d) affiliation). On January 19, 1993, the Treasury Department and the IRS issued Notice 93-2, 1993-1 CB 292, which stated that the 1992 proposed regulations would be amended to limit the

application of the regulations to transactions in which section 337(d) affiliation existed immediately before the deemed redemption or distribution. The Treasury Department and the IRS indicated that further study was required for cases in which section 337(d) affiliation did not exist prior to a distribution of stock by a partnership to a corporate partner, but resulted from the distribution.

The Treasury Department and the IRS received several written comments in response to Notice 89-37, the 1992 proposed regulations, and Notice 93-2. Commenters largely supported the 1992 deemed redemption rule, though some suggested modifications. Some commenters, however, opposed the 1992 distribution rule, asserting that the rule is overly broad and inconsistent with the deemed redemption rule. These comments are discussed in detail in the Explanation of Provisions section of this preamble.

After considering these comment letters, and taking into account subsequent changes in relevant law as described in part 1 of this preamble, the Treasury Department and the IRS are withdrawing the 1992 proposed regulations and simultaneously issuing temporary and final regulations that also serve as the text of new proposed regulations published in the Proposed Rules section of this issue of the **Bulletin**.

### **Explanation of Provisions**

The purpose of these regulations authorized under section 337(d) is to prevent corporate taxpayers from using a partnership to circumvent gain required to be recognized under section 311(b) or section 336(a). These regulations, including the rules governing the amount and timing of recognized gain, must be applied in a manner consistent with, and which reasonably carries out, this purpose.

These regulations apply when a partnership, either directly or indirectly, owns, acquires, or distributes Stock of the Corporate Partner (as defined in part 1 of this preamble). Under these regulations, a Corporate Partner (as defined in part 1 of this preamble) may recognize gain when it is treated as acquiring or increasing its interest in Stock of the Corporate Partner held by a partnership in exchange for appreciated property in a manner that avoids

gain recognition under section 311(b) or section 336(a). The regulations also provide exceptions under which a Corporate Partner is not required to recognize gain.

These regulations retain the 1992 deemed redemption rule with the modifications described in part 2 of this preamble. However, these regulations remove the 1992 distribution rule in response to comments. In its place, these regulations apply the deemed redemption rule to partnership distributions of Stock of the Corporate Partner to the Corporate Partner as though the partnership amended its agreement, immediately before the distribution, to allocate 100 percent of the distributed stock to the Corporate Partner.

### *1. Scope and Definitions*

These regulations apply to certain partnerships that hold stock of a Corporate Partner. For this purpose, a "Corporate Partner" is defined as a person that holds or acquires an interest in a partnership and that is classified as a corporation for federal income tax purposes. The regulations define "Stock of the Corporate Partner" expansively to include the Corporate Partner's stock, or other equity interests, including options, warrants, and similar interests, in the Corporate Partner or a corporation that controls the Corporate Partner within the meaning of section 304(c), except that section 318(a)(1) and (3) shall not apply (section 304(c) control). Stock of the Corporate Partner also includes interests in any entity to the extent that the value of the interest is attributable to Stock of the Corporate Partner.

These definitions of Corporate Partner and Stock of the Corporate Partner are consistent with those set forth in the 1992 proposed regulations except for two changes. First, these regulations modify the definition of Stock of the Corporate Partner. Based on changes in the law and comments received, the Treasury Department and the IRS have determined that the scope of the definition of "Stock of a Partner" in the 1992 proposed regulations was too narrow in certain instances and too broad in others. These regulations broaden the definition of Stock of a Corporate Partner to include stock or other equity interests of any corporation that possesses section 304(c) control of the

Corporate Partner, whereas the 1992 proposed regulations' definition was limited to stock or other equity interests issued by the Corporate Partner and its section 337(d) affiliates. Section 304(c) control generally exists when there is ownership of stock of a corporation possessing at least 50 percent of the total combined voting power of all classes of the corporation's stock that is entitled to vote or at least 50 percent of the value of the shares of all classes of stock of the corporation, while control of a corporation under section 1504(a)(2) requires ownership of stock of the corporation possessing at least 80 percent of the total voting power of the stock of the corporation and at least 80 percent of the total value of the stock of the corporation. The Treasury Department and the IRS believe the lower threshold for control set forth in section 304(c) is the more appropriate standard for this purpose because *General Utilities* repeal could be avoided by acquiring stock of a corporation that owns less than 80 percent of the vote and value of the Corporate Partner's stock. In addition, these regulations narrow the definition of Stock of a Corporate Partner to exclude stock of any corporation that does not possess section 304(c) control of the Corporate Partner, even if the corporation is a section 337(d) affiliate or a member of the same consolidated group as the Corporate Partner. The enactment of sections 732(f) and 755(c) subsequent to the issuance of the 1992 proposed regulations generally have served to prevent abusive transactions involving partnerships that own stock of lower tier section 337(d) affiliates of the Corporate Partner. Accordingly, these regulations do not apply to a partnership that owns, acquires, or distributes stock of any section 337(d) affiliate of the Corporate Partner unless that affiliate possesses section 304(c) control of the Corporate Partner. The Treasury Department and the IRS continue to study the application of these provisions and plan to issue additional guidance as needed to address further abuses in this area. Comments are requested regarding such guidance.

Second, these regulations add an exception for certain related-party partners. Under this exception, Stock of the Corporate Partner does not include any stock or

other equity interest held or acquired by a partnership if all interests in the partnership's capital and profits are held by members of an affiliated group defined in section 1504(a) that includes the Corporate Partner. Thus, these regulations do not apply if, for example, a domestic corporation and its wholly owned domestic subsidiary (each of which is an includible corporation under section 1504(b)) are the only partners in a partnership and either corporation contributes stock of another affiliate. The Treasury Department and the IRS have determined that this additional exception is appropriate because the purpose of these regulations is not implicated if a partnership is owned entirely by affiliated corporations. The Treasury Department and the IRS invite comments on whether this exception should be extended, for example, to partnerships owned by controlled foreign corporations that are owned entirely by a single affiliated group.

For partnerships that hold Stock of the Corporate Partner, these regulations apply to a transaction (or series of transactions) that is a "Section 337(d) Transaction." These regulations define a Section 337(d) Transaction as a transaction that has the effect of an exchange by a Corporate Partner of its interest in appreciated property for an interest in Stock of the Corporate Partner owned, acquired, or distributed by a partnership. For example, a Section 337(d) Transaction may occur if: (i) a Corporate Partner contributes appreciated property to a partnership that owns Stock of the Corporate Partner; (ii) a partnership acquires Stock of the Corporate Partner; (iii) a partnership that owns Stock of the Corporate Partner distributes appreciated property to a partner other than the Corporate Partner; (iv) a partnership distributes stock of the Corporate Partner to the Corporate Partner; or (v) a partnership agreement is amended in a manner that increases a Corporate Partner's interest in the Stock of the Corporate Partner (including in connection with a contribution to, or distribution from, a partnership).

If a partnership engages in a Section 337(d) Transaction, the Corporate Partner must recognize gain. The regulations define a "Gain Percentage" that the partnership uses to quantify the amount of gain recognized. The computation of the Gain

Percentage is set forth in part 2 of this preamble.

## 2. Deemed Redemption Rule

These regulations largely retain the 1992 deemed redemption rule. If a transaction is a Section 337(d) Transaction described in part 1 of this preamble, a Corporate Partner must recognize gain under the deemed redemption rule. To determine the amount of gain, the Corporate Partner must first determine the amount of appreciated property (other than Stock of the Corporate Partner) effectively exchanged for Stock of the Corporate Partner (by value) and then calculate the amount of taxable gain recognized.

These regulations set forth general principles that apply in determining the amount of appreciated property effectively exchanged for Stock of the Corporate Partner. These general principles require that the Corporate Partner's economic interest with respect to both Stock of the Corporate Partner and all other appreciated property of the partnership be determined based on all facts and circumstances, including the allocation and distribution rights set forth in the partnership agreement. The deemed redemption rule applies only to the extent that the transaction has the effect of an exchange by the Corporate Partner of its interest in appreciated property for Stock of the Corporate Partner. Thus, these regulations do not apply to the extent a transaction has the effect of an exchange by a Corporate Partner of non-appreciated property for Stock of the Corporate Partner or has the effect of an exchange by a Corporate Partner of appreciated property for property other than Stock of the Corporate Partner.

A Corporate Partner must recognize gain under these regulations even if the Section 337(d) Transaction would not otherwise change the Corporate Partner's allocable share of gain under section 704(c). For example, if a Corporate Partner contributes appreciated property to a newly-formed partnership and an individual contributes cash that the partnership subsequently uses to purchase Stock of the Corporate Partner, then the purchase of the stock is a Section 337(d) Transaction even though the Corporate Partner's allocable share of gain in the appreciated property under

section 704(c) is the same before and after the purchase. The Treasury Department and the IRS believe that this gain recognition is appropriate because a Section 337(d) Transaction may create an immediate benefit to the Corporate Partner equivalent to the benefit associated with the redemption of corporate stock in exchange for appreciated property. *See Example 4* of § 1.337(d)-3T(h) in these regulations.

If the Corporate Partner has an existing interest in the partnership's Stock of the Corporate Partner prior to the Section 337(d) Transaction, the deemed redemption rule applies only with respect to the Corporate Partner's incremental increase in the Stock of the Corporate Partner. For example, changing allocations to increase a Corporate Partner's interest in the Stock of the Corporate Partner from 50 percent to 80 percent and to decrease the Corporate Partner's interest in other appreciated property from 80 percent to 50 percent would have the effect of an exchange by the Corporate Partner of the 30-percent incremental decrease in its interest in the appreciated property for the 30-percent incremental increase in the Stock of the Corporate Partner. *See Example 5* of § 1.337(d)-3T(h) in these regulations.

For purposes of recognizing gain under the deemed redemption rule, the Corporate Partner's interest in an identified share of Stock of the Corporate Partner will never be less than the Corporate Partner's largest interest (by value) in that share of Stock of the Corporate Partner that was taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). *See Example 6* of § 1.337(d)-3T(h) in these regulations. This rule ensures that alternating increases and decreases in a Corporate Partner's interest in Stock of the Corporate Partner do not cause duplicate gain recognition. This limitation does not apply if any reduction in the Corporate Partner's interest in the identified share of Stock of the Corporate Partner occurred as part of a plan or arrangement to circumvent the purpose of these regulations. *See Example 7* of § 1.337(d)-3T(h) in these regulations.

In certain limited circumstances, a partnership's acquisition of Stock of the Corporate Partner does not have the effect of an exchange of appreciated property for that stock. For example, as one commenter asserted, if a partnership with an operating business uses the cash generated in that business to purchase Stock of the Corporate Partner, the deemed redemption rule should not apply to the stock purchase because the Corporate Partner's share in appreciated property has not been reduced, and thus no exchange has occurred. The Treasury Department and the IRS acknowledge that such stock acquisitions would not contravene the purposes of these regulations. Accordingly, these regulations adopt this comment and do not apply to stock purchases or other transactions that do not have the effect of an exchange of appreciated property for Stock of the Corporate Partner.

If a transaction is a Section 337(d) Transaction, the deemed redemption rule requires the Corporate Partner to recognize a percentage of its total gain in partnership appreciated property equal to a fraction, the numerator of which is the Corporate Partner's interest (by value) in appreciated property effectively exchanged for Stock of the Corporate Partner under the deemed redemption rule, and the denominator of which is the Corporate Partner's interest (by value) in appreciated property immediately before the Section 337(d) Transaction. This fraction is defined in these regulations as the "Gain Percentage." The Corporate Partner's gain under the deemed redemption rule equals the product of (i) the Corporate Partner's Gain Percentage and (ii) the gain from the appreciated property that is the subject of the exchange that the that the Corporate Partner would recognize if, immediately before the Section 337(d) Transaction, all assets of the partnership and any assets contributed to the partnership in the section 337(d) Transaction were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)), reduced, but not below zero, by any gain the Corporate Partner is required to recognize with respect to the appreciated property in the Section 337(d) Transaction under any other section of the Code. For example, if a Corporate Partner

would be allocated \$100x of tax gain on a sale of appreciated partnership property (other than Stock of the Corporate Partner) and the Corporate Partner's interest in that appreciated partnership property (determined under all facts and circumstances) is \$500x, and if the partnership engages in a Section 337(d) Transaction that reduces the Corporate Partner's interest in appreciated partnership property by \$200x and increases the Corporate Partner's interest in Stock of the Corporate Partner by \$200x, then the Corporate Partner's Gain Percentage equals 40% ( $200x/500x$ ), and the Corporate Partner's gain under the deemed redemption rule is \$40x (40% of \$100x).

The gain from the hypothetical sale used to compute gain under the deemed redemption rule is determined by applying the principles of section 704(c), which generally requires the partnership to take into account variations between the adjusted tax basis and fair market value of partnership property at the time it is contributed to the partnership and upon certain other events that allow or require the value of partnership property to be redetermined under § 1.704-1(b)(2)(iv)(f). *See Examples 3* and *5* of § 1.337(d)-3T(h) in these regulations. A partner's share of gain under section 704(c) for this purpose includes any remedial allocations under § 1.704-3(d) for a partnership that has elected under section 704(c) to report notional items of offsetting tax gain and loss to its partners to eliminate distortions that may arise when the partnership's total tax gain or loss on the sale of partnership property is less than all partners' aggregate share of gain or loss from the property.

These regulations also contain two rules related to the effect of the deemed redemption rule on partner and partnership basis. First, these regulations require the Corporate Partner to increase its basis in its partnership interest by an amount equal to the gain that the Corporate Partner recognizes in a Section 337(d) Transaction. This basis increase is necessary to prevent the Corporate Partner from recognizing gain a second time when the partnership liquidates (or, if property is distributed to the Corporate Partner, when that property is sold).

Second, the regulations require the partnership to increase its adjusted tax basis in the appreciated property that is treated as the subject of a Section 337(d) Transaction by the amount of gain that the Corporate Partner recognized with respect to that property as a result of the Section 337(d) Transaction. This basis increase applies regardless of whether the partnership has elected under section 754 to adjust the basis of partnership property. This rule prevents the Corporate Partner from recognizing gain a second time when the partnership sells the property that was effectively exchanged under the deemed redemption rule.

One commenter suggested that when a partnership owns or acquires stock in a Corporate Partner's subsidiary or a sister of the Corporate Partner and the stock is not issued as part of the transaction, the deemed redemption rule should not apply unless and until a subsequent transaction relating to the stock creates tax consequences that are inconsistent with *General Utilities* repeal. As discussed in part 1 of this preamble, these regulations only apply to Stock of a Corporate Partner, which under these regulations, does not include stock in a Corporate Partner's sister corporation or subsidiary unless such corporation possesses section 304(c) control of the Corporate Partner. Such control could exist, if, for example, a Corporate Partner's subsidiary were to own so-called "hook stock" in the Corporate Partner. If such control of the Corporate Partner does exist, then it is appropriate to treat stock of a Corporate Partner's subsidiary or sister corporation as Stock of the Corporate Partner because the value of that sister or subsidiary corporation's stock owned or acquired by the partnership is in part attributable to the Corporate Partner's stock.

Another commenter suggested that the deemed redemption rule is no longer necessary. The commenter explained that the acquisition of Stock of the Corporate Partner is not the appropriate time to impose tax and that the 1992 distribution rule and changes in the law since 1989 make it more difficult to exit a partnership tax-free. The Treasury Department and the IRS do not adopt this comment because a Section 337(d) Transaction may create an immediate benefit to the Corporate Partner equivalent to the benefit associated

with the redemption of corporate stock in exchange for appreciated property. If the deemed redemption rule does not apply at the time of this exchange, the Corporate Partner can defer paying tax on this economic benefit in a manner that is inconsistent with section 311(b).

### 3. Partnership Distributions of Stock of the Corporate Partner

The 1992 distribution rule required a Corporate Partner to recognize gain when the partnership distributes Stock of the Corporate Partner to the Corporate Partner. Commenters noted a number of concerns with this rule and recommended eliminating it.

Several commenters noted that the rule was overly broad because it could cause the Corporate Partner to recognize gain in an amount that exceeded the appreciation in property effectively exchanged for the stock. For example, the rule could require a Corporate Partner to recognize gain upon a partnership's distribution of appreciated Stock of the Corporate Partner even though the partnership held no other appreciated property. One commenter stated that the 1992 distribution rule would therefore require the Corporate Partner to recognize gain on appreciation inherent in its partnership interest, even though the distribution does not implicate the repeal of the *General Utilities* doctrine and even though section 1032 provides for nonrecognition of gain on the distribution. The commenter maintained that the 1992 distribution rule should not apply when a Corporate Partner merely exchanges an indirect interest in its own stock for a direct interest in its own stock.

The Treasury Department and the IRS agree with these comments and adopt new rules governing the tax consequences of a distribution of Stock of the Corporate Partner to that Corporate Partner. Instead of adopting the 1992 distribution rule, these regulations extend the deemed redemption rule to certain distributions to the Corporate Partner of Stock of the Corporate Partner. These new rules governing distributions apply only if the distributed stock has previously been the subject of a Section 337(d) Transaction or becomes the subject of a Section 337(d) Transaction as a result of the distribution (a sec-

tion 337(d) distribution). Additionally, these regulations do not apply to a distribution to the Corporate Partner of the Stock of the Corporate Partner to which section 732(f) applies at the time of the distribution. If the deemed redemption rule applies to a distribution, these regulations deem the partnership to amend its agreement immediately before the distribution to allocate 100 percent of the distributed stock to the Corporate Partner and to allocate an appropriately reduced interest in other partnership property away from the Corporate Partner. This deemed allocation is solely for purposes of recognizing gain under these regulations, and no inference is intended with regard to the treatment of such allocations generally.

If a distribution is a section 337(d) distribution, then in addition to any gain recognized under the deemed redemption rule upon the distribution of Stock of the Corporate Partner to the Corporate Partner, these regulations also require the Corporate Partner to recognize gain to the extent that the partnership's basis in the distributed Stock of the Corporate Partner exceeds the Corporate Partner's basis in its partnership interest (as reduced by any cash distributed in the transaction) immediately before the distribution. Recognition of gain in this circumstance is necessary to prevent the Corporate Partner from shifting basis away from its own stock onto other property of the partnership. The regulations provide an exception to this additional gain recognition rule if the gain recognition or basis reduction rules of section 732(f) apply at the time of the distribution. Although this exception generally ensures that gain recognized as a result of these regulations will not be duplicated as a result of section 732(f), duplication may still result in certain circumstances. For example, if a Corporate Partner recognizes gain under section 337(d) on a partnership distribution and section 732(f) does not apply to the distribution because the section 732(f) control requirement is not satisfied at the time of the distribution, but the control requirement is subsequently satisfied triggering section 732(f), then the Corporate Partner could recognize gain under both provisions. The Treasury Department and the IRS invite comments on how the rules in these

regulations should be coordinated with section 732(f).

These regulations set forth two rules under sections 337 and 732 to coordinate the effects of the rule requiring gain recognition when the Stock of the Corporate Partner is stepped down on a section 337(d) distribution with existing rules for determining the basis of property upon partnership distributions. The first rule applies for purposes of determining the basis of property distributed to the Corporate Partner (other than the basis of the Corporate Partner in its own stock), the basis of the Corporate Partner's remaining partnership interest, and the partnership's basis in undistributed Stock of the Corporate Partner, and for purposes of computing gain on the distribution. For these purposes, the basis of Stock of the Corporate Partner distributed to the Corporate Partner equals the greater of: (i) the partnership's basis of that distributed Stock of the Corporate Partner immediately before the distribution, or (ii) the fair market value of that distributed Stock of the Corporate Partner immediately before the distribution less the Corporate Partner's allocable share of gain from all of the Stock of the Corporate Partner if the partnership sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately before the distribution. See *Examples 2 and 3* of § 1.337(d)-3T(h) in these regulations. This special rule is necessary to prevent basis from shifting away from distributed Stock of the Corporate Partner to other property. This basis shift could occur, for example, upon a distribution of less than all of the partnership's Stock of the Corporate Partner to the Corporate Partner. The Treasury Department and the IRS request comments on this rule, including comments on whether its objectives would be better achieved through guidance under section 732 providing that on a distribution of a partial interest in partnership property, the basis of the distributed property in the hands of the distributee partner is determined by taking the principles of section 704(c) into account.

A second rule applies when a Corporate Partner receives both Stock of the Corporate Partner and other property in a section 337(d) distribution. Under this

rule, the basis to be allocated to the properties distributed under section 732(a) or (b) is allocated first to the Stock of the Corporate Partner before taking into account the distribution of any other property (other than cash). Therefore, before taking into account the distribution of other property, the Corporate Partner will reduce its basis in its partnership interest by the Corporate Partner's basis in the distributed Stock of the Corporate Partner (but not below zero). The Corporate Partner will determine its basis in other distributed partnership property and in its remaining partnership interest after giving effect to this reduction. This rule, which governs the application of sections 732(a) and 732(b), is being promulgated pursuant to the specific statutory grant of authority in section 337(d)(1) to ensure that the purposes of the repeal of the *General Utilities* doctrine are not circumvented through the use of any provision of law or regulations.

When a Corporate Partner receives a partnership distribution of its own stock, it is unclear under existing law whether the Corporate Partner has basis in that stock. (See, for example, Rev. Rul. 2006-2, 2006-1 CB 261.) The resolution of this question is beyond the scope of these regulations. However, because the distribution to a Corporate Partner of its own stock affects the Corporate Partner's basis in other distributed property and any retained partnership interest, these regulations require the partnership and the Corporate Partner to determine the basis of other distributed property and any retained partnership interest by reference to the partnership's basis in the distributed Stock of the Corporate Partner. That is, the Corporate Partner determines its basis in other distributed property and in any retained partnership interest as though the distributed stock was stock other than Stock of the Corporate Partner. Similarly, the regulations compute any gain recognition on the distribution by comparing the Corporate Partner's basis in its partnership interest to the basis of that Stock of the Corporate Partner in the hands of the partnership (without regard to whether the Corporate Partner can have basis in the distributed stock). No inference is intended with respect to the question of

whether a corporation has or does not have basis in its own stock.

#### 4. *De Minimis and Inadvertence Exceptions*

These regulations retain the de minimis and inadvertence exceptions from the 1992 proposed regulations, but make small modifications to the de minimis rule to reduce burden. As set forth in these regulations, the de minimis rule provides that these regulations do not apply to a Corporate Partner if three conditions are satisfied. These conditions are tested upon the occurrence of a Section 337(d) Transaction and upon any subsequent revaluation event described in § 1.704-1(b)(2)(iv)(f).

The first condition requires that both the Corporate Partner and any persons related to the Corporate Partner under section 267(b) or section 707(b) own, in the aggregate, less than five percent of the partnership. The second condition requires that the partnership hold Stock of the Corporate Partner worth less than two percent of the value of the partnership's gross assets, including Stock of the Corporate Partner. The third condition requires that the partnership has never, at any point in time, held more than \$1,000,000 in Stock of the Corporate Partner or more than two percent of any particular class of Stock of the Corporate Partner. The 1992 proposed regulations contained similar conditions, but capped the permissible value of the partnership's Stock of the Corporate Partner at \$250,000.

These regulations provide a special rule that applies if the conditions of the de minimis rule are satisfied at the time of a Section 337(d) Transaction, but are not satisfied at the time of a subsequent Section 337(d) Transaction or revaluation event described in § 1.704-1(b)(2)(iv)(f). This rule provides that, solely for purposes of the deemed redemption rule, a Corporate Partner may determine its gain on the subsequent acquisition or revaluation event as if it had already recognized gain at the previous event. Accordingly, the Corporate Partner would only recognize gain with respect to appreciation arising between the earlier acquisition or revaluation event and the subsequent event. Neither the Corporate Partner nor the partnership increases its basis by the gain the

Corporate Partner would have recognized if the de minimis rule did not apply to the prior acquisition or revaluation event.

These regulations also contain an inadvertence exception. The inadvertence exception provides that these regulations do not apply to Section 337(d) Transactions in which the partnership satisfies two requirements. First, the partnership must dispose of, by sale or distribution, the Stock of the Corporate Partner before the due date (including extensions) of its federal income tax return for the taxable year in which the partnership acquired the stock (or in which the Corporate Partner joined the partnership, if applicable). Second, the partnership must not have distributed the Stock of the Corporate Partner to the Corporate Partner or a person possessing section 304(c) control of the Corporate Partner. Other than broadening and narrowing the scope of related distributees as a result of the modified definition of Stock of the Corporate Partner, this inadvertence exception is generally unchanged from the 1992 proposed regulations. However, the Treasury Department and the IRS will consider comments with respect to removing the prohibition against distributions of Stock of the Corporate Partner to the Corporate Partner in light of the enactment of section 737, which requires a partner to recognize gain on property with built-in gain contributed to a partnership when the partnership distributes other property to the partner within seven years of the contribution.

#### 5. Tiered Partnerships

The Treasury Department and the IRS are concerned that taxpayers could use tiered partnerships to circumvent these regulations. Therefore, these regulations require taxpayers to apply these regulations to tiered partnerships in a manner consistent with the regulations' purpose. See Example 8 of § 1.337(d)-3T(h) in these regulations.

#### Effective/Applicability Date

These regulations apply to transactions occurring on or after June 12, 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. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rule-making published in the Proposed Rules section in this issue of the **Bulletin**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal authors of these regulations are Joseph R. Worst and Kevin I. Babitz, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

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\* \* \* \* \*

#### Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART I—INCOME TAXES

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

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

Section 1.337(d)-3T also issued under 26 U.S.C. 337(d). \* \* \*

Par. 2. Section 1.337(d)-3T is added to read as follows:

*§ 1.337(d)-3T Gain recognition upon certain partnership transactions involving a partner's stock (temporary).*

(a) *Purpose.* The purpose of this section is to prevent corporate taxpayers from using a partnership to circumvent gain required to be recognized under section 311(b) or section 336(a). The rules of this section, including the determination of the amount of gain, must be applied in a man-

ner that is consistent with and that reasonably carries out this purpose.

(b) *In general.* This section applies when a partnership, either directly or indirectly, owns, acquires, or distributes Stock of the Corporate Partner (within the meaning of paragraph (c)(2) of this section). Under paragraphs (d) or (e) of this section, a Corporate Partner (within the meaning of paragraph (c)(1) of this section) is required to recognize gain when a transaction has the effect of the Corporate Partner acquiring or increasing an interest in its own stock in exchange for appreciated property in a manner that contravenes the purpose of this section as set forth in paragraph (a) of this section. Paragraph (f) of this section sets forth exceptions under which a Corporate Partner does not recognize gain.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Corporate Partner.* A Corporate Partner is a person that is classified as a corporation for federal income tax purposes and holds or acquires an interest in a partnership.

(2) *Stock of the Corporate Partner—(i) In general.* With respect to a Corporate Partner, Stock of the Corporate Partner includes the Corporate Partner's stock, or other equity interests, including options, warrants, and similar interests, in the Corporate Partner or a corporation that controls the Corporate Partner within the meaning of section 304(c), except that section 318(a)(1) and (3) shall not apply. Stock of the Corporate Partner also includes interests in any entity to the extent that the value of the interest is attributable to Stock of the Corporate Partner.

(ii) *Affiliated partner exception.* Stock of the Corporate Partner does not include any stock or other equity interests held or acquired by a partnership if all interests in the partnership's capital and profits are held by members of an affiliated group as defined in section 1504(a) that includes the Corporate Partner.

(3) *Section 337(d) Transaction.* A Section 337(d) Transaction is a transaction (or series of transactions) that has the effect of an exchange by a Corporate Partner of its interest in appreciated property for an interest in Stock of the Corporate Partner owned, acquired, or distributed by

a partnership. For example, a Section 337(d) Transaction may occur when—

(i) A Corporate Partner contributes appreciated property to a partnership that owns Stock of the Corporate Partner;

(ii) A partnership acquires Stock of the Corporate Partner;

(iii) A partnership that owns Stock of the Corporate Partner distributes appreciated property to a partner other than a Corporate Partner;

(iv) A partnership distributes Stock of the Corporate Partner to the Corporate Partner; or

(v) A partnership agreement is amended in a manner that increases a Corporate Partner's interest in Stock of the Corporate Partner (including in connection with a contribution to, or distribution from, a partnership).

(4) *Gain Percentage.* A Corporate Partner's Gain Percentage equals a fraction, the numerator of which is the Corporate Partner's interest (by value) in appreciated property effectively exchanged for Stock of the Corporate Partner under the test described in paragraphs (d)(1) and (2) of this section, and the denominator of which is the Corporate Partner's interest (by value) in that appreciated property immediately before the Section 337(d) Transaction. Paragraph (d) of this section requires a partnership to multiply the Gain Percentage by the Corporate Partner's aggregate gain in appreciated property to determine gain recognized under this section.

(d) *Deemed redemption rule—(1) In general.* A Corporate Partner in a partnership that engages in a Section 337(d) Transaction recognizes gain at the time, and to the extent, that the Corporate Partner's interest in appreciated property (other than Stock of the Corporate Partner) is reduced in exchange for an increased interest in Stock of the Corporate Partner, as determined under paragraph (d)(2) of this section. This section does not apply to the extent a transaction has the effect of an exchange by a Corporate Partner of non-appreciated property for Stock of the Corporate Partner or has the effect of an exchange by a Corporate Partner for property other than Stock of the Corporate Partner.

(2) *Corporate Partner's Interest in Partnership Property.* The Corporate

Partner's interest with respect to both Stock of the Corporate Partner and the appreciated property that is the subject of the exchange is determined based on all facts and circumstances, including the allocation and distribution rights set forth in the partnership agreement. The Corporate Partner's interest in an identified share of Stock of the Corporate Partner will never be less than the Corporate Partner's largest interest (by value) in that share of Stock of the Corporate Partner that was taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction with respect to such share (regardless of whether the Corporate Partner recognized gain in the earlier transaction). See *Example 6* of paragraph (h) of this section. However, this limitation will not apply if any reduction in the Corporate Partner's interest in the identified share of Stock of the Corporate Partner occurred as part of a plan or arrangement to circumvent the purpose of this section. See *Example 7* of paragraph (h) of this section.

(3) *Amount of gain recognized on the exchange.* The amount of gain the Corporate Partner recognizes under paragraph (d)(1) of this section equals the product of the Corporate Partner's Gain Percentage and the gain from the appreciated property that is the subject of the exchange that the Corporate Partner would recognize if, immediately before the Section 337(d) Transaction, all assets of the partnership and any assets contributed to the partnership in the Section 337(d) Transaction were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)), reduced, but not below zero, by any gain the Corporate Partner is required to recognize with respect to the appreciated property in the Section 337(d) Transaction under any other provision of this chapter. This gain is computed taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations under § 1.704-3(d).

(4) *Basis adjustments—(i) Corporate Partner's basis in the partnership interest.* The basis of the Corporate Partner's interest in the partnership is increased by the amount of gain that the Corporate Partner recognizes under this paragraph (d).

(ii) *Partnership's basis in partnership property.* The partnership's adjusted tax basis in the appreciated property that is treated as the subject of the exchange under this paragraph (d) is increased by the amount of gain recognized with respect to that property by the Corporate Partner as a result of that exchange, regardless of whether the partnership has an election in effect under section 754.

(e) *Distribution of Stock of the Corporate Partner—(1) In general.* This paragraph (e) applies to distributions to the Corporate Partner of Stock of the Corporate Partner to which section 732(f) does not apply and that have previously been the subject of a Section 337(d) Transaction or become the subject of a Section 337(d) Transaction as a result of the distribution. Upon the distribution of Stock of the Corporate Partner to the Corporate Partner, paragraph (d) of this section will apply as though immediately before the distribution the partners amended the partnership agreement to allocate to the Corporate Partner a 100 percent interest in that portion of the Stock of the Corporate Partner that is distributed and to allocate an appropriately reduced interest in other partnership property away from the Corporate Partner.

(2) *Basis rules—(i) Basis allocation on distributions of stock and other property.* If, as part of the same transaction, a partnership distributes Stock of the Corporate Partner and other property (other than cash) to the Corporate Partner, see § 1.732-1T(c)(1)(iii) for a rule allocating basis first to the Stock of the Corporate Partner before the distribution of the other property.

(ii) *Computation of Basis.* For purposes of determining the basis of property distributed to the Corporate Partner (other than the basis of the Corporate Partner in its own stock), the basis of the Corporate Partner's remaining partnership interest, and the partnership's basis in undistributed Stock of the Corporate Partner, and for purposes of computing gain under paragraph (e)(3) of this section, the partnership's basis of Stock of the Corporate Partner distributed to the Corporate Partner equals the greater of—

(A) The partnership's basis of that distributed Stock of the Corporate Partner immediately before the distribution, or

(B) The fair market value of that distributed Stock of the Corporate Partner immediately before the distribution less the Corporate Partner's allocable share of gain from all of the Stock of the Corporate Partner if the partnership sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately before the distribution.

(3) *Gain recognition.* The Corporate Partner will recognize gain on a distribution of Stock of the Corporate Partner to the Corporate Partner to the extent that the partnership's basis in the distributed Stock of the Corporate Partner (as determined under paragraph (e)(2)(ii) of this section) exceeds the Corporate Partner's basis in its partnership interest (as reduced by any cash distributed in the transaction) immediately before the distribution.

(f) *Exceptions—*(1) *De minimis rule—*(i) *In general.* This section does not apply to a Corporate Partner if at the time that the partnership acquires Stock of the Corporate Partner or at the time of a revaluation event as described in § 1.704-1(b)(2)(iv)(f) (without regard to whether or not the partnership revalues its assets) —

(A) The Corporate Partner and any persons related to the Corporate Partner under section 267(b) or section 707(b) own in the aggregate less than five percent of the partnership;

(B) The partnership holds Stock of the Corporate Partner with a value of less than two percent of the partnership's gross assets (including the Stock of the Corporate Partner); and

(C) The partnership has never, at any point in time, held in the aggregate—

(1) Stock of the Corporate Partner with a fair market value greater than \$1,000,000; or

(2) More than two percent of any particular class of Stock of the Corporate Partner.

(ii) *De minimis rule ceases to apply.* If a partnership satisfies the conditions of the de minimis rule of paragraph (f)(1) of this section upon an acquisition of Stock of the Corporate Partner or revaluation event as described in § 1.704-1(b)(2)(iv)(f), but later fails to satisfy the conditions of the de minimis rule upon a subsequent acquisition or revaluation event, then solely for

purposes of paragraph (d) of this section, the Corporate Partner may compute its gain on the subsequent acquisition or revaluation event as if it had already recognized gain at the previous event. Neither the Corporate Partner nor the partnership increases its basis by the gain the Corporate Partner would have recognized if the de minimis rule of paragraph (f)(1) of this section did not apply to the prior acquisition or revaluation event.

(2) *Inadvertence rule.* Unless acquired as part of a plan to circumvent the purpose of this section, this section does not apply to Stock of the Corporate Partner that —

(i) Is disposed of (by sale or distribution) by the partnership before the due date (including extensions) of its federal income tax return for the taxable year during which the Stock of the Corporate Partner is acquired (or for the taxable year in which the Corporate Partner becomes a partner, whichever is applicable); and

(ii) Is not distributed to the Corporate Partner or a corporation that controls the Corporate Partner within the meaning of section 304(c), except that section 318(a)(1) and (3) shall not apply.

(g) *Tiered partnerships.* The rules of this section shall apply to tiered partnerships in a manner that is consistent with the purpose set forth in paragraph (a) of this section.

(h) *Examples.* The following examples illustrate the principles of this section. All amounts in the following examples are reported in millions of dollars:

*Example 1. Deemed redemption rule – contribution of Stock of a Corporate Partner.* (i) In Year 1, X, a corporation, and A, an individual, form partnership AX as equal partners in all respects. X contributes Asset 1 with a fair market value of \$100 and a basis of \$20. A contributes X stock, which is Stock of the Corporate Partner, with a basis and fair market value of \$100.

(ii) Because A and X are equal partners in AX in all respects, the partnership formation causes X's interest in X stock to increase from \$0 to \$50 and its interest in Asset 1 to decrease from \$100 to \$50. Thus, the partnership formation is a Section 337(d) Transaction because the formation has the effect of an exchange by X of \$50 of Asset 1 for \$50 of X stock.

(iii) X must recognize gain under paragraph (d) of this section with respect to Asset 1 to prevent the circumvention of section 311(b) principles. X's gain equals the product of X's Gain Percentage and the gain from Asset 1 that X would recognize (decreased, but not below zero, by any gain that X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this

chapter) if, immediately before the Section 337(d) Transaction, all assets were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before the formation of partnership AX, X's allocable share of gain would have been \$80. X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's \$50 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's \$100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes \$40 of gain (\$80 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from \$20 to \$60. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from \$20 to \$60 because Asset 1 is the appreciated property treated as the subject of the exchange.

*Example 2. Distribution of Stock of the Corporate Partner – pro rata distribution.* (i) The facts are the same as in *Example 1(i)*. AX liquidates in Year 9, when Asset 1 and the X stock each have a fair market value of \$200. X and A each receive 50% of Asset 1 and 50% of the X stock in the liquidation. At the time AX liquidates, X's basis in its AX partnership interest is \$60 and A's basis in its AX partnership interest is \$100.

(ii) When AX liquidates, X's interests in its stock and in Asset 1 do not change. Thus, the liquidation is not a Section 337(d) Transaction because it does not have the effect of an exchange by X of appreciated property for Stock of the Corporate Partner.

(iii) Paragraph (e) of this section applies because the distributed X stock was the subject of a previous Section 337(d) Transaction and because section 732(f) does not apply. Under § 1.732-1T(c)(1)(iii), the distribution to X of X stock is deemed to immediately precede the distribution of 50% of Asset 1 to X for purposes of determining X's basis in the distributed property. For purposes of determining X's basis in Asset 1 and X's gain on distribution, the basis of the distributed X stock is treated as \$50, the greater of \$50 (50% of the stock's \$100 basis in the hands of the partnership), or \$50, the fair market value of that distributed X stock (\$100) less X's allocable share of gain from the distributed X stock if AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property immediately before the distribution (\$50). Thus, X reduces its basis in its partnership interest by \$50 prior to the distribution of Asset 1. Accordingly, X's basis in the distributed portion of Asset 1 is \$10. Because AX's basis in the distributed X stock immediately before the distribution (\$50) does not exceed X's basis in its AX partnership interest immediately before the distribution (\$60), X recognizes no gain under paragraph (e)(3) of this section.

*Example 3. Distribution of Stock of the Corporate Partner – non pro rata distribution.* (i) The facts are the same as *Example 2(i)*, except that when AX liquidates, X receives 75% of the X stock and 25% of Asset 1 and A receives 25% of the X stock and 75% of Asset 1.

(ii) The liquidation of AX causes X's interest in X stock to increase from \$100 to \$150 and its inter-

est in Asset 1 to decrease from \$100 to \$50. Thus, AX's liquidating distributions of X stock and Asset 1 to X are a Section 337(d) Transaction because the distributions have the effect of an exchange by X of \$50 of Asset 1 for \$50 of X stock.

(iii) X must recognize gain with respect to Asset 1 to prevent the circumvention of section 311(b) principles. Under paragraph (e)(1) of this section, paragraph (d) of this section is applied as if X and A amended the AX partnership agreement to allocate to X a 100% interest in the distributed portion of the X stock. X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 that X would have recognized (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) if, immediately before the Section 337(d) Transaction, AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property.

(iv) If Asset 1 had been sold in a fully taxable transaction immediately before the amendment of the AX partnership agreement, X's allocable share of gain would have been \$90, or the sum of X's \$40 remaining gain under section 704(c) and \$50 of the \$100 post-contribution appreciation. X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's \$50 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's \$100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes \$45 of gain (\$90 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from \$60 to \$105. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from \$60 to \$105 because Asset 1 is the appreciated property treated as the subject of the exchange.

(v) Paragraph (e) of this section applies because the distributed X stock was the subject of a previous Section 337(d) Transaction and because section 732(f) does not apply. Under § 1.732-1T(c)(1)(iii), AX is treated as first distributing the X stock to X before the distribution of 25% of Asset 1. For purposes of determining X's basis in Asset 1 and X's gain on distribution, the basis of the distributed X stock is treated as \$100, the greater of \$75 (75% of the stock's \$100 basis in the hands of the partnership) or \$100, the fair market value of the distributed X stock (\$150) less X's allocable share of gain if the partnership had sold all of the X stock immediately before the distribution for cash in an amount equal to its fair market value (\$50). Thus, X will reduce its basis in its partnership interest by \$100 prior to the distribution of Asset 1. Accordingly, X's basis in the distributed portion of Asset 1 is \$5. Because AX's basis in the distributed X stock immediately before the distribution as computed for purposes of this section (\$100) does not exceed X's basis in its AX partnership interest immediately before the distribution (\$105), X recognizes no additional gain under paragraph (e)(3) of this section.

*Example 4. Deemed redemption rule – subsequent purchase of Stock of the Corporate Partner.* The facts are the same as *Example 1(i)*, except that A contributes cash of \$100 instead of X stock. In a later

year, when the value of Asset 1 has not changed, AX uses the contributed cash to purchase X stock for \$100. AX's purchase of X stock has the effect of an exchange by X of appreciated property for X stock, and thus, is a Section 337(d) Transaction. X must recognize gain at the time, and to the extent, that X's share of appreciated property (other than X stock) is reduced in exchange for X stock. Thus, the consequences of the partnership's purchase of X stock are the same as those described in *Example 1(ii)* and (iii), resulting in X recognizing \$40 of gain.

*Example 5. Change in allocation ratios – amendment of partnership agreement.* (i) The facts are the same as *Example 2(i)*, except that in Year 9, AX does not liquidate, and the AX partnership agreement is amended to allocate to X 80% of the income, gain, loss, and deduction from the X stock and to allocate to A 80% of the income, gain, loss, and deduction from Asset 1. If AX had sold the partnership assets immediately before the change to the partnership agreement, X would have been allocated \$90 of gain from Asset 1 and \$50 of gain from the X stock.

(ii) The amendment to the AX partnership agreement causes X's interest in its stock to increase from \$100 (50% of the stock value immediately before the amendment of the agreement) to \$160 (80% of stock value immediately following amendment of agreement) and its interest in Asset 1 to decrease from \$100 to \$40. Thus, the amendment of the partnership agreement is a Section 337(d) Transaction because the amendment has the effect of an exchange by X of \$60 of Asset 1 for \$60 of its stock.

(iii) X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 that X would have recognized (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) if, immediately before the Section 337(d) Transaction, AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before the amendment of the AX partnership agreement, X's allocable share of gain would have been \$90, or the sum of X's \$40 remaining gain under section 704(c) and 50% of the \$100 post-contribution appreciation. X's Gain Percentage is 60% (equal to a fraction, the numerator of which is X's \$60 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's \$100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes \$54 of gain (\$90 multiplied by 60%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from \$60 to \$114. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from \$60 to \$114 because Asset 1 is the appreciated property treated as the subject of the exchange.

*Example 6. Change in allocation ratios – admission and exit of a partner.* (i) The facts are the same as *Example 1(i)*. In addition, in Year 2, when the values of Asset 1 and the X stock have not changed, B contributes \$100 of cash to AX in exchange for a one-third interest in the partnership. Upon the admission of B as a partner, X's interest in Asset 1

decreases from \$50 to \$33.33, and its interest in B's contributed cash increases. B's admission is not a Section 337(d) Transaction because it does not have the effect of an exchange by X of its interest in Asset 1 for X stock. Accordingly, X does not recognize gain under paragraph (d) of this section.

(ii) In Year 9, when the values of Asset 1 and the X stock have not changed, the partnership distributes \$50 of cash and 50% of Asset 1 (valued at \$50) to B in liquidation of B's interest. X and A are equal partners in all respects after the distribution. Upon the liquidation of B's interest, X's interest in Asset 1 decreases from \$33.33 to \$25, and its interest in X stock increases from \$33.33 to \$50. AX's liquidation of B's interest has the effect of an exchange by X of appreciated property for X stock, and thus, is a Section 337(d) Transaction.

(iii) Pursuant to paragraph (d)(2) of this section, X's interest in X stock and other appreciated property held by the partnership is determined based on all facts and circumstances, including allocation and distribution rights in the partnership agreement. However, paragraph (d)(2) of this section also requires that X's interest in its stock for purposes of paragraph (d) will never be less than the Corporate Partner's largest interest (by value) in those shares of Stock of the Corporate Partner taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). Although X's interest in X stock increases to \$50 upon AX's liquidation of B's interest, X's largest interest previously taken into account under paragraph (d)(1) of this section was \$50. Thus, X's interest in its stock is not considered to be increased, and X therefore recognizes no gain under paragraph (d) of this section, provided that the transactions did not occur as part of a plan or arrangement to circumvent the purpose of this section.

*Example 7. Change in allocation ratios – plan to circumvent purpose of this section.* (i) In Year 1, X, a corporation, and A, an individual, contribute a small amount of capital to newly-formed partnership AX, with X receiving a 99% interest in AX and A receiving a 1% interest in AX. AX borrows \$100 from a third-party lender and uses the proceeds to purchase X stock, which is Stock of the Corporate Partner. Later, as part of a plan or arrangement to circumvent the purposes of this section, A contributes \$100 of cash, which AX uses to repay the loan, and X contributes Asset 1 with a fair market value of \$100 and basis of \$20. After these contributions, A and X are equal partners in AX in all respects.

(ii) Pursuant to paragraph (d)(2) of this section, X's interest in X stock and other appreciated property held by the partnership is determined based on all facts and circumstances, including allocation and distribution rights in the partnership agreement. Generally pursuant to paragraph (d)(2) of this section, X's interest in X stock for purposes of paragraph (d) will never be less than the Corporate Partner's largest interest (by value) in those shares of Stock of the Corporate Partner taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). This limitation does not apply, however, if the reduction in X's interest in X's stock

occurred as part of a plan or arrangement to circumvent the purpose of this section. Because the transactions described in this example are part of a plan or arrangement to circumvent the purpose of this section, the limitation in paragraph (d)(2) of this section does not apply. Accordingly, the deemed redemption rule under paragraph (d) of this section applies to the transactions with the consequences described in Example 1(iii) of this section, resulting in X recognizing \$40 of gain.

*Example 8. Tiered partnership.* (i) In Year 1, X, a corporation, and A, an individual, form partnership UTP. X contributes Asset 1 with a fair market value of \$80 and a basis of \$0 in exchange for an 80% interest in UTP. A contributes \$20 of cash in exchange for a 20% interest in UTP. UTP and B, an individual, form partnership LTP as equal partners. UTP contributes Asset 1 and \$20 of cash. B contributes X stock, which is Stock of the Corporate Partner, with a basis and fair market value of \$100.

(ii) Pursuant to paragraph (g) of this section, the rules of this section shall apply to tiered partnerships in a manner that is consistent with the purpose set forth in paragraph (a) of this section. Pursuant to paragraph (d)(1) of this section, if X is in a partnership that engages in a Section 337(d) Transaction, X must recognize gain at the time, and to the extent, that X's share of appreciated property is reduced in exchange for X stock. The formation of LTP causes X's interest in X stock to increase from \$0 to \$40 and its interest in Asset 1 to decrease from \$64 to \$32. Thus, LTP's formation is a Section 337(d) Transaction because the formation has the effect of an exchange by X of \$32 of Asset 1 for \$32 of X stock.

(iii) X must recognize gain with respect to Asset 1 to prevent the circumvention of section 311(b) principles. X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) that X would recognize if, immediately before the Section 337(d) Transaction, all assets were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before LTP's formation, X's allocable share of gain would have been \$80 pursuant to section 704(c). X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's \$32 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's \$64 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes \$40 of gain (\$80 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraphs (d)(4)(i) and (d)(4)(ii) of this section, X's basis in its UTP partnership interest increases from \$0 to \$40, UTP's basis in its LTP partnership interest increases from \$20 to \$60, and LTP's basis in Asset 1 increases from \$0 to \$40 pursuant to paragraph (g) of this section.

(i) *Effective/applicability date.* This section applies to transactions occurring on or after June 12, 2015.

(j) *Expiration date.* This section expires on June 11, 2018.

Par. 3. Section 1.732-1 is amended by revising paragraphs (c)(1) and (5) to read as follows:

*§ 1.732-1 Basis of distributed property other than money.*

\* \* \* \* \*

(c) \* \* \* (1) [Reserved]. For further guidance, see § 1.732-1T(c)(1).

\* \* \* \* \*

(5) *Effective/applicability date*—(i) *In general.* This paragraph (c) applies to distributions of property from a partnership that occur on or after December 15, 1999.

(ii) [Reserved]. For further guidance, see § 1.732-1T(c)(5)(ii).

\* \* \* \* \*

Par. 4. Section 1.732-1T is added to read as follows:

*§ 1.732-1T Basis of distributed property other than money (temporary).*

(a) and (b) [Reserved]. For further guidance, see § 1.732-1(a) and (b).

(c) *Allocation of basis among properties distributed to a partner*—(1) *General rule*—(i) *Unrealized receivables and inventory items.* Except as provided in paragraph (c)(1)(iii) of this section, the basis to be allocated to properties distributed to a partner under section 732(a)(2) or (b) is allocated first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership immediately before the distribution. If the basis to be allocated is less than the sum of the adjusted bases to the partnership of the distributed unrealized receivables and inventory items, the adjusted basis of the distributed property must be decreased in the manner provided in § 1.732-1(c)(2)(i). See § 1.460-4(k)(2)(iv)(D) for a rule determining the partnership's basis in long-term contract accounted for under a long-term contract method of accounting.

(ii) *Other distributed property.* Any basis not allocated to unrealized receivables or inventory items under paragraph (c)(1)(i) of this section or to stock of persons that control the corporate partner or to the corporate partner's stock under paragraph (c)(1)(iii) of this section is al-

located to any other property distributed to the partner in the same transaction by assigning to each distributed property an amount equal to the adjusted basis of the property to the partnership immediately before the distribution. However, if the sum of the adjusted bases to the partnership of such other distributed property does not equal the basis to be allocated among the distributed property, any increase or decrease required to make the amounts equal is allocated among the distributed property as provided in § 1.732-1(c)(2).

(iii) *Stock distributed to the corporate partner.* If a partnership makes a distribution described in § 1.337(d)-3T(e)(1), then for purposes of this section, the basis to be allocated to properties distributed under section 732(a)(2) or (b) is allocated first to the Stock of the Corporate Partner, as defined in § 1.337(d)-3T(c)(2), before the distribution of any other property (other than cash). The amount allocated to the Stock of the Corporate Partner is as provided in § 1.337(d)-3T(e)(2).

(2) through (5)(i) [Reserved]. For further guidance, see § 1.732-1(c)(2) through (c)(5)(i).

(ii) *Exception.* Notwithstanding paragraph (c)(5)(i), the first sentence of each of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, and paragraph (c)(1)(iii) of this section in its entirety, apply to distributions of Stock of the Corporate Partner, as defined in § 1.337(d)-3T(c)(2), that occur on or after June 12, 2015.

(d) and (e) [Reserved]. For further guidance, see § 1.732-1(d) and (e).

(f) *Expiration date.* This section expires on June 11, 2018.

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

Approved June 1, 2015

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

(Filed by the Office of the Federal Register on June 11, 8:45 a.m., and published in the issue of the Federal Register for June 12, 80 F.R. 33402)

## Section 9815.– Summary of Benefits and coverage and Uniform Glossary

26 CFR 54.9815–2715 – Summary of benefits and coverage and uniform glossary.

### TD 9724

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 54

#### DEPARTMENT OF LABOR Employee Benefits Security Administration 29 CFR Part 2590

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES 45 CFR Part 147

#### Summary of Benefits and Coverage and Uniform Glossary

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Final rules.

**SUMMARY:** This document contains final regulations regarding the summary of benefits and coverage (SBC) and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act. It finalizes changes to the regulations that implement the disclosure requirements under section 2715 of the Public Health Service Act to help plans and individuals better understand their

health coverage, as well as to gain a better understanding of other coverage options for comparison.

**DATES: Effective Date:** These final regulations are effective on August 17, 2015.

#### FOR FURTHER INFORMATION

**CONTACT:** Elizabeth Schumacher or Amber Rivers, Employee Benefits Security Administration, Department of Labor, at (202) 693-8335 (not a toll-free number); Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 317-5500 (not a toll-free number); Heather Raeburn, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492-4224 (not a toll-free number).

**Customer Service Information:** Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor’s website (<http://www.dol.gov/ebsa>). In addition, information from HHS on private health insurance for consumers can be found on CMS’s website ([www.cms.gov/cciiio](http://www.cms.gov/cciiio)) and information on health reform can be found at <http://www.healthcare.gov>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Patient Protection and Affordable Care Act, Pub. L. 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L. 111–152, was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating

to group health plans and health insurance issuers in the group and individual markets. The term “group health plan” includes both insured and self-insured group health plans.<sup>1</sup> The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728.

Section 2715 of the PHS Act, as added by the Affordable Care Act, directs the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments)<sup>2</sup> to develop standards for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage in compiling and providing a summary of benefits and coverage (SBC) that “accurately describes the benefits and coverage under the applicable plan or coverage.” PHS Act section 2715 also calls for the “development of standards for the definitions of terms used in health insurance coverage.”

In accordance with the statute, the Departments, in developing such standards, consulted with the National Association of Insurance Commissioners (referred to in this document as the “NAIC”)<sup>3</sup>, and the NAIC provided its final recommendations to the Departments regarding the SBC on July 29, 2011. On August 22, 2011, the Departments published proposed regulations (2011 proposed regulations) and an accompanying document soliciting comments on the template, instructions, and related materials for implementing the disclosure provisions under PHS Act sec-

<sup>1</sup>The term “group health plan” is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term “health plan,” as used in other provisions of title I of the Affordable Care Act. The term “health plan” does not include self-insured group health plans.

<sup>2</sup>Note, however, that in sections under headings listing only two of the three Departments, the term “Departments” generally refers only to the two Departments listed in the heading.

<sup>3</sup>The NAIC convened a working group (NAIC working group) comprised of a diverse group of stakeholders. This working group met frequently for over one year while developing its recommendations. In developing its recommendations, the NAIC considered the results of various consumer testing sponsored by both insurance industry and consumer associations. Throughout the process, NAIC working group draft documents and meeting notes were displayed on the NAIC’s website for public review, and several interested parties filed formal comments. In addition to participation from the NAIC working group members, conference calls and in-person meetings were open to other interested parties and individuals and provided an opportunity for non-member feedback. See [www.naic.org/committees\\_b\\_consumer\\_information.htm](http://www.naic.org/committees_b_consumer_information.htm).

tion 2715.<sup>4</sup> After consideration of all the comments received on the 2011 proposed regulations and accompanying documents, the Departments published joint final regulations to implement the disclosure requirements under PHS Act section 2715 on February 14, 2012 (2012 final regulations) and an accompanying document with the template, instructions, and related materials.<sup>5</sup>

After the 2012 final regulations were published, the Departments released Frequently Asked Questions (FAQs) regarding implementation of the SBC provisions as part of six issuances. The Departments released FAQs about Affordable Care Act Implementation Parts VII, VIII, IX, X, XIV, and XIX to answer outstanding questions, including questions related to the SBC.<sup>6</sup> These FAQs addressed questions related to compliance with the requirements of the 2012 final regulations, implemented additional safe harbors,<sup>7</sup> and released updated SBC materials.

On December 30, 2014, the Departments issued proposed regulations (December 2014 proposed regulations), as well as a new proposed SBC template, instructions, an updated uniform glossary, and other materials to incorporate some of the feedback the Departments have received and to make some improvements to the template.<sup>8</sup> The draft updated template, instructions, and supplementary materials are available at <http://cciio.cms.gov> and <http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html>.

On March 30, 2015, the Departments released an FAQ stating that the Departments intend to finalize changes to the regulations in the near future but intend to utilize consumer testing and offer an opportunity for the public, including the NAIC, to provide further input before finalizing revisions to the SBC template

and associated documents.<sup>9</sup> The Departments anticipate the new template and associated documents will be finalized by January 2016 and will apply to coverage that would renew or begin on the first day of the first plan year (or, in the individual market, policy year) that begins on or after January 1, 2017 (including open season periods that occur in the Fall of 2016 for coverage beginning on or after January 1, 2017).

After consideration of the comments and feedback received from stakeholders in response to the December 2014 proposed regulations, the Departments are publishing these final regulations. In response to the 2014 proposed regulations, the Departments received comments on the regulations as well as the template and associated documents. The Departments received many comments on the proposed changes to the template and associated documents but received very few comments relating to the regulations. As stated in the FAQ issued on March 30, 2015, the Departments anticipate the new template and associated documents will be finalized by January 2016, and, therefore, only the comments on the regulations will be addressed in this final rule. Comments relating to the template and associated documents will be addressed when those documents are finalized.

## II. Overview of the Final Regulations

### A. Requirement to Provide a Summary of Benefits and Coverage

#### 1. Provision of the SBC by an Issuer to a Plan

Under paragraph (a)(1)(i) of the 2012 final regulations, a health insurance issuer offering group health insurance coverage must provide an SBC to a group health

plan (or its sponsor) upon an application by the plan for health coverage. The issuer must provide the SBC as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application. The Departments proposed to add language to clarify that, under the 2012 final regulations, a health insurance issuer offering group health insurance coverage (or plan, if applicable, under paragraph (a)(1)(ii), as discussed below) is not required to automatically provide the SBC again if the issuer already provided the SBC before application to any entity or individual, provided there is no change in the information required to be in the SBC.

The comments the Departments received on this clarification generally supported the proposed language and, accordingly, these final regulations finalize the language of the proposed regulations without change. Therefore, these final regulations include language clarifying that, if the issuer provides the SBC upon request before application for coverage, the requirement to provide an SBC upon application is deemed satisfied, and the issuer is not required to automatically provide another SBC upon application to the same entity or individual, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required to be included in the SBC, a new SBC that includes the changed information must be provided upon application (that is, as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application).

Under paragraph (a)(i)(B) of the 2012 final regulations, if there is any change in the information required to be in the SBC

<sup>4</sup>See proposed regulations, published at 76 FR 52442 (August 22, 2011) and guidance document published at 76 FR 52475 (August 22, 2011).

<sup>5</sup>See final regulations, published at 77 FR 8668 (February 14, 2012) and guidance document published at 77 FR 8706 (February 14, 2012).

<sup>6</sup>See Frequently Asked Questions about Affordable Care Act Implementation Part VII (available at [www.dol.gov/ebsa/faqs/faq-aca7.html](http://www.dol.gov/ebsa/faqs/faq-aca7.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs7.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html)); Part VIII (available at [www.dol.gov/ebsa/faqs/faq-aca8.html](http://www.dol.gov/ebsa/faqs/faq-aca8.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs8.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html)); Part IX (available at [www.dol.gov/ebsa/faqs/faq-aca9.html](http://www.dol.gov/ebsa/faqs/faq-aca9.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs9.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html)); Part X (available at [www.dol.gov/ebsa/faqs/faq-aca10.html](http://www.dol.gov/ebsa/faqs/faq-aca10.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs10.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs10.html)); Part XIV (available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html)); and Part XIX (available at [www.dol.gov/ebsa/faqs/faq-aca19.html](http://www.dol.gov/ebsa/faqs/faq-aca19.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs19.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html)).

<sup>7</sup>As discussed more fully herein, some of the enforcement safe harbors and transitions are being made permanent (several with modifications) by these final regulations.

<sup>8</sup>See proposed regulations published at 79 FR 78577 (December 30, 2014).

<sup>9</sup>See Frequently Asked Questions about Affordable Care Act Implementation Part XXIV, available at <http://www.dol.gov/ebsa/faqs/faq-aca24.html> and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs24.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs24.html).

that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage. If the information is unchanged, the issuer does not need to provide the SBC again in connection with coverage for that plan year, except upon request. The December 2014 proposed regulations stated that if the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, an updated SBC is not required to be provided to the plan or its sponsor (unless an updated SBC is requested) until the first day of coverage. The updated SBC should reflect the final coverage terms under the policy, certificate, or contract of insurance that was purchased.

Some commenters supported the clarification and stated that if there is a change in the information required, a new SBC that includes the changed information must be provided upon application. Other commenters stated that enrollees in both the group and individual markets need to know of pending plan changes during open and special enrollment periods so that they can make informed decisions about their plan options.

These final regulations finalize the language of the proposed regulations without change. Therefore, if the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, an updated SBC is not required to be provided to the plan or its sponsor (unless an updated SBC is requested) until the first day of coverage. The updated SBC is required to reflect the final coverage terms under the policy, certificate, or contract of insurance that was purchased.

## *2. Provision of the SBC by a Plan or Issuer to Participants and Beneficiaries*

Under paragraph (a)(1)(ii) of 2012 final regulations, a group health plan (including the plan administrator), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary<sup>10</sup> with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.<sup>11</sup> The December 2014 proposed regulations clarified that if the plan or issuer provides the SBC prior to application for coverage, the plan or issuer is not required to automatically provide another SBC upon application, if there is no change to the information required to be in the SBC. If there is any change to the information required to be in the SBC by the time the application is filed, the plan or issuer must update and provide a current SBC as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.

The comments the Departments received on this proposal generally supported adopting the language of the proposed regulations, which incorporates this clarification of the 2012 final regulations. Therefore, these final regulations provide that if an SBC was provided upon request before application, the requirement to provide the SBC upon application is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required to be in the SBC, a new SBC that includes the updated information must be provided as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.

Under the 2012 final regulations, if there is any change to the information

required to be in the SBC that was provided upon application and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage. The December 2014 proposed regulations addressed how to satisfy the requirement to provide an SBC when the terms of coverage are not finalized. Those proposed regulations proposed that if the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, the plan or issuer is not required to provide an updated SBC (unless an updated SBC is requested) until the first day of coverage. The updated SBC would be required to reflect the final coverage terms under the policy, certificate, or contract of insurance that was purchased. The Departments did not receive comments relating to this provision, and, therefore, these final regulations finalize the language of the proposed regulations without change.

Under the 2012 final regulations, the plan or issuer must also provide the SBC to individuals enrolling through a special enrollment period, also called special enrollees.<sup>12</sup> Special enrollees must be provided with an SBC no later than when a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

The December 2014 proposed regulations followed the approach of the 2012 final rules with respect to this requirement and did not include a proposed change. The proposed regulations provided that, to the extent individuals who are eligible for special enrollment would like to receive SBCs earlier than this timeframe, they may request an SBC with respect to any particular plan, policy, or benefit package and the SBC is required to be provided as soon as practicable, but in no event later

<sup>10</sup>ERISA section 3(7) defines a participant as: any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employers or members of such organization, or whose beneficiaries may be eligible to receive any such benefit. ERISA section 3(8) defines a beneficiary as: a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

<sup>11</sup>With respect to insured group health plan coverage, PHS Act section 2715 generally places the obligation to provide an SBC on both the group health plan and health insurance issuer. As discussed below, under section III.A.1.d., "Special Rules to Prevent Unnecessary Duplication with Respect to Group Health Coverage", if either the issuer or the plan provides the SBC, both will have satisfied their obligations. As they do with other notices required of both plans and issuers under part 7 of ERISA, title XXVII of the PHS Act, and Chapter 100 of the Code, the Departments expect plans and issuers to make contractual arrangements for sending SBCs. Accordingly, the remainder of this preamble generally refers to requirements for plans or issuers.

<sup>12</sup>See special enrollment regulations published at 26 CFR 54.9801-6, 29 CFR 2590.701-6, and 45 CFR 146.117.

than seven business days following receipt of the request. The Departments received several comments relating to the timeframe. While some commenters supported the existing requirement, other commenters stated that the Departments should require plans and issuers to provide the SBC to special enrollees upon enrollment or by the first day of coverage. Some commenters stated that rules should require plans and issuers to treat special enrollees the same as applicants for coverage, which would require provision of the SBC as soon as practicable following receipt of an application, but in no event later than seven business days following receipt of the application.

The Departments recognize the importance of special enrollees having information about a plan, policy, or benefit package for which they are eligible; however, special enrollees have the opportunity to obtain this information by requesting the SBC. Accordingly, these regulations retain the provision of the proposed regulations regarding special enrollees without change. To the extent that individuals who are eligible for special enrollment and are contemplating their coverage options would like to receive SBCs earlier, they may always request an SBC with respect to any particular plan, policy, or benefit package, and the SBC is required to be provided as soon as practicable, but in no event later than seven business days following receipt of the request. Therefore, these final regulations continue to provide that the plan or issuer must provide the SBC to individuals enrolling through a special enrollment period, also called special enrollees, no later than when a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

### *B. Special Rules to Prevent Unnecessary Duplication with Respect to Group Health Coverage*

Paragraph (a)(1)(iii) of the 2012 final regulations sets forth three special rules to streamline provision of the SBC and avoid unnecessary duplication with respect to group health coverage. In addition to retaining these three existing special rules, the Departments proposed adding two additional provisions, and codifying an enforcement safe harbor set forth in a previous FAQ,<sup>13</sup> to ensure participants and beneficiaries receive information while preventing unnecessary duplication. The first proposed provision sought to address circumstances where an entity required to provide an SBC with respect to an individual has entered into a binding contract with another party to provide the SBC to the individual. In such a case, the proposed regulations stated that the entity would be considered to satisfy the requirement to provide the SBC with respect to the individual if specified conditions are met:

(1) The entity monitors performance under the contract;<sup>14</sup>

(2) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(3) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

In response to this proposal, some commenters expressed concern that the proposed approach would permit circumstances where a group health plan that

contracts with a third party administrator is deemed compliant with the requirements, although certain participants and beneficiaries under the plan have not received an SBC. On the other hand, the Departments received comments recommending the final regulations eliminate the requirement to monitor the performance of contractors, arguing that it is unnecessary and unduly burdensome.

In light of all the comments received, the Departments finalize the proposed approach without change. The approach set forth by the Departments works to achieve the goals of preventing unnecessary duplication for plans and issuers, while incorporating safeguards to ensure that participants and beneficiaries receive the requisite information. The Departments believe that the requirement to monitor the performance under the contract is necessary to ensure that participants and beneficiaries receive the information to which they are entitled. The Departments may provide additional guidance if the Departments become aware of situations where participants and beneficiaries are not being provided SBCs in accordance with these final regulations.

The second provision proposed by the Departments addressed unnecessary duplication with respect to a group health plan that uses two or more insurance products provided by separate issuers to insure benefits under the plan. The Departments recognize that a plan sponsor may purchase an insurance product for certain coverage from a particular issuer and purchase a separate insurance product or self-insure with respect to other coverage (such as outpatient prescription drug coverage). In these circumstances, the first issuer may or may not know of the existence of other coverage, or whether the plan sponsor has arranged the two benefit packages as a single plan or two separate plans.

To address these arrangements, the December 2014 proposed regulations proposed that, with respect to a group health

<sup>13</sup>See Affordable Care Act Implementation FAQs Part IX, question 10, available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs9.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html).

<sup>14</sup>The selection and monitoring of service providers for a group health plan, including parties assuming responsibility to complete, provide information for, or deliver SBCs, is a fiduciary act subject to prudence and loyalty duties and prohibited transaction provisions of ERISA. No single fiduciary procedure will be appropriate in all cases; the procedure for selecting and monitoring service providers may vary in accordance with the nature of the plan and other facts and circumstances relevant to the choice of the service provider. More general information on hiring and monitoring service providers is contained in the Department of Labor publication "Understanding Your Fiduciary Responsibilities Under a Group Health Plan," which is available at: [www.dol.gov/ebsa/publications/ghpfiduciaryresponsibilities.html](http://www.dol.gov/ebsa/publications/ghpfiduciaryresponsibilities.html).

plan that uses two or more insurance products provided by separate issuers, the group health plan administrator is responsible for providing complete SBCs with respect to the plan. The group health plan administrator may contract with one of its issuers (or other service providers) to perform that function. Absent a contract to perform the function, an issuer has no obligation to provide coverage information for benefits that it does not insure. The comments the Departments received on this proposed provision generally supported the approach, and therefore these regulations also finalize this rule without change.

To address concerns regarding unnecessary duplication in situations where plans may have benefits provided by more than one issuer, the Departments set forth an enforcement safe harbor in an FAQ on May 11, 2012,<sup>15</sup> which permitted the provision of multiple partial SBCs if certain conditions were satisfied. The Departments extended this enforcement safe harbor for one year on April 23, 2013,<sup>16</sup> and indefinitely on May 2, 2014.<sup>17</sup> The Departments requested comment on whether to codify this policy in the final regulations.

Some commenters supported the policy in the enforcement safe harbor and either requested the Departments extend the enforcement safe harbor or codify it in regulations. Other commenters requested that the Departments require plan administrators to synthesize the information into a single SBC in order to meet the SBC content requirements when two or more insurance products are provided by separate issuers with respect to a single group health plan.

These final regulations codify this enforcement safe harbor, which permits a group health plan administrator to synthesize the information into a single SBC or provide multiple partial SBCs that, together, provide all the relevant information to meet the SBC content requirements.

### *C. Provision of the SBC by an Issuer Offering Individual Market Coverage*

Paragraph (a)(1)(iv) of the HHS 2012 final regulations sets forth standards applicable to individual health insurance coverage, under which the provision of the SBC by an issuer offering individual market coverage largely parallels the group market requirements described above, with only those changes necessary to reflect the differences between the two markets. The rules provide that a health insurance issuer offering individual health insurance coverage must provide an SBC to an individual or dependent upon receiving an application for any health insurance policy as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.<sup>18</sup> If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to an individual or dependent no later than the first day of coverage.

The December 2014 proposed regulations proposed to clarify when the issuer must provide the SBC again if the issuer already provided the SBC prior to application. HHS proposed that if the issuer provides the SBC prior to application for coverage, the issuer is not required to automatically provide another SBC upon application, if there is no change to the information required to be in the SBC. If there is any change to the information required to be in the SBC that was provided prior to application for coverage by the time the application is filed, the issuer must update and provide a current SBC to the same individual or dependent as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.

The comments received on this proposal generally supported adopting the language of the proposed regulation. Therefore, these final regulations provide that if an SBC was provided upon request before application, the requirement to provide the SBC upon application is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information that is required to be in the SBC, a new SBC that includes the changed information must be provided as soon as practicable following receipt of the application, but in no event later than seven business days following receipt of the application.

HHS also proposed to address situations where an issuer offering individual market insurance coverage, consistent with applicable Federal and State law, automatically reenrolls an individual and any dependents into a different plan or product than the plan in which these individuals were previously enrolled. If the issuer automatically re-enrolls an individual covered under a policy, certificate, or contract of insurance (including every dependent) into a policy, certificate, or contract of insurance under a different plan or product, HHS proposed that the issuer would be required to provide an SBC with respect to the coverage in which the individual (including every dependent) will be enrolled, consistent with the timing requirements that apply when the policy is renewed or reissued. The comments received regarding this proposal supported this proposed approach. Therefore, these final regulations finalize the proposed approach without change.

### *D. Special Rules to Prevent Unnecessary Duplication With Respect to Individual Health Insurance Coverage*

Student health insurance coverage is a type of individual health insurance coverage provided pursuant to a written agree-

<sup>15</sup>Affordable Care Act Implementation FAQs Part IX, question 10, available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and [http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs9.html](http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html).

<sup>16</sup>Affordable Care Act Implementation FAQs Part XIV, question 5, available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html).

<sup>17</sup>Affordable Care Act FAQ Part XIX, question 8, available at [www.dol.gov/ebsa/faqs/faq-aca19.html](http://www.dol.gov/ebsa/faqs/faq-aca19.html) and [http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs19.html](http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html).

<sup>18</sup>We clarify for issuers participating in an Exchange for the individual market, an issuer's obligation to provide the SBC upon "application" is triggered by the issuer's receipt of notice from the Exchange of the individual's plan selection, rather than the Exchange's receipt of the individual's eligibility application.

ment between an institution of higher education and a health insurance issuer to students enrolled in that institution of higher education, and their dependents, that meet certain specified conditions.<sup>19</sup>

The December 2014 proposed regulations proposed to extend an anti-duplication rule similar to that provided with respect to group health coverage to student health insurance coverage. HHS proposed that the requirement to provide an SBC with respect to an individual would be considered satisfied for an entity (such as an institution of higher education) if another party (such as a health insurance issuer) provides a timely and complete SBC to the individual. HHS solicited comments on whether or not a requirement to monitor the provisioning of the SBC in this circumstance should be added.

The comments received generally supported this proposal. Most of the commenters supported requiring the entity that is contracting the provisioning of the SBC to a different entity to monitor the contract to ensure individuals receive an SBC. However, a few commenters stated that such a requirement would be unnecessary and unduly burdensome.

Considering the comments received, these final regulations adopt an anti-duplication provision with respect to providing SBCs for student health insurance coverage, with the addition of a duty to monitor that parallels the duty to monitor that is being finalized with respect to the anti-duplication rule for group health plans. HHS believes that the requirement to monitor the performance under the contract is necessary to ensure that individuals receive the information to which they are entitled. HHS may provide additional guidance if the Departments become aware of situations where individuals are

not being provided SBCs in accordance with these final regulations.

### E. Content

PHS Act section 2715(b)(3) generally provides that the SBC must include nine statutory content elements. The 2012 final regulations added three content elements: (1) for plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of the network providers; (2) for plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage under the plan or coverage; and (3) an Internet address for obtaining the uniform glossary, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies of the uniform glossary are available.

#### 1. *Minimum Essential Coverage and Minimum Value Statement*

One of the statutory content elements is a statement of whether the plan or coverage provides minimum essential coverage (MEC) as defined under section 5000A(f) of the Code, and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage is not less than 60% of those costs. In April 2013, the Departments issued an updated SBC template (and sample completed SBC) with the addition of statements regarding whether the plan or coverage provides MEC (as defined under section 5000A(f) of the Code) and whether the plan or coverage meets the minimum value (MV) requirements.<sup>20</sup>

In Affordable Care Act Implementation FAQs Part XIV, issued contemporaneously with the updated SBC template in April 2013, the Departments stated that this language is required to be included in SBCs provided with respect to coverage beginning on or after January 1, 2014.<sup>21</sup>

The Departments also stated in Affordable Care Act Implementation FAQs Part XIV that if a plan or issuer was unable to modify the SBC template for these disclosures, the Departments would not take any enforcement action against a plan or issuer for using the original template authorized at the time the 2012 final regulations were issued, provided that the SBC was furnished with a cover letter or similar disclosure stating whether the plan or coverage does or does not provide MEC and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage does or does not meet the MV standard under the Affordable Care Act.<sup>22</sup> As stated in the FAQ issued on March 30, 2015, the Departments anticipate finalizing the new template and associated documents by January 2016. Therefore, until the new template and associated documents are finalized and applicable, plans and issuers may continue to rely on the flexibility provided in Affordable Care Act Implementation FAQs Part XIV<sup>23</sup> and the Departments will not take enforcement action against a plan or issuer that provides an SBC with a cover letter or similar disclosure with the required MEC and MV statements.<sup>24</sup>

#### 2. *QHP and Abortion Services*

Under section 1303(b)(3)(A) of the Affordable Care Act and implementing regulations at 45 CFR 156.280(f), a Qualified

<sup>19</sup>See 45 CFR 147.145, published at 77 FR 16453 (March 21, 2012).

<sup>20</sup>See Affordable Care Act Implementation FAQs Part XIV, question 1, available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html).

<sup>21</sup>The guidance with respect to statements regarding MEC and MV was originally issued for SBCs provided with respect to coverage beginning on or after January 1, 2014, and before January 1, 2015 (referred to as the "second year of applicability"). See Affordable Care Act Implementation FAQs Part XIV, question 1, available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html). This guidance was extended to be applicable until further guidance was issued. See Affordable Care Act Implementation FAQs Part XIX, question 7, available at [www.dol.gov/ebsa/faqs/faq-aca19.html](http://www.dol.gov/ebsa/faqs/faq-aca19.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs19.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19.html).

<sup>22</sup>See Affordable Care Act Implementation FAQs Part XIV, question 2, available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html).

<sup>23</sup>Affordable Care Act Implementation FAQs Part XIV, question 2, available at [www.dol.gov/ebsa/faqs/faq-aca14.html](http://www.dol.gov/ebsa/faqs/faq-aca14.html) and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs14.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs14.html).

<sup>24</sup>HHS also notes that until the new template and associated documents are finalized and applicable, it will not take enforcement action against an individual market issuer for omitting such a statement for minimum value, which is not relevant with respect to individual market coverage.

Health Plan (QHP) issuer that elects to offer a QHP that provides coverage of abortion services for which federal funding is prohibited (non-excepted abortion services) must provide a notice to enrollees, as part of the SBC provided at the time of enrollment, of coverage of such services.

The December 2014 proposed regulations proposed to require issuers of QHPs sold through an individual market Exchange to disclose on the SBC these QHPs whether abortion services are covered or excluded, and whether coverage is limited to services for which federal funding is allowed (excepted abortion services). Several commenters supported this proposal. Some commenters recommended that the requirement to disclose coverage or exclusion of abortion services be expanded to all plans and issuers offering coverage in all markets, not only issuers of QHPs in the individual market. Finally, some commenters recommended limiting the required disclosure to only a QHP issuer that offers a QHP providing coverage of non-excepted abortion services.

After consideration of all the comments regarding this proposal, these final regulations adopt the proposed approach without change. These final regulations require that QHP issuers must disclose on the SBC for QHPs sold through an individual market Exchange whether abortion services are covered or excluded, and whether coverage is limited to excepted abortion services. HHS feels that this level of transparency is important to facilitate comparisons across individual market QHPs, and to avoid confusion regarding which abortion services are or are not covered.

The December 2014 proposed regulations were published contemporaneously with proposed updates to the SBC template, instructions, and associated documents. The proposed updates to the SBC template instructions and associated documents included guidance for QHP issuers regarding the wording and placement of the abortion disclosure requirement on the SBC. We received numerous comments regarding the proposed language for the disclosure, as well as the placement of the disclosure on the SBC template. As previously stated, the Depart-

ments anticipate finalizing the new template and associated documents, separately from this final rule, by January 2016. HHS will consider and address the comments regarding the wording and placement of the disclosure in finalizing the new template and associated documents. HHS acknowledges that QHP issuers will not have final guidance regarding the specific wording and placement of this disclosure until the template, instructions, and associated documents are finalized. Therefore, until the new template and associated documents are finalized and applicable, individual market QHP issuers may adopt any reasonable wording and placement of the disclosure on the SBC. Individual market QHP issuers may also provide the disclosure in a cover letter or other similar disclosure provided with the SBC. Consistent with the effective dates described in section K of this final rule, this requirement is applicable for individual market QHP issuers for SBCs issued in connection with coverage that begins on or after January 1, 2016.

For Multi-State Plan issuers, the Office of Personnel Management will issue guidance about the wording and placement of the abortion disclosure requirement on the SBC.

### *3. Contact Information for Questions*

The statute provides that the SBC must include “a contact number for the consumer to call with additional questions and an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.” The 2012 final regulations state that the SBC must include “contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance).” These final regulations clarify that all plans and issuers must include on the SBC contact information for questions.

### *4. Internet Address to Obtain the Actual Individual Underlying Policy or Group Certificate*

Questions have arisen as to whether PHS Act section 2715(b)(3)(i) (which requires that an SBC include “. . . an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained”) and associated regulations require that all plans and issuers must post underlying plan documents automatically on an Internet website. Some commenters stated that plans and issuers should be required to post actual policy and underlying plan documents as well as direct links to the plan’s prescription drug formulary. Other commenters stated that the Departments should permit plan sponsors to decide whether the underlying plan documents are posted online. Others stated that mandating self-insured group health plans to post underlying plan information online is redundant and burdensome.

The statutory language regarding this requirement refers specifically to an “individual coverage policy” and “group certificate of coverage.” This statutory provision does not reference group health plan coverage that provides benefits on a self-insured basis. While the Departments recognize that such information may be useful to consumers, based on the statutory language, the Departments may only require issuers to post the underlying individual coverage policy or group certificate of coverage to an Internet address. Accordingly, these final regulations provide that issuers must also include an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. The Departments note that these final regulations require these documents to be easily available to individuals, plan sponsors, and participants and beneficiaries shopping for coverage prior to submitting an application for coverage. For the group market only, because the actual “certificate of coverage” is not available until after the plan sponsor has negotiated the terms of coverage with the issuer, an issuer is permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sam-

ple group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must be easily available to plan sponsors and participants and beneficiaries via an Internet web address.

The Departments note that nothing in this section prohibits issuers and group health plan sponsors from making additional underlying group health plan or policy documents more readily available to participants and beneficiaries, including by posting them on the internet. HHS encourages issuers to make all relevant policy documents easily accessible to individuals shopping for, and enrolled in, coverage to facilitate comparison of policy options and understanding of benefits available under a particular plan or policy.

The Departments also note that, separate from the SBC requirement, provisions of other applicable laws require disclosure of plan documents and other instruments governing the plan. For example, ERISA section 104 and the Department of Labor's implementing regulations<sup>25</sup> provide that, for plans subject to ERISA, the plan documents and other instruments under which the plan is established or operated must generally be furnished by the plan administrator to plan participants<sup>26</sup> upon request. In addition, the Department of Labor's claims procedure regulations (applicable to ERISA plans), as well as the Departments' claims and appeals regulations under the Affordable Care Act (applicable to all non-grandfathered group health plans and health insurance issuers in the group and individual markets),<sup>27</sup> set forth rules regarding claims and appeals, including the right of claimants (or their authorized representatives) upon appeal of an adverse benefit determination (or a final internal adverse benefit determination) to be provided by the plan or issuer, upon request and free of charge, reasonable ac-

cess to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. Plans and issuers must continue to comply with these provisions and any other applicable laws.

#### F. Appearance

PHS Act section 2715 sets forth standards related to the appearance and language of the SBC. Specifically, the SBC is to be presented in a culturally and linguistically appropriate manner utilizing terminology understandable by the average plan enrollee, in a uniform format that does not exceed four double-sided pages in length, and does not include print smaller than 12-point font. Plans and issuers have informed the Departments that they are concerned about including all of the required information in the SBC while also satisfying the limitation on the length of the document of four double-sided pages. Comments were invited on potential ways to reconcile the statutory page limit with the statutory content, appearance, and format requirements, particularly the need for the summary to present information in an understandable, accurate, and meaningful way that facilitates comparisons of health options, including those that have disparate and comparatively complex features. Specifically, the Departments invited comments on the sorts of plans that have difficulty meeting the statutory limit, and what other sorts of accommodations may be appropriate for those plans.

Some commenters expressed concern regarding the difficulty of complying with the statutory page limit. One commenter stated that it is difficult to provide customers with clear and accurate information while describing the benefits provided under certain complex plan designs. As discussed above, the statute requires that the

SBC not exceed four pages, and these final regulations retain the interpretation set forth in the 2012 final regulations that the SBC can be four double-sided pages. The Departments will address specific issues related to completing the four-page template, as well as the issues plans and issuers encounter meeting these requirements with the finalization of the new template and associated documents, separate from this final rule.

#### G. Form

##### 1. Group Health Plan Coverage

To facilitate faster and less burdensome disclosure of the SBC and to be consistent with PHS Act section 2715(d)(2), which permits disclosure in either paper or electronic form, the 2012 final regulations set forth rules to permit greater use of electronic transmittal of the SBC. For SBCs provided electronically by a plan or issuer to participants and beneficiaries, the 2012 final regulations make a distinction between a participant or beneficiary who is already covered under the group health plan and a participant or beneficiary who is eligible for coverage but not enrolled in a group health plan. For participants and beneficiaries who are already covered under the group health plan, the 2012 final regulations permit provision of the SBC electronically, if the requirements of the Department of Labor's regulations at 29 CFR 2520.104b-1 are met. Paragraph (c) of those regulations includes an electronic disclosure safe harbor.<sup>28</sup> For participants and beneficiaries who are eligible for but not enrolled in coverage, the 2012 final regulations permit the SBC to be provided electronically, if the format is readily accessible<sup>29</sup> and a paper copy is provided free of charge upon request. Additionally, to reduce paper copies that may be unnecessary, if the

<sup>25</sup>29 CFR 2520.104b-1.

<sup>26</sup>ERISA section 3(7) defines a "participant" to include any employee or former employee who is or may become eligible to receive a benefit of any type from an employee benefit plan or whose beneficiaries may be eligible to receive any such benefit. Accordingly, employees who are not enrolled but are, for example, in a waiting period for coverage, or who are otherwise shopping amongst benefit package options at open season, generally are considered plan participants for this purpose.

<sup>27</sup>29 CFR 2560.503-1. See also 29 CFR 2590.715-2719(b)(2)(i) and 45 CFR 147.136(b)(2)(i), requiring nongrandfathered plans and issuers to incorporate the internal claims and appeals processes set forth in 29 CFR 2560.503-1.

<sup>28</sup>On April 7, 2011, the Department of Labor published a Request for Information regarding electronic disclosure at 76 FR 19285. In it, the Department of Labor stated that it is reviewing the use of electronic media by employee benefit plans to furnish information to participants and beneficiaries covered by employee benefit plans subject to ERISA. Because these SBC regulations adopt the ERISA electronic disclosure rules by cross-reference, any changes that may be made to 29 CFR 2520.104b-1 in the future would also apply to the SBC.

<sup>29</sup>The Departments note that our use of the phrase "readily accessible" in this context is not intended to connote terms of art, such as "reasonable accommodation," "readily achievable," and "accessible," as used in connection with the determination of legal requirements with regard to disability.

electronic form is an Internet posting, the plan or issuer must timely advise the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provide the Internet address, and notify the individual that the documents are available in paper form upon request. The Departments note that the rules for participants and beneficiaries who are eligible for but not enrolled in coverage are substantially similar to the requirements for an issuer providing an electronic SBC to a group health plan (or its sponsor) under paragraph (a)(4)(i) of the regulations. Finally, plans, and participants and beneficiaries (both those covered and those eligible but not enrolled), have the right to receive an SBC in paper form, free of charge, upon request.

In Affordable Care Act Implementation FAQs Part IX, question 1, the Departments adopted an additional safe harbor related to electronic delivery of SBCs.<sup>30</sup> In the December 2014 proposed regulations, the Departments proposed to codify this safe harbor through rulemaking. Commenters generally supported permitting electronic delivery of SBCs. Some commenters requested the Departments adopt the safe harbor outlined in the FAQ. Other commenters recommended adopting the safe harbor standard for all individuals receiving the SBC without making any distinction as to whether the individual is already enrolled in the plan.

These final regulations adopt the safe harbor for electronic delivery set forth in the FAQ without expanding the application of the safe harbor to all individuals entitled to receive the SBC. The Departments note that these rules provide a mechanism by which all SBCs may be provided electronically. The Departments believe that the approach set forth in the FAQ achieves an appropriate balance between ensuring participants and beneficiaries receive the necessary information, while allowing plans and issuers to provide such information electronically. Thus, SBCs may be provided electronically to participants and beneficiaries in

connection with their online enrollment or online renewal of coverage under the plan. SBCs also may be provided electronically to participants and beneficiaries who request an SBC online. In either case, the individual must have the option to receive a paper copy upon request.

## *2. Individual Health Insurance Coverage and Self-insured Non-Federal Governmental Plans*

The HHS 2012 final regulations established a provision under paragraph (a)(4)(iii)(C) that deems health insurance issuers in the individual market to be in compliance with the requirement to provide the SBC to an individual requesting summary information about a health insurance product prior to submitting an application for coverage if the issuer provides the content required under paragraph (a)(2) of the regulations to the federal health reform Web portal described in 45 CFR 159.120. Issuers must submit all of the content required under paragraph (a)(2), as specified in guidance by the Secretary, to be deemed compliant with the requirement to provide an SBC to an individual requesting summary information prior to submitting an application for coverage. HHS intends to continue to facilitate the operation of this deemed compliance option for individual market issuers. An issuer must provide all SBCs other than the “shopper” SBC contemplated in the deemed compliance provision as required under the 2012 final regulations (and any future final regulations), including providing the SBC at the time of application and renewal.

The Departments note that, consistent with the 2012 final regulations, an issuer in the individual market must provide the SBC in a manner that can reasonably be expected to provide actual notice regardless of the format. An issuer in the individual market satisfies the form requirements set forth in the 2012 final regulations if it does at least one of the following: (1) Hand-delivers a paper copy of the SBC to the individual or dependent; (2) mails a paper copy of the SBC to the mailing address provided to the issuer by

the individual or dependent; (3) provides the SBC by email after obtaining the individual’s or dependent’s agreement to receive the SBC or other electronic disclosures by email; (4) posts the SBC on the Internet and advises the individual or dependent in paper or electronic form, in a manner compliant with 45 CFR 147.200(a)(4)(iii)(A)(1) through (3), that the SBC is available on the Internet and includes the applicable Internet address; or (5) provides the SBC by any other method that can reasonably be expected to provide actual notice.

The 2012 final regulations also provide that the obligation to provide an SBC cannot be satisfied electronically in the individual market unless: the format is readily accessible; the SBC is displayed in a location that is prominent and readily accessible; the SBC is provided in an electronic form that can be electronically retained and printed; the SBC is consistent with the appearance, content, and language requirements; and the issuer notifies the individual that a paper SBC is available upon request without charge.<sup>31</sup>

The December 2014 proposed regulations proposed to clarify the form and manner for SBCs provided by a self-insured non-Federal governmental plan. Under the proposal, such SBCs could be provided in paper form. Alternatively, such SBCs could be provided electronically if the plan conforms to either the substance of the provisions applicable to ERISA plans (in paragraph (a)(4)(ii) of the regulations) or to individual health insurance coverage (in paragraph (a)(4)(iii) of the regulations).

The Departments did not receive any comments regarding this proposal. Therefore, the Departments are finalizing the proposal without change, to allow for self-insured non-Federal governmental plans to provide an SBC in either paper form, or electronically if the plan conforms to either the substance of the provisions applicable to ERISA plans (in paragraph (a)(4)(ii) of the regulations) or to individual health insurance coverage (in paragraph (a)(4)(iii) of the regulations).

<sup>30</sup>See Affordable Care Act Implementation FAQs Part IX, question 4, available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs9.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html).

<sup>31</sup>We clarify that an issuer’s posting of the SBC on its website is not sufficient by itself; paragraph (a)(4)(iii) of the 2012 final regulations requires the SBC to be provided in a manner that can reasonably be expected to provide actual notice in paper or electronic form.

## H. Language

PHS Act section 2715(b)(2) provides that standards shall ensure that the SBC “is presented in a culturally and linguistically appropriate manner.” The 2012 final regulations provide that a plan or issuer for this purpose is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of 45 CFR 147.136(e), implementing standards for the form and manner of notices related to internal claims appeals and external review, are met as applied to the SBC.<sup>32</sup>

To help plans and issuers meet the language requirements of paragraph (a)(5) of the 2012 final regulations, as requested by commenters, HHS provided written translations of the SBC template, sample language, and the uniform glossary in Chinese, Navajo, Spanish, and Tagalog (the four languages with populations meeting the thresholds outlined in 45 CFR 147.136(e)).<sup>33</sup> HHS may also make these materials available in other languages to facilitate voluntary distribution of SBCs to other individuals with limited English proficiency. The Departments requested comment on this standard, and on other potential standards that could facilitate consistency across the Departments’ programs.

Some commenters requested an additional standard that would require the translation of the SBC into any language spoken by 500 individuals or 5 percent of individuals in the plan’s service area or an employer’s workforce, whichever is less, and to include taglines in at least 15 languages on all SBCs that indicate the availability of translated SBCs and oral language services. Some commenters were concerned that the 10 percent standard for language and translation services is insufficient to present the SBC in a culturally and linguistically appropriate manner and cited different Federal standards for other

disclosures. Other commenters supported the existing requirement from the 2012 final regulations or stated that the prevalence of speakers of a language in a particular state is the best criteria for identifying which language services should be provided.

The Departments believe that it is important to provide SBCs in a culturally and linguistically appropriate manner to ensure that individuals get the important information needed to properly evaluate coverage options. The standard established under the 2012 final regulations addresses the need to provide language services to ensure that consumers receive SBCs in an understandable format while balancing that need with the goal of keeping administrative costs down. Additionally, a rule based on a particular number or percentage of a plan’s population, rather than a county’s population, may increase administrative costs and make it difficult for plans and issuers to provide SBCs that comply with the page limitations. Therefore, these final rules continue to provide that a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of 45 CFR 147.136(e), implementing standards for the form and manner of notices related to internal claims appeals and external review, are met as applied to the SBC.<sup>34,35</sup>

### I. Process for Imposition of Fine in the Case of Willful Violation

In general, PHS Act section 2715(f) provides that a group health plan (including its administrator), and a health insurance issuer offering group or individual health insurance coverage, that willfully fails to provide the information required under this section are subject to a fine. In the December 2014 proposed regulations, the Department of Labor proposed that it will use the same process and procedures

for assessment of the civil fine as used for failure to file an annual report under 29 CFR 2560.502c–2 and 29 CFR part 2570, subpart C. In accordance with ERISA section 502(b)(3), 29 U.S.C. 1132(b)(3), the Secretary of Labor is not authorized to assess this fine against a health insurance issuer. Moreover, the IRS proposed to clarify that the IRS will enforce this section using a process and procedure consistent with section 4980D of the Code. The Departments did not receive comments on this proposal to utilize existing processes and procedures under ERISA and the Code and therefore finalize these proposals without change.

### J. Applicability

In August 2012, the Departments issued FAQs<sup>36</sup> that provided a temporary nonenforcement policy with respect to group health plans providing Medicare Advantage benefits, which are Medicare benefits financed by the Medicare Trust Funds, for which the benefits are set by Congress and regulated by the Centers for Medicare & Medicaid Services. The December 2014 proposed regulations proposed to add language to codify this temporary relief and exempt from the SBC requirements a group health plan benefit package that provides Medicare Advantage benefits. Medicare Advantage benefits are not health insurance coverage, and Medicare Advantage organizations are not required to provide an SBC with respect to such benefits. Additionally, there are separately required disclosures required to be provided by Medicare Advantage organizations to ensure that enrollees in these plans receive the necessary information about their coverage and benefits.

The Departments did not receive comments opposing the proposal to exempt group health plans providing Medicare Advantage benefits from the SBC requirements. Therefore, these final regulations

<sup>32</sup>See 75 FR 43330 (July 23, 2010), as amended by 76 FR 37208 (June 24, 2011). Guidance on the HHS website contains a list of the counties that meet this threshold. This information is available at [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2009-13-CLAS-County-Data\\_12-05-14\\_clean\\_508.pdf](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2009-13-CLAS-County-Data_12-05-14_clean_508.pdf).

<sup>33</sup>Translations are available at <http://ccio.cms.gov/programs/consumer/summaryandglossary/index.html>.

<sup>34</sup>See 75 FR 43330 (July 23, 2010), as amended by 76 FR 37208 (June 24, 2011).

<sup>35</sup>Nothing in these regulations should be construed as limiting an individual’s rights under other Federal authorities applicable to recipients of Federal financial assistance, such as Section 504 of the Rehabilitation Act of 1973, which includes effective communication requirements for individuals with disabilities, and Title VI of the Civil Rights Act of 1964, which includes language assistance requirements for individuals with limited English proficiency.

<sup>36</sup>See Affordable Care Act Implementation FAQs Part X, question 1, available at <http://www.dol.gov/ebsa/faqs/faq-aca10.html> and [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs10.html](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs10.html).

finalize without change the proposal to codify the relief and exempt from the SBC requirements a group health plan benefit package that provides Medicare Advantage benefits.

In May 2012, the Departments issued FAQs addressing insurance products that are no longer being offered for purchase (“closed blocks of business”). The Departments had provided temporary enforcement relief through an FAQ provided that certain conditions were met: (1) The insurance product is no longer being actively marketed; (2) the health insurance issuer stopped actively marketing the product prior to September 23, 2012, when the requirement to provide an SBC was first applicable to health insurance issuers; and (3) the health insurance issuer has never provided an SBC with respect to such product.<sup>37</sup> The Departments reiterated that relief in the December 2014 proposed regulations, and we do so again in these final regulations. But, we again note that if an insurance product was actively marketed for business on or after September 23, 2012, and is no longer being actively marketed for business, or if the plan or issuer ever provided an SBC in connection with the product, the plan and issuer must provide the SBC with respect to such coverage, as required by PHS Act section 2715 and these final regulations.

#### K. Applicability Date

The December 2014 proposed regulations proposed that these rules, if finalized, would apply for disclosures with respect to participants and beneficiaries who enroll or re-enroll in group health coverage through an open enrollment period (including re-enrollees and late enrollees) beginning on the first day of the first open enrollment period that begins on or after September 1, 2015. With respect to disclosures to participants and beneficiaries who enroll in group health coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the requirements were proposed to apply

beginning on the first day of the first plan year that begins on or after September 1, 2015. For disclosures to plans, and to individuals and dependents in the individual market, these requirements were proposed to apply to health insurance issuers beginning on September 1, 2015. Comments received generally supported these applicability dates, except that a number of commenters suggested that the requirements apply with respect to the individual market for coverage beginning on or after January 1, 2016. These final regulations adopt the applicability dates as proposed, except that for disclosures to individuals and dependents in the individual market, the requirements apply to health insurance issuers with respect to SBCs issued for coverage that begins on or after January 1, 2016. Until these final regulations become applicable, plans and issuers must continue to comply with the 2012 final regulations, as applicable.

### III. Economic Impact and Paperwork Burden

#### A. Executive Orders 12866 and 13563—Departments of Labor and HHS

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). As discussed below, the Departments have concluded that these final regulations would not have economic impacts of \$100 mil-

lion or more in any one year or otherwise meet the definition of an “economically significant rule” under Executive Order 12866. Nonetheless, consistent with Executive Orders 12866 and 13563, the Departments have provided an assessment of the potential benefits and the costs associated with these final regulations.

These final regulations are expected to have only small benefits and costs as they primarily provide clarifications of the previous 2012 final regulations and also incorporate into regulations previous guidance issued by the Departments that has taken the form of responses to frequently asked questions or enforcement safe harbors.<sup>38</sup> The Departments have not been able to quantify these costs and benefits, but they are qualitatively discussed below.

The clarifications would help lower costs as they establish that duplicate SBCs do not have to be provided upon application if a previous SBC was provided and there have been no changes to the required information. The clarification also prevents unnecessary duplications for plans and issuers, while incorporating safeguards to ensure that participants and beneficiaries (and covered individuals and dependents) receive the required information. These final regulations also provide flexibility in providing SBCs for the situation where a plan has multiple issuers and also adopt the safe harbor for electronic delivery previously set forth in an FAQ, thereby reducing the cost of delivery.

These final regulations also require an issuer to provide an internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. The costs associated with this requirement are discussed in the Paperwork Reduction Act section below.

#### B. Paperwork Reduction Act

##### 1. Departments of Labor and the Treasury

These final rules are not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*),

<sup>37</sup>See Affordable Care Act Implementation FAQs Part IX, question 12, available at <http://www.dol.gov/ebsa/faqs/faq-aca9.html> and [http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs9.html](http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9.html).

<sup>38</sup>See Affordable Care Act Implementation FAQs Part XXIV available at <http://www.dol.gov/ebsa/faqs/faq-aca24.html> and [http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca\\_implementation\\_faqs24.html](http://www.cms.gov/CCHIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs24.html).

because these final regulations make no changes to the existing collection of information as defined in 44 U.S.C. 3502(3).

Please note that the proposed regulations included an ICR related to the revision of the SBC template that has been omitted in these final regulations as the Departments intend to utilize consumer testing and offer an opportunity for public comment before finalizing revisions to the SBC template. An analysis under the PRA will be conducted when the SBC template is finalized.

## 2. Department of Health and Human Services

These final regulations require health insurance issuers offering group and individual health insurance coverage must include in the SBC an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained. These documents are required to be easily available to individuals, plan sponsors, and participants and beneficiaries shopping for coverage prior to submitting an application for coverage. With respect to group health coverage, because the actual “certificate of coverage” is not available until after the plan sponsor has negotiated the terms of coverage with the issuer, an issuer is permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must be easily available to plan sponsors and participants and beneficiaries via an Internet web address.

Some commenters stated that requiring the individual coverage policy documents and group certificates of coverage be made available by posting to an Internet web address would be unduly burdensome because of the requirement to make the documents available to individuals and plan sponsors shopping for coverage, but not yet enrolled in coverage. The December 2014 proposed regulations estimated the burden for this requirement to be de minimis because the documents already

exist and issuers already have web addresses where the materials can be made available. Additionally, HHS understands that issuers already frequently make these materials available online to individuals, plan sponsors, and participants and beneficiaries after enrollment in coverage. These final regulations clarify that these documents must be made available online to those shopping for coverage prior to enrollment as well. It is not expected that group health insurance issuers will be providing access to group certificates of coverage prior to execution of the final group certificate of coverage. Instead, HHS anticipates and expects that the sample group certificate of coverage that underlies the product being marketed and sold, and that have been filed with and approved by a state Department of Insurance, are what will be provided prior to the execution of the actual group certificate of coverage. Based on this HHS still believes that the requirement to make these documents available via an Internet web address will result in only a de minimis burden on issuers.

These final regulations make no other revisions to the existing collection of information. The December 2014 proposed regulations included an ICR related to the revision of the SBC template that has been omitted in these final regulations as the Departments intend to utilize consumer testing and offer an opportunity for public comment before finalizing revisions to the SBC template. An analysis under the PRA will be conducted when the SBC template is finalized.

The Department notes that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number.

The 2015–2017 paperwork burden estimates are summarized as follows:

*Type of Review:* Revision.

*Agency:* Department of Health and Human Services.

*Title:* Summary of Benefits and Coverage Uniform Glossary

*CMS Identifier (OMB Control Number):* CMS-10407 (0938-1146).

*Affected Public:* Private sector.

*Total Respondents:* 126,500

*Total Responses:* 41,153,858

*Frequency of Response:* On-going.

*Estimated Total Annual Burden Hours (three year average):* 322,411 hours.

*Estimated Total Annual Cost Burden (three year average):* \$7,207,361

## C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis (IRFA) describing the rule’s impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities.

The RFA generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of “small entity.”)

There are several different types of small entities affected by these final regulations. For issuers and third party administrators, the Departments use as their measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. For plans, the Departments continue to consider a small plan to be an employee benefit plan with fewer than 100 participants.<sup>39</sup> Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Departments be-

<sup>39</sup>The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

lieve that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*).

The Departments carefully considered the likely impact of these final rules on small entities in connection with their assessment under Executive Order 12866. The incremental changes of these final regulations impose minimal additional costs, but also serve to reduce the costs of compliance by providing help to plans and service providers by providing clarifications. These final regulations also incorporate into regulations previous guidance from the Departments that has taken the form of responses to frequently asked questions or enforcement safe harbors. Accordingly, pursuant to section 605(b) of the RFA, the Departments hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities.

#### *D. Unfunded Mandates Reform Act— Department of Labor and Department of Health and Human Services*

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any final rule that includes a Federal mandate that could result in expenditure in any one year by State, local or Tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars updated annually for inflation. In 2015, that threshold level is approximately \$144 million. These final regulations include no mandates on State, local, or Tribal governments. These final regulations propose requirements regarding standardized consumer disclosures that would affect private sector firms (for example, health insurance issuers offering coverage in the individual and group markets, and third-party administrators providing administrative services to group health plans), but we conclude that these costs would not exceed the \$144 mil-

lion threshold. Thus, the Departments of Labor and HHS conclude that these final regulations would not impose an unfunded mandate on State, local or Tribal governments or the private sector. Regardless, consistent with policy embodied in UMRA, the final requirements described in this notice of final rulemaking has been designed to be the least burdensome alternative for State, local and Tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

#### *E. Federalism Statement—Department of Labor and Department of Health and Human Services*

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments of Labor’s and HHS’ view, these final regulations have federalism implications because they would have direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government relating to the disclosure of health insurance coverage information to consumers. Under these final regulations, all group health plans and health insurance issuers offering group or individual health insurance coverage, including self-funded non-federal governmental plans as defined in section 2791 of the PHS Act, would be required to follow uniform standards for compiling and providing a summary of benefits and coverage to consumers. Such Federal standards developed under PHS Act section 2715(a) would preempt any related State standards that require a summary of benefits and coverage that provides less

information to consumers than that required to be provided under PHS Act section 2715(a).

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements in title XXVII of the PHS Act (including those added by the Affordable Care Act) are not to be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the “narrowest” preemption of State laws (See House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018).

States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law. However, under these final rules, a State would not be allowed to impose a requirement that modifies the summary of benefits and coverage required to be provided under PHS Act section 2715(a), because it would prevent the application of these final rules’ uniform disclosure requirements.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments of Labor and HHS have engaged in efforts to consult with and work cooperatively with affected States, including consulting with, and attending confer-

ences of, the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments of Labor and HHS will act in a similar fashion in enforcing the Affordable Care Act, including the provisions of section 2715 of the PHS Act. Throughout the process of developing these final regulations, to the extent feasible within the applicable preemption provisions, the Departments of Labor and HHS have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments of Labor's and HHS' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this final rule, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached final rules in a meaningful and timely manner.

#### F. Special Analyses – Department of the Treasury

For purposes of the Department of the Treasury it has been determined that this notice of final rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations. For a discussion of the impact of this final rule on small entities, please see section V.C. of this preamble. Pursuant to section 7805(f) of the Code, this notice of final rulemaking has been submitted to the Small Business Administration for comment on its impact on small business.

#### G. Congressional Review Act

These final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory En-

forcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

#### IV. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

\* \* \* \* \*

Approved June 8, 2015.

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement,  
Internal Revenue Service.*

Approved June 9, 2015.

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

Signed this 5th day of June, 2015.

Phyllis C. Borzi,  
*Assistant Secretary,  
Employee Benefits Security Administration,  
Department of Labor.*

Approved June 2, 2015.

Andrew M. Slavitt,  
*Acting Administrator,  
Centers for Medicare & Medicaid Services.*

Approved June 9, 2015.

Sylvia M. Burwell,  
*Secretary,  
Department of Health and Human Services.*

#### DEPARTMENT OF THE TREASURY

Internal Revenue Service  
*26 CFR Chapter 1*

Accordingly, 26 CFR part 54 is amended as follows:

#### PART 54 —PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 continues to read in part as follows:

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

Section 54.9815–2715 also issued under 26 U.S.C. 9833;  
\* \* \* \* \*

Par. 2. Section 54.9815–2715 is revised to read as follows:

#### § 54.9815–2715 Summary of benefits and coverage and uniform glossary.

(a) *Summary of benefits and coverage—*  
(1) *In general.* A group health plan (and its administrator as defined in section 3(16)(A) of ERISA), and a health insurance issuer offering group health insurance coverage, is required to provide a written summary of benefits and coverage (SBC) for each benefit package without charge to entities and individuals described in this paragraph (a)(1) in accordance with the rules of this section.

(i) *SBC provided by a group health insurance issuer to a group health plan—*  
(A) *Upon application.* A health insurance issuer offering group health insurance coverage must provide the SBC to a group health plan (or its sponsor) upon application for health coverage, as soon as practicable following receipt of the application, but in no event later than seven

business days following receipt of the application. If an SBC was provided before application pursuant to paragraph (a)(1)(i)(D) of this section (relating to SBCs upon request), this paragraph (a)(1)(i)(A) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information required, a new SBC that includes the changed information must be provided upon application pursuant to this paragraph (a)(1)(i)(A).

(B) *By first day of coverage (if there are changes)*. If there is any change in the information required to be in the SBC that was provided upon application and before the first day of coverage, the issuer must update and provide a current SBC to the plan (or its sponsor) no later than the first day of coverage.

(C) *Upon renewal, reissuance, or reenrollment*. If the issuer renews or reissues a policy, certificate, or contract of insurance for a succeeding policy year, or automatically re-enrolls the policyholder or its participants and beneficiaries in coverage, the issuer must provide a new SBC as follows:

(1) If written application is required (in either paper or electronic form) for renewal or reissuance, the SBC must be provided no later than the date the written application materials are distributed.

(2) If renewal, reissuance, or reenrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(D) *Upon request*. If a group health plan (or its sponsor) requests an SBC or summary information about a health insurance product from a health insurance issuer offering group health insurance coverage, an SBC must be provided as soon as practicable, but in no event later than seven business days following receipt of the request.

(ii) *SBC provided by a group health insurance issuer and a group health plan to participants and beneficiaries—(A) In general*. A group health plan (including its administrator, as defined under section 3(16) of ERISA), and a health insurance issuer offering group health insurance coverage, must provide an SBC to a participant or beneficiary (as defined under sections 3(7) and 3(8) of ERISA), and consistent with the rules of paragraph (a)(1)(iii) of this section, with respect to each benefit package offered by the plan or issuer for which the participant or beneficiary is eligible.

(B) *Upon application*. The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan or issuer does not distribute written application materials for enrollment, the SBC must be provided no later than the first date on which the participant is eligible to enroll in coverage for the participant or any beneficiaries. If an SBC was provided before application pursuant to paragraph (a)(1)(ii)(F) of this section (relating to SBCs upon request), this paragraph (a)(1)(ii)(B) is deemed satisfied, provided there is no change to the information required to be in the SBC. However, if there has been a change in the information that is required to be in the SBC, a new SBC that includes the changed information must be provided upon application pursuant to this paragraph (a)(1)(ii)(B).

(C) *By first day of coverage (if there are changes)*. (1) If there is any change to the information required to be in the SBC that was provided upon application and before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.

(2) If the plan sponsor is negotiating coverage terms after an application has been filed and the information required to be in the SBC changes, the plan or issuer is not required to provide an updated SBC (unless an updated SBC is requested) until the first day of coverage.

(D) *Special enrollees*. The plan or issuer must provide the SBC to special enrollees (as described in § 54.9801-6) no later than the date by which a summary plan description is required to be provided under the timeframe set forth in ERISA

section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

(E) *Upon renewal, reissuance, or reenrollment*. If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), or automatically re-enrolls participants and beneficiaries in coverage, the plan or issuer must provide a new SBC, as follows:

(1) If written application is required for renewal, reissuance, or reenrollment (in either paper or electronic form), the SBC must be provided no later than the date on which the written application materials are distributed.

(2) If renewal, reissuance, or reenrollment is automatic, the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year; however, with respect to an insured plan, if the policy, certificate, or contract of insurance has not been issued or renewed before such 30-day period, the SBC must be provided as soon as practicable but in no event later than seven business days after issuance of the new policy, certificate, or contract of insurance, or the receipt of written confirmation of intent to renew, whichever is earlier.

(F) *Upon request*. A plan or issuer must provide the SBC to participants or beneficiaries upon request for an SBC or summary information about the health coverage, as soon as practicable, but in no event later than seven business days following receipt of the request.

(iii) *Special rules to prevent unnecessary duplication with respect to group health coverage—(A)* An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual satisfies that requirement if another party provides the SBC, but only to the extent that the SBC is timely and complete in accordance with the other rules of this section. Therefore, for example, in the case of a group health plan funded through an insurance policy, the plan satisfies the requirement to provide an SBC with respect to an individual if the issuer provides a timely and complete SBC to the individual. An entity required to provide an SBC under this paragraph (a)(1) with respect to an individual that contracts with another party to provide such SBC is considered

to satisfy the requirement to provide such SBC if:

(1) The entity monitors performance under the contract;

(2) If the entity has knowledge that the SBC is not being provided in a manner that satisfies the requirements of this section and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and

(3) If the entity has knowledge the SBC is not being provided in a manner that satisfies the requirements of this section and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

(B) If a single SBC is provided to a participant and any beneficiaries at the participant's last known address, then the requirement to provide the SBC to the participant and any beneficiaries is generally satisfied. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC is required to be provided to the beneficiary at the beneficiary's last known address.

(C) With respect to a group health plan that offers multiple benefit packages, the plan or issuer is required to provide a new SBC automatically to participants and beneficiaries upon renewal or reenrollment only with respect to the benefit package in which a participant or beneficiary is enrolled (or will be automatically reenrolled under the plan); SBCs are not required to be provided automatically upon renewal or reenrollment with respect to benefit packages in which the participant or beneficiary is not enrolled (or will not automatically be enrolled). However, if a participant or beneficiary requests an SBC with respect to another benefit package (or more than one other benefit package) for which the participant or beneficiary is eligible, the SBC (or SBCs, in the case of a request for SBCs relating to more than one benefit package) must be provided upon request as soon as practicable, but in no event later than seven

business days following receipt of the request.

(D) Subject to paragraph (a)(2)(ii) of this section, a plan administrator of a group health plan that uses two or more insurance products provided by separate health insurance issuers with respect to a single group health plan may synthesize the information into a single SBC or provide multiple partial SBCs provided that all the SBC include the content in paragraph (a)(2)(iii) of this section.

(2) *Content*—(i) *In general*. Subject to paragraph (a)(2)(iii) of this section, the SBC must include the following:

(A) Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage, in accordance with guidance as specified by the Secretary;

(B) A description of the coverage, including cost sharing, for each category of benefits identified by the Secretary in guidance;

(C) The exceptions, reductions, and limitations of the coverage;

(D) The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;

(E) The renewability and continuation of coverage provisions;

(F) Coverage examples, in accordance with the rules of paragraph (a)(2)(ii) of this section;

(G) With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

(H) A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract of insurance should be consulted to determine the governing contractual provisions of the coverage;

(I) Contact information for questions;

(J) For issuers, an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;

(K) For plans and issuers that maintain one or more networks of providers, an

Internet address (or similar contact information) for obtaining a list of network providers;

(L) For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage; and

(M) An Internet address for obtaining the uniform glossary, as described in paragraph (c) of this section, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available.

(ii) *Coverage examples*. The SBC must include coverage examples specified by the Secretary in guidance that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions) in accordance with this paragraph (a)(2)(ii).

(A) *Number of examples*. The Secretary may identify up to six coverage examples that may be required in an SBC.

(B) *Benefits scenarios*. For purposes of this paragraph (a)(2)(ii), a benefits scenario is a hypothetical situation, consisting of a sample treatment plan for a specified medical condition during a specific period of time, based on recognized clinical practice guidelines as defined by the National Guideline Clearinghouse, Agency for Healthcare Research and Quality. The Secretary will specify, in guidance, the assumptions, including the relevant items and services and reimbursement information, for each claim in the benefits scenario.

(C) *Illustration of benefit provided*. For purposes of this paragraph (a)(2)(ii), to illustrate benefits provided under the plan or coverage for a particular benefits scenario, a plan or issuer simulates claims processing in accordance with guidance issued by the Secretary to generate an estimate of what an individual might expect to pay under the plan, policy, or benefit package. The illustration of benefits provided will take into account any cost sharing, excluded benefits, and other limitations on coverage, as specified by the Secretary in guidance.

(iii) *Coverage provided outside the United States*. In lieu of summarizing coverage for items and services provided outside the United States, a plan or issuer

may provide an Internet address (or similar contact information) for obtaining information about benefits and coverage provided outside the United States. In any case, the plan or issuer must provide an SBC in accordance with this section that accurately summarizes benefits and coverage available under the plan or coverage within the United States.

(3) *Appearance.* (i) A group health plan and a health insurance issuer must provide an SBC in the form, and in accordance with the instructions for completing the SBC, that are specified by the Secretary in guidance. The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

(ii) A group health plan that utilizes two or more benefit packages (such as major medical coverage and a health flexible spending arrangement) may synthesize the information into a single SBC, or provide multiple SBCs.

(4) *Form.* (i) An SBC provided by an issuer offering group health insurance coverage to a plan (or its sponsor), may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the following three conditions are satisfied –

(A) The format is readily accessible by the plan (or its sponsor);

(B) The SBC is provided in paper form free of charge upon request; and

(C) If the electronic form is an Internet posting, the issuer timely advises the plan (or its sponsor) in paper form or email that the documents are available on the Internet and provides the Internet address.

(ii) An SBC provided by a group health plan or health insurance issuer to a participant or beneficiary may be provided in paper form. Alternatively, the SBC may be provided electronically (such as by email or an Internet posting) if the requirements of this paragraph (a)(4)(ii) are met.

(A) With respect to participants and beneficiaries covered under the plan or coverage, the SBC may be provided electronically as described in this paragraph (a)(4)(ii)(A). However, in all cases, the plan or issuer must provide the SBC in paper form if paper form is requested.

(1) In accordance with the Department of Labor's disclosure regulations at 29 CFR 2520.104b-1;

(2) In connection with online enrollment or online renewal of coverage under the plan; or

(3) In response to an online request made by a participant or beneficiary for the SBC.

(B) With respect to participants and beneficiaries who are eligible but not enrolled for coverage, the SBC may be provided electronically if:

(1) The format is readily accessible;

(2) The SBC is provided in paper form free of charge upon request; and

(3) In a case in which the electronic form is an Internet posting, the plan or issuer timely notifies the individual in paper form (such as a postcard) or email that the documents are available on the Internet, provides the Internet address, and notifies the individual that the documents are available in paper form upon request.

(5) *Language.* A group health plan or health insurance issuer must provide the SBC in a culturally and linguistically appropriate manner. For purposes of this paragraph (a)(5), a plan or issuer is considered to provide the SBC in a culturally and linguistically appropriate manner if the thresholds and standards of 29 CFR 2590.715-2719(e) are met as applied to the SBC.

(b) *Notice of modification.* If a group health plan, or health insurance issuer offering group health insurance coverage, makes any material modification (as defined under section 102 of ERISA) in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the modification to enrollees not later than 60 days prior to the date on which the modification will become effective. The notice of modification must be provided in a form that is consistent with the rules of paragraph (a)(4) of this section.

(c) *Uniform glossary*—(1) *In general.* A group health plan, and a health insurance issuer offering group health insurance coverage, must make available to participants and beneficiaries the uniform glos-

sary described in paragraph (c)(2) of this section in accordance with the appearance and form and manner requirements of paragraphs (c)(3) and (4) of this section.

(2) *Health-coverage-related terms and medical terms.* The uniform glossary must provide uniform definitions, specified by the Secretary in guidance, of the following health-coverage-related terms and medical terms:

(i) Allowed amount, appeal, balance billing, co-insurance, complications of pregnancy, co-payment, deductible, durable medical equipment, emergency medical condition, emergency medical transportation, emergency room care, emergency services, excluded services, grievance, habilitation services, health insurance, home health care, hospice services, hospitalization, hospital outpatient care, in-network co-insurance, in-network co-payment, medically necessary, network, non-preferred provider, out-of-network co-insurance, out-of-network co-payment, out-of-pocket limit, physician services, plan, preauthorization, preferred provider, premium, prescription drug coverage, prescription drugs, primary care physician, primary care provider, provider, reconstructive surgery, rehabilitation services, skilled nursing care, specialist, usual customary and reasonable (UCR), and urgent care; and

(ii) Such other terms as the Secretary determines are important to define so that individuals and employers may compare and understand the terms of coverage and medical benefits (including any exceptions to those benefits), as specified in guidance.

(3) *Appearance.* A group health plan, and a health insurance issuer, must provide the uniform glossary with the appearance specified by the Secretary in guidance to ensure the uniform glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee.

(4) *Form and manner.* A plan or issuer must make the uniform glossary described in this paragraph (c) available upon request, in either paper or electronic form (as requested), within seven business days after receipt of the request.

(d) *Preemption.* State laws that conflict with this section (including a state law that requires a health insurance issuer to provide an SBC that supplies less infor-

mation than required under paragraph (a) of this section) are preempted.

(e) *Failure to provide.* A group health plan that willfully fails to provide information required under this section to a participant or beneficiary is subject to a fine of not more than \$1,000 for each such failure. A failure with respect to each participant or beneficiary constitutes a separate offense for purposes of this paragraph (e). The Department will enforce this section using a process and procedure consistent with section 4980D of the Code.

(f) *Applicability to Medicare Advantage benefits.* The requirements of this section do not apply to a group health plan benefit package that provides Medicare Advantage benefits pursuant to or 42 U.S.C. Chapter 7, Subchapter XVIII, Part C.

(g) *Applicability date.* (1) This section is applicable to group health plans and group health insurance issuers in accordance with this paragraph (g). (See 29 CFR 2590.715–1251(d), providing that this section applies to grandfathered health plans.)

(i) For disclosures with respect to participants and beneficiaries who enroll or re-enroll through an open enrollment period (including re-enrollees and late enrollees), this section applies beginning on the first day of the first open enrollment period that begins on or after September 1, 2015; and

(ii) For disclosures with respect to participants and beneficiaries who enroll in coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), this section applies beginning on the first day of the first plan year that begins on or after September 1, 2015.

(2) For disclosures with respect to plans, this section is applicable to health insurance issuers beginning September 1, 2015.

(Filed by the Office of the Federal Register on June 12, 2015, 4:15 p.m., and published in the issue of the Federal Register for June 16, 2015, 80 F.R. 34292)

## Section 9815.— Summary of Benefits and coverage and Uniform Glossary

26 CFR 54.9815–2715 – Summary of benefits and coverage and uniform glossary.

### TD 9725

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 20, 25, and 602

### Portability of a Deceased Spousal Unused Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance under sections 2010 and 2505 of the Internal Revenue Code on the estate and gift tax applicable exclusion amount, in general, as well as on the applicable requirements for electing portability of a deceased spousal unused exclusion (DSUE) amount to the surviving spouse and on the applicable rules for the surviving spouse's use of this DSUE amount. The statutory provisions underlying the portability rules were enacted as part of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and these provisions were made permanent by the American Taxpayer Relief Act of 2012. The portability rules affect the estates of married decedents dying on or after January 1, 2011, and the surviving spouses of those decedents.

DATES: *Effective Date.* These regulations are effective on June 12.

*Applicability Dates:* For specific dates of applicability of the final regulations, see §§ 20.2001–2(b), 20.2010–1(e), 20.2010–2(e), 20.2010–3(f), 25.2505–1(e), and 25.2505–2(g).

FOR FURTHER INFORMATION CONTACT: Karlene Lesho (202) 317-6859 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget under control number 1545–0015. The collections of information are in §§ 20.2010–2(a), 20.2010–2(a)(1), 20.2010–2(a)(3)(i), 20.2010–2(a)(7)(ii)(B), and 20.2010–2(b). Responses to each collection of information are voluntary to obtain the benefit of being able to elect portability or to take advantage of the special reporting requirements applicable to certain assets, and, for certain estates, to opt out of a deemed portability election. The likely respondents are executors of estates of decedents survived by a spouse.

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.

Books and 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 amends the Estate Tax Regulations (26 CFR part 20) under sections 2001 and 2010 of the Internal Revenue Code (Code) and the Gift Tax Regulations (26 CFR part 25) under section 2505 of the Code. On December 17, 2010, in section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (124 Stat. 3296, 3302) (TRUIR-JCA), Congress amended section 2010(c) of the Code to allow portability of the applicable exclusion amount between spouses and made conforming amendments to sections 2505(a), 2631(c), and 6018(a)(1) of the Code. The changes made by TRUIR-JCA to sections 2010(c), 2505(a), 2631(c), and 6018(a)(1) of the Code were scheduled to expire after December 31, 2012, pursuant to section 304 of TRUIR-JCA. However, on January 2, 2013, Congress enacted the American Taxpayer Relief Act of 2012, Public Law

112–240 (126 Stat. 2313) (ATRA), which made portability permanent. In section 101(c)(2) of ATRA, Congress made a technical correction to section 2010(c)(4)(B) of the Code, retroactive to the original date of enactment of section 303 of TRUIRJCA, by amending clause (i) to replace “basic exclusion amount” with “applicable exclusion amount.”

On June 18, 2012, temporary regulations relating to this topic (TD 9593, 77 FR 36150) (“2012 temporary regulations”) and a notice of proposed rulemaking cross-referencing the temporary regulations (REG–141832–11, 77 FR 36229) (“NPRM”) were published in the **Federal Register**. No requests to speak at the scheduled public hearing were received, and the hearing was canceled. Comments responding to the NPRM were received and are available for public inspection and copying at <http://www.regulations.gov> or upon request. After consideration of all the comments, the proposed rules in the NPRM are adopted as amended by this Treasury decision. The public comments and revisions are discussed in this preamble.

## Summary of Comments and Explanation of Revisions

### 1. Availability of Extension of Time to Elect Portability

Section 2010(c) of the Code allows the estate of a decedent who is survived by a spouse to make a portability election, which generally allows the surviving spouse to apply the decedent’s deceased spousal unused exclusion (DSUE) amount to the surviving spouse’s own transfers during life and at death. Under section 2010(c)(5)(A), a portability election is effective only if made on an estate tax return filed by the executor of the decedent’s estate within the time prescribed by law for filing such return. Section 20.2010–2T(a)(1) of the 2012 temporary regulations requires every estate electing portability of a decedent’s DSUE amount to file an estate tax return within nine months of the decedent’s date of death, unless an extension of time for filing has been granted.

A commenter requested that the final regulations address the availability of an extension of time under §§ 301.9100–2

and 301.9100–3 of the Procedure and Administration Regulations to elect portability under section 2010(c)(5)(A) of the Code. Section 301.9100–2(b) provides an automatic six-month extension of time for making certain statutory and regulatory elections if the return is timely filed. Because the portability election is deemed to be made by the timely filing of a complete and properly prepared estate tax return, this relief provision will not be helpful with regard to the portability election unless the return that was timely filed was not complete or properly prepared and that insufficiency is corrected within six months from the unextended due date of the return.

Section 301.9100–3 allows the grant of an extension of time for making regulatory elections that do not meet the requirements for an automatic extension of time under § 301.9100–2. An extension under § 301.9100–3 to elect portability is not available to estates that are required to file an estate tax return based on the applicable amount in section 6018(a) because, in such a case, the due date for the portability election is prescribed by statute and § 301.9100–3 applies only to an election whose due date is prescribed by regulation. See sections 2010(c)(5)(A), 6075(a), and 6018(a); § 301.9100–1(b). However, an extension of time under § 301.9100–3 to elect portability may be available to estates that are under the value threshold described in section 6018 for being required to file an estate tax return. In such a case, the due date for the portability election is prescribed by regulation, not by statute. See Rev. Proc. 2014–18, 2014–7 IRB 513, section 2.03.

The Treasury Department and the IRS believe that clarifying the availability of an extension of time under § 301.9100–3 to elect portability will assist taxpayers in understanding and meeting their tax responsibilities. Accordingly, the final regulations provide that an extension of time to elect portability will not be granted under § 301.9100–3 to any estate that is required to file an estate tax return because the value of the gross estate equals or exceeds the threshold amount described in section 6018, but may be granted under the rules set forth in § 301.9100–3 to estates with a gross estate value below

that threshold amount and thus not otherwise required to file an estate tax return.

As transitional relief in the wake of TRUIRJCA and ATRA, the Treasury Department and the IRS have published guidance regarding the availability of an automatic extension of time for executors of certain estates under the filing threshold of section 6018(a) to file an estate tax return to elect portability of an unused exclusion amount. See Notice 2012–21, 2012–10 IRB 450; Rev. Proc. 2014–18. The Treasury Department and the IRS continue to receive, and are continuing to consider, requests for permanent extensions of this type of relief. However, such relief is not included in the final regulations.

### 2. Effect of Portability Election Where DSUE Amount is Uncertain

Section 20.2010–2T(a)(2) of the 2012 temporary regulations provides that upon the timely filing of a complete and properly prepared estate tax return, an executor of the estate of a decedent survived by a spouse will have elected portability of the decedent’s DSUE amount, unless the executor validly opts out of making the portability election. The inclusion of a computation of the DSUE amount is an essential requirement of a complete and properly prepared estate tax return intended to make the portability election. See section 2010(c)(5)(A) and § 20.2010–2T(b)(1). Section 20.2010–3T(c) provides that the portability election applies (and generally is available to the surviving spouse) upon the decedent’s death, but, to the extent the DSUE amount subsequently is reduced or cannot be substantiated, the DSUE amount will not be available to the surviving spouse.

A commenter requested that the final regulations address whether an estate can make a “protective” election if a DSUE amount is not reflected on an otherwise complete and properly prepared estate tax return at the time of its timely filing, but subsequent adjustments to amounts on the estate tax return would result in unused exclusion of that decedent. The following example illustrates such a scenario. An executor files a complete and properly prepared estate tax return that shows a DSUE amount equal to zero at the time of

the return's timely filing and does not follow the instructions set forth in the instructions for opting out of portability. At the same time, the executor also files a protective claim for refund attributable to a claim against the estate. Subsequently, the estate becomes entitled to a deduction under section 2053 for a payment made in satisfaction of the claim against the estate which reduces the estate tax and results in unused exemption.

In this example, the Treasury Department and the IRS believe that the executor has elected portability in accordance with § 20.2010-2T(a)(2) and that the recomputed DSUE amount will be available to the decedent's surviving spouse. The final regulations clarify this intended result by providing in § 20.2010-2(b) that the computation requirement in section 2010(c)(5)(A) will be satisfied if the estate tax return is prepared in accordance with the requirements of § 20.2010-2(a)(7). Accordingly, there is no need for a protective election.

### 3. Persons Permitted to Make the Election

Several commenters requested that the final regulations allow a surviving spouse who is not an executor as defined in section 2203 of the Code to file an estate tax return and make the portability election in several different circumstances. A few of the circumstances described include those in which the spouse is given the right to file the estate tax return in a prenuptial or marital agreement, or the spouse has petitioned the appropriate local court for the spouse's appointment as an executor solely for the limited purpose of filing the estate tax return and the executor does not make the portability election. The Treasury Department and the IRS recognize the possibility that an executor may exercise the executor's discretion to not make the portability election, thus causing the estate to forfeit the opportunity to elect portability, but note that section 2010(c)(5) of the Code permits only the executor of the decedent's estate to file the estate tax return and make the portability election. The 2012 temporary regulations address the circumstances in which an appointed executor or a non-appointed executor may file the estate tax return and decide whether or not to elect portability. The Treasury Department and the IRS believe that any consid-

eration of what, if any, state law action might bring the surviving spouse within the definition of executor under section 2203 is outside of the scope of this regulation. Accordingly, the final regulations adopt the applicable rules in the 2012 temporary regulations without change.

### 4. Requirement of a "Complete and Properly Prepared" Estate Tax Return

Section 20.2010-2T(a)(2) provides that the estate of a decedent survived by a spouse makes the portability election by timely filing a complete and properly prepared estate tax return for the decedent's estate. Section 20.2010-2T(a)(7)(i) provides that an estate tax return prepared in accordance with all applicable requirements is considered a "complete and properly prepared" estate tax return. Section 20.2010-2T(a)(7)(ii)(A), however, provides a special rule applicable to estates that are not otherwise required to file an estate tax return under section 6018. For these estates, the executor does not need to report the value of certain property that qualifies for the marital or charitable deduction. The 2012 temporary regulations also included exceptions to the application of the special rule by providing specific circumstances under which the special rule will not apply.

A commenter suggested that the final regulations elaborate on the circumstances under which a timely filed estate tax return may be considered so deficient as to render the estate tax return incomplete for purposes of electing portability. The Treasury Department and the IRS acknowledge that, as with all tax returns, some errors or omissions made with respect to an estate tax return will be considered minor and correctible. However, the Treasury Department and the IRS consider the issue of whether an estate tax return is complete and properly prepared to be determined most appropriately on a case-by-case basis by applying standards as prescribed in current law. Therefore, this suggestion has not been adopted.

A commenter recommended that the final regulations modify the special rule in § 20.2010-2T(a)(7)(ii)(A) to narrow the exceptions to the application of the special rule, thus allowing more estates to avoid the expense of a potentially-complicated

appraisal to value assets includible in the gross estate. Specifically, the commenter recommended that the special rule in § 20.2010-2T(a)(7)(ii)(A) should apply to certain property, the value of which qualifies for the marital deduction or charitable deduction (marital deduction property or charitable deduction property), when: (i) the marital deduction property or charitable deduction property is a stated number of shares of stock and a stated number of shares of the same stock are includible in the gross estate but are not marital deduction property or charitable deduction property; (ii) the property represents the balance of the value of shares remaining after a non-marital or non-charitable bequest of shares based on a specific value; and (iii) the property represents the marital or charitable portion of a fractional division of property, whether by bequest, spousal election, or disclaimer. In the first two instances, the value of the marital deduction property or charitable deduction property may be relevant to assessing the accuracy of the valuation of the nondeductible interest and whether any valuation premium or discount is warranted. In the last instance, because any beneficiary's share of the estate usually can be satisfied in a manner other than with that beneficiary's proportional share of each individual asset, it will be necessary to know the total value in order to verify the non-deductible portion of the estate. Therefore, the Treasury Department and the IRS continue to believe that § 20.2010-2T(a)(7)(ii)(A) appropriately excludes the described circumstances from application of the special rule. While the final regulations do not adopt the commenter's suggestion to narrow the exceptions to the application of the special rule, the final regulations provide flexibility to refine the rules in subregulatory guidance at any time in the future when the IRS may determine that additional guidance would be appropriate with regard to the application of the special rule to particular types of transfers.

The same commenter suggested that the exception in § 20.2010-2T(a)(7)(ii)(A)(2) is made unnecessarily broad by its reference to "another provision of the Code." The commenter was concerned that, because the fair market value of a bequeathed asset determines the basis of that

asset in the hands of the legatee, the value of all estate assets would have an impact on section 1014, and, thus, all assets would have to be valued. In referring to value needed to determine an estate's eligibility under other Code sections such as sections 2032 and 2032A, the Treasury Department and the IRS did not intend to include a basis determination under section 1014. Accordingly, the language of § 20.2010-2T(a)(7)(ii)(A)(2) has been clarified.

Finally, a commenter repeated a suggestion (first made in response to a request for comments in Notice 2011-82, 2011-42 IRB 516) that the IRS prepare a shorter version of the estate tax return to be used by estates that are not otherwise required to file an estate tax return but do so only to elect portability. The Treasury Department and the IRS have reconsidered this suggestion, taking into account several factors including: the information needed by the IRS to compute and verify the DSUE amount; how such an abbreviated return would differ from a return qualifying for the special rule regarding valuations under § 20.2010-2(a)(7)(ii); the past experience of the IRS regarding the accuracy of abbreviated returns; the administrative issues in creating and maintaining alternate return forms; and the reasons provided by commenters. The Treasury Department and the IRS have concluded that, on balance, a timely filed, complete, and properly prepared estate tax return affords the most efficient and administrable method of obtaining the information necessary to compute and verify the DSUE amount, and the alleged benefits to taxpayers from an abbreviated form is far outweighed by the anticipated administrative difficulties in administering the estate tax. In addition, the "Technical Explanation of the Revenue Provisions Contained in the 'Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010' Scheduled for Consideration by the United States Senate," J. Comm. on Tax'n, 111<sup>th</sup> Cong., JCX-55-10 (December 10, 2010), suggests that estates electing portability that are not otherwise required to file an estate tax return under section 6018(a) are intended to be subject to the same filing requirements applicable to estates required to file an estate tax return under section 6018(a).

For these reasons, this suggestion is not adopted.

#### 5. *Special Rules for Qualified Domestic Trusts*

The preamble to the 2012 regulations discussed comments and proposals the Treasury Department and the IRS had received on the proper application of the portability rules to qualified domestic trusts (QDOTs) created for spouses who are not U.S. citizens. The preamble noted that each of the proposals raised issues of fairness, complexity, and administrability.

The QDOT rules in the 2012 temporary regulations provide that the executor of a decedent's estate claiming a marital deduction for property passing to a QDOT shall compute the decedent's DSUE amount on the decedent's estate tax return for the purpose of electing portability in the same way the DSUE amount is computed for any other decedent. However, because the estate tax payments made from the QDOT after the decedent's death are part of the decedent's estate tax liability, the decedent's DSUE amount must be redetermined upon the final distribution or other taxable event on which estate tax under section 2056A is imposed (generally, this occurs upon the termination of all QDOTs created by or funded with assets passing from the decedent or upon the death of the surviving spouse). See § 20.2010-2T(c)(4). The QDOT rules in the 2012 temporary regulations further provide that the earliest date such a decedent's DSUE amount may be included in determining the applicable exclusion amount available to the surviving spouse or the surviving spouse's estate is the date of the event that triggers the final estate tax liability of the decedent under section 2056A. See § 20.2010-3T(c)(2). The preamble to the 2012 temporary regulations requested further comments on the QDOT issue.

A commenter challenged this delay in the surviving spouse's ability to use the decedent's DSUE amount if the surviving spouse becomes a United States citizen after the decedent's estate tax return is filed and after property passes to a QDOT for the benefit of that surviving spouse.

Under section 2056A(b)(12), the estate tax imposed under section 2056A(b)(1)

will cease to apply to property held in a QDOT if the surviving spouse becomes a United States citizen (a fact to be certified to the IRS under § 20.2056A-10(a)(2)) and either of the following requirements are met: (A) the spouse was a resident of the United States at all times after the death of the decedent and before the spouse becomes a citizen of the United States, or (B) no tax was imposed by section 2056A(b)(1)(A) with respect to any distribution before the spouse becomes a citizen. If the spouse becomes a U.S. citizen, but does not satisfy either of these two requirements, section 2056A(b)(12)(C) provides that the section 2056A(b)(1) estate tax will cease to apply to the QDOT if the spouse elects (i) to treat any distribution on which tax was imposed by section 2056A(b)(1)(A) as a taxable gift made by the spouse during the year in which the spouse becomes a U.S. citizen or in any subsequent year, and thereby including each such distribution in the spouse's own adjusted taxable gifts for both estate and gift tax purposes, and (ii) to treat any reduction in the tax imposed by section 2056A(b)(1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a U.S. citizen or any subsequent year.

The Treasury Department and the IRS conclude that, if the surviving spouse of the decedent becomes a citizen of the United States and the requirements under section 2056A(b)(12) and the corresponding regulations are satisfied so that the tax imposed by section 2056A(b)(1) no longer applies, then the decedent's DSUE amount is no longer subject to adjustment and will become available for transfers by the surviving spouse as of the date the surviving spouse becomes a citizen of the United States. Accordingly, the final regulations make clarifying changes in §§ 20.2010-2(c)(4), 20.2010-3(c)(3), and 25.2505-2(d)(3).

A commenter also requested clarification of the rules in §§ 20.2010-3T(b), 25.2505-2T(b) and 25.2505-2T(c) as they apply to a QDOT. Section 25.2505-2T(b)

provides that, in the case of a surviving spouse making a gift, the surviving spouse will be considered to apply any available DSUE amount to the taxable gift before the surviving spouse's own basic exclusion amount. Sections 20.2010-3T(b) and 25.2505-2T(c) address how to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied a DSUE amount of one or more deceased spouses. These rules are applicable to all surviving spouses but can be applied only after the surviving spouse determines the spouse's available DSUE amount, if any. Sections 20.2010-3T(c)(2) and 25.2505-2T(d)(2) provide rules governing the date DSUE can be taken into consideration by the surviving spouse or the surviving spouse's estate when property passes from a decedent for the benefit of a surviving spouse in one or more QDOTs and the decedent elects portability. The Treasury Department and the IRS believe that the impact of these rules in the context of QDOTs is sufficiently clear. Thus, the final regulations adopt these rules without change, except that the rule in § 25.2505-2T(d)(2) is now provided in § 25.2505-2(d)(3).

#### *6. Issues Related to Examination of Returns to Determine DSUE Amount*

Section 2010(c)(5)(B) grants the IRS the authority to examine returns of each deceased spouse of the surviving spouse to determine the DSUE amount allowed to be included in the applicable exclusion amount of the surviving spouse, even if the period of limitations under section 6501 has expired for assessing gift or estate tax with respect to the returns of the deceased spouse. The Treasury Department and the IRS received several comments and recommendations related to this examination authority.

First, a commenter requested that the final regulations provide that, during an examination to determine the allowable DSUE amount, the examination authority of the IRS be limited to issues of the reporting and valuation of assets, and not extend to other legal issues that may impact the availability of the DSUE amount to the surviving spouse. The Treasury Department and the IRS note that section

2010(c)(5)(B) grants broad statutory authority to the IRS to examine the correctness of any return, without regard to the period of limitations on assessment, "to make determinations with respect to [the allowable DSUE] amount for purposes of carrying out [section 2010(c) of the Code]." Thus, the Treasury Department and the IRS conclude that limiting such authority is inconsistent with the statute. Accordingly, this suggestion is not adopted.

Second, a commenter requested confirmation that, in the examination of a return for the purpose of determining the allowable DSUE amount that takes place after the expiration of the period of limitations on assessment of tax, the valuation of assets may be adjusted upward or downward with a possible result that the allowable DSUE amount may decrease or increase. The accurate valuation of assets reported on an estate or gift tax return, regardless of whether the valuation is higher or lower than the reported value, is fundamental to the examination of such a return and fundamental to the accurate determination of the DSUE amount available to the surviving spouse. The Treasury Department and the IRS accordingly conclude no clarifying change is necessary on this issue.

Third, a commenter suggested the final regulations consider whether, in the examination of a return for the purpose of determining the allowable DSUE amount that takes place after the expiration of the period of limitations on assessment of tax, an adjustment to the value of an asset reported on the return affects the basis of that asset under section 1014. Section 1014 generally provides that the basis of property acquired from a decedent is the fair market value of such property on the decedent's date of death. The Treasury Department and the IRS believe that a change to the date-of-death value of an asset included in the estate of a decedent survived by a spouse, made pursuant to an examination of a return of that decedent after the expiration of the period of limitations on the assessment of tax on that return, does not necessarily result in a change to the basis of that asset under section 1014. Rather, the basis of property acquired from a decedent is determined in accordance with the existing principles of

section 1014. The Treasury Department and the IRS conclude that the scope of the examination authority granted in section 2010(c)(5)(B) is sufficiently clear and, therefore, make no change in the final regulations.

Fourth, a commenter suggested that the final regulations clarify the deductibility of administrative expenses associated with the examination to determine the allowable DSUE amount. The Treasury Department and the IRS conclude that any expenses associated with an examination to determine the DSUE amount to be included in the applicable exclusion amount of the surviving spouse should be treated as any other expense associated with the preparation of the surviving spouse's return. Thus, in the case of an examination arising with respect to a gift tax return of the surviving spouse, such expenses are not deductible and, in the case of an examination arising with respect to an estate tax return of the surviving spouse, such expenses may be deductible if such expenses meet all of the applicable requirements for deductibility under section 2053. The Treasury Department and the IRS believe that the standards for deducting expenses for estate and gift tax purposes are sufficiently clear so that no change to the 2012 temporary regulations is necessary.

Finally, a commenter suggested clarifying who may participate in the examination to determine the DSUE amount to be included in the applicable exclusion amount of the surviving spouse. In general, pursuant to the current rules, each taxpayer has the authority to participate in the resolution of the issues raised in the audit of his or her return. However, the Treasury Department and the IRS believe addressing this issue is outside the scope of this final regulation and, therefore, make no change in the final regulation.

#### *7. Availability of DSUE Amount by Surviving Spouse Who Becomes a Citizen of the United States*

A commenter requested further guidance on the rules in §§ 20.2010-3T(e) and 25.2505-2T(f), which prohibit a noncitizen, nonresident surviving spouse, or the estate of such a surviving spouse, from taking into account the DSUE amount of

any deceased spouse except to the extent allowed under any treaty obligation of the United States. First, the commenter suggested the final regulations clarify the specificity a treaty must employ in referencing portability or the DSUE amount for the exception to apply. The Treasury Department and the IRS consider this question regarding the interpretation of treaty language to be outside the scope of these final regulations and, thus, decline to make this change.

Next, the commenter requested that the final regulations allow a surviving spouse who becomes a U.S. citizen after the death of the deceased spouse to take into account the DSUE amount of such deceased spouse. Because a surviving spouse who becomes a U.S. citizen is subject to the estate and gift tax rules of chapter 11 and 12 that apply to U.S. citizens and residents, the Treasury Department and the IRS believe it is appropriate that such a surviving spouse be permitted to take into account the DSUE amount available from any deceased spouse as of the date such surviving spouse becomes a U.S. citizen, provided the deceased spouse's executor has made the portability election. Accordingly, the final regulations include such a rule in §§ 20.2010-3 and 25.2505-2.

#### *8. Effect of Portability Election on Application of Rev. Proc. 2001-38*

Multiple commenters have requested guidance on the application of Rev. Proc. 2001-38, 2001-24 IRB 1335, when an estate makes a portability election under section 2010(c)(5)(A) as well as an election under section 2056(b)(7) to treat qualified terminable interest property (QTIP) as passing to the surviving spouse for purposes of the marital deduction.

Rev. Proc. 2001-38 provides a procedure by which the IRS will disregard and treat as a nullity for Federal estate, gift, and generation-skipping transfer tax purposes a QTIP election made under section 2056(b)(7) in cases where the election was not necessary to reduce the estate tax liability to zero. The commenter notes that, with the introduction of portability of a deceased spouse's unused exclusion amount, an executor may purposefully elect both portability and QTIP treatment and the rationale for the rule voiding the

election in Rev. Proc. 2001-38 (that the election was of no benefit to the taxpayer) is no longer applicable. The Treasury Department and the IRS intend to provide guidance, by publication in the Internal Revenue Bulletin, to clarify whether a QTIP election made under section 2056(b)(7) may be disregarded and treated as null and void when an executor has elected portability of the DSUE amount under section 2010(c)(5)(A).

#### *9. Incorrect Basic Exclusion Amount in Examples*

A commenter noted that §§ 20.2010-3T and 25.2505-2T include an incorrect basic exclusion amount for the applicable year in the examples. The final regulations correct this mistake.

#### *10. Order of Credits*

The NPRM requested comments on, and reserved § 20.2010-2(c)(3) to provide guidance on, the impact of the credits in sections 2012 through 2015 on computing the DSUE amount. One comment was received, and advocated for a rule in computing the DSUE amount that the tentative tax is equal to the net estate tax after the application of all available credits. The commenter stated that a deceased spouse's applicable credit amount should not be applied to the extent one or more of the estate tax credits are available to reduce the decedent's estate tax.

The amount of the allowable credit in sections 2012 through 2015 can be determined only after subtracting from the tax imposed by section 2001 the applicable credit amount determined under section 2010. Accordingly, to the extent the applicable credit amount is applied to reduce the tax imposed by section 2001 to zero, the credits in sections 2012 through 2015 are not available. The rule in section 2010(c)(4) for computing the DSUE amount does not take into account any unused credits arising under sections 2012 through 2015. Based on these considerations, the Treasury Department and the IRS conclude that no adjustment to the computation of the DSUE amount to account for any unused credits is warranted. Accordingly, § 20.2010-2(c)(3) of the final regulations clarifies that eligibility for

credits against the tax imposed by section 2001 does not factor into the computation of the DSUE amount.

### **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 13563. Therefore, a regulatory flexibility 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 final regulations. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect estates of a decedent which generally are not small entities under the Act. Thus, we do not expect a substantial number of small entities to be affected. 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 2012 temporary regulations, as well as the cross-referencing notice of proposed rulemaking preceding these final regulations, were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities, and no comments were received.

### **Statement of Availability for Documents Published in the Internal Revenue Bulletin**

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

### **Drafting Information**

The principal author of these final regulations is Karlene Lesho, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects

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## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20, 25, and 602 are amended as follows:

### PART 20—ESTATE TAX; ESTATE OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 is amended by removing the entries for §§ 20.2010-0T, 20.2010-1T, 20.2010-2T, and 20.2010-3T and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 20.2010-0 also issued under 26 U.S.C. 2010(c)(6).

Section 20.2010-1 also issued under 26 U.S.C. 2010(c)(6).

Section 20.2010-2 also issued under 26 U.S.C. 2010(c)(6).

Section 20.2010-3 also issued under 26 U.S.C. 2010(c)(6).

\* \* \* \* \*

Par. 2. Section 20.2001-2 is added to read as follows:

#### § 20.2001-2 Valuation of adjusted taxable gifts for purposes of determining the deceased spousal unused exclusion amount of last deceased spouse.

(a) *General rule.* Notwithstanding § 20.2001-1(b), §§ 20.2010-2(d) and 20.2010-3(d) provide additional rules regarding the authority of the Internal Revenue Service to examine any gift or other tax return(s), even if the time within which a tax may be assessed under section 6501 has expired, for the purpose of determining the deceased spousal unused exclusion amount available under section 2010(c) of the Internal Revenue Code.

(b) *Effective/applicability date.* Paragraph (a) of this section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2001-2T(a), as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

### § 20.2001-2T [Removed]

Par. 3. Section 20.2001-2T is removed.

Par. 4. Section 20.2010-0 is added to read as follows:

#### § 20.2010-0 Table of contents.

This section lists the table of contents for §§ 20.2010-1 through 20.2010-3.

#### § 20.2010-1 Unified credit against estate tax; in general.

- (a) General rule.
- (b) Special rule in case of certain gifts made before 1977.
- (c) Credit limitation.
- (d) Explanation of terms.
  - (1) Applicable credit amount.
  - (2) Applicable exclusion amount.
  - (3) Basic exclusion amount.
  - (4) Deceased spousal unused exclusion (DSUE) amount.
  - (5) Last deceased spouse.
  - (e) Effective/applicability date.

#### § 20.2010-2 Portability provisions applicable to estate of a decedent survived by a spouse.

- (a) Election required for portability.
  - (1) Timely filing required.
  - (2) Portability election upon filing of estate tax return.
  - (3) Portability election not made; requirements for election not to apply.
  - (4) Election irrevocable.
  - (5) Estates eligible to make the election.
  - (6) Persons permitted to make the election.
  - (7) Requirements of return.
- (b) Requirement for DSUE computation on estate tax return.
  - (c) Computation of the DSUE amount.
    - (1) General rule.
    - (2) Special rule to consider gift taxes paid by decedent.
    - (3) Impact of applicable credits.
    - (4) Special rule in case of property passing to qualified domestic trust.
    - (5) Examples.
    - (d) Authority to examine returns of decedent.
    - (e) Effective/applicability date.

#### § 20.2010-3 Portability provisions applicable to the surviving spouse's estate.

(a) Surviving spouse's estate limited to DSUE amount of last deceased spouse.

- (1) In general.
- (2) No DSUE amount available from last deceased spouse.
- (3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.

(b) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.

- (1) In general.
- (2) Example.
- (c) Date DSUE amount taken into consideration by surviving spouse's estate.

- (1) General rule.
- (2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.
- (3) Special rule when property passes to surviving spouse in a qualified domestic trust.

(d) Authority to examine returns of deceased spouses.

(e) Availability of DSUE amount for estates of nonresidents who are not citizens.

(f) Effective/applicability date.

### § 20.2010-0T [Removed]

Par. 5. Section 20.2010-0T is removed.  
Par. 6. Section 20.2010-1 is added to read as follows:

#### § 20.2010-1 Unified credit against estate tax; in general.

(a) *General rule.* Section 2010(a) allows the estate of every decedent a credit against the estate tax imposed by section 2001. The allowable credit is the applicable credit amount. See paragraph (d)(1) of this section for an explanation of the term *applicable credit amount*.

(b) *Special rule in case of certain gifts made before 1977.* The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for

gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(c) *Credit limitation.* The applicable credit amount allowed under paragraph (a) of this section cannot exceed the amount of the estate tax imposed by section 2001.

(d) *Explanation of terms.* The explanation of terms in this section applies to this section and to §§ 20.2010–2 and 20.2010–3.

(1) *Applicable credit amount.* The term *applicable credit amount* refers to the allowable credit against estate tax imposed by section 2001 and gift tax imposed by section 2501. The applicable credit amount equals the amount of the tentative tax that would be determined under section 2001(c) if the amount on which such tentative tax is to be computed were equal to the applicable exclusion amount. The applicable credit amount is determined by applying the unified rate schedule in section 2001(c) to the applicable exclusion amount.

(2) *Applicable exclusion amount.* The *applicable exclusion amount* equals the sum of the basic exclusion amount and, in the case of a surviving spouse, the deceased spousal unused exclusion (DSUE) amount.

(3) *Basic exclusion amount.* The *basic exclusion amount* is the sum of—

(i) For any decedent dying in calendar year 2011, \$5,000,000; and

(ii) For any decedent dying after calendar year 2011, \$5,000,000 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for that calendar year by substituting “calendar year 2010” for “calendar year 1992” in section 1(f)(3)(B) and by rounding to the nearest multiple of \$10,000.

(4) *Deceased spousal unused exclusion (DSUE) amount.* The term *DSUE amount* refers, generally, to the unused portion of a decedent’s applicable exclusion amount to the extent this amount does not exceed the basic exclusion amount in effect in the year of the decedent’s death. For the rules on computing the DSUE amount, see §§ 20.2010–2(c) and 20.2010–3(b).

(5) *Last deceased spouse.* The term *last deceased spouse* means the most recently deceased individual who, at that individual’s death after December 31, 2010, was married to the surviving spouse. See §§ 20.2010–3(a) and 25.2505–2(a) for ad-

ditional rules pertaining to the identity of the last deceased spouse for purposes of determining the applicable exclusion amount of the surviving spouse.

(e) *Effective/applicability date.* This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010–1T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and June 12, 2015.

#### § 20.2010–1T [Removed]

Par. 7. Section 20.2010–1T is removed.

Par. 8. Section 20.2010–2 is added to read as follows:

#### § 20.2010–2 *Portability provisions applicable to estate of a decedent survived by a spouse.*

(a) *Election required for portability.* To allow a decedent’s surviving spouse to take into account that decedent’s deceased spousal unused exclusion (DSUE) amount, the executor of the decedent’s estate must elect portability of the DSUE amount on a timely filed Form 706, “United States Estate (and Generation-Skipping Transfer) Tax Return” (estate tax return). This election is referred to in this section and in § 20.2010–3 as the portability election.

(1) *Timely filing required.* An estate that elects portability will be considered, for purposes of subtitle B and subtitle F of the Internal Revenue Code (Code), to be required to file a return under section 6018(a). Accordingly, the due date of an estate tax return required to elect portability is nine months after the decedent’s date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained). See §§ 20.6075–1 and 20.6081–1 for additional rules relating to the time for filing estate tax returns. An extension of time to elect portability under this paragraph (a) will not be granted under § 301.9100–3 of this chapter to an estate that is required to file an estate tax return under section 6018(a), as determined without regard to this paragraph (a). Such an extension, however, may be available under the procedures applicable under §§ 301.9100–1 and 301.9100–3 of this chapter to an es-

tate that is not required to file a return under section 6018(a), as determined without regard to this paragraph (a).

(2) *Portability election upon filing of estate tax return.* Upon the timely filing of a complete and properly prepared estate tax return, an executor of an estate of a decedent survived by a spouse will have elected portability of the decedent’s DSUE amount unless the executor chooses not to elect portability and satisfies the requirement in paragraph (a)(3)(i) of this section. See paragraph (a)(7) of this section for the return requirements related to the portability election.

(3) *Portability election not made; requirements for election not to apply.* The executor of the estate of a decedent survived by a spouse will not make or be considered to make the portability election if either of the following applies:

(i) The executor states affirmatively on a timely filed estate tax return, or in an attachment to that estate tax return, that the estate is not electing portability under section 2010(c)(5). The manner in which the executor may make this affirmative statement on the estate tax return is as set forth in the instructions issued with respect to such form (“Instructions for Form 706”).

(ii) The executor does not timely file an estate tax return in accordance with paragraph (a)(1) of this section.

(4) *Election irrevocable.* An executor of the estate of a decedent survived by a spouse who timely files an estate tax return may make or may supersede a portability election previously made, provided that the estate tax return reporting the election or the superseding election is filed on or before the due date of the return, including extensions actually granted. However, see paragraph (a)(6) of this section when contrary elections are made by more than one person permitted to make the election. The portability election, once made, becomes irrevocable once the due date of the estate tax return, including extensions actually granted, has passed.

(5) *Estates eligible to make the election.* An executor may elect portability on behalf of the estate of a decedent survived by a spouse if the decedent dies on or after January 1, 2011. However, an executor of the estate of a nonresident decedent who

was not a citizen of the United States at the time of death may not elect portability on behalf of that decedent, and the timely filing of such a decedent's estate tax return will not constitute the making of a portability election.

(6) *Persons permitted to make the election*—(i) *Appointed executor*. An executor or administrator of the estate of a decedent survived by a spouse that is appointed, qualified, and acting within the United States, within the meaning of section 2203 (an appointed executor), may timely file the estate tax return on behalf of the estate of the decedent and, in so doing, elect portability of the decedent's DSUE amount. An appointed executor also may elect not to have portability apply pursuant to paragraph (a)(3) of this section.

(ii) *Non-appointed executor*. If there is no appointed executor, any person in actual or constructive possession of any property of the decedent (a non-appointed executor) may timely file the estate tax return on behalf of the estate of the decedent and, in so doing, elect portability of the decedent's DSUE amount, or, by complying with paragraph (a)(3) of this section, may elect not to have portability apply. A portability election made by a non-appointed executor when there is no appointed executor for that decedent's estate can be superseded by a subsequent contrary election made by an appointed executor of that same decedent's estate on an estate tax return filed on or before the due date of the return, including extensions actually granted. An election to allow portability made by a non-appointed executor cannot be superseded by a contrary election to have portability not apply made by another non-appointed executor of that same decedent's estate (unless such other non-appointed executor is the successor of the non-appointed executor who made the election). See § 20.6018-2 for additional rules relating to persons permitted to file the estate tax return.

(7) *Requirements of return*—(i) *General rule*. An estate tax return will be considered complete and properly prepared for purposes of this section if it is prepared in accordance with the instructions issued for the estate tax return (Instructions for Form 706) and if the requirements of §§ 20.6018-2, 20.6018-3, and 20.6018-4 are satisfied. However,

see paragraph (a)(7)(ii) of this section for reduced requirements applicable to certain property of certain estates.

(ii) *Reporting of value not required for certain property*—(A) *In general*. A special rule applies with respect to certain property of estates in which the executor is not required to file an estate tax return under section 6018(a), as determined without regard to paragraph (a)(1) of this section. With respect to such an estate, for bequests, devises, or transfers of property included in the gross estate, the value of which is deductible under section 2056 or 2056A (marital deduction property) or under section 2055(a) (charitable deduction property), an executor is not required to report a value for such property on the estate tax return (except to the extent provided in this paragraph (a)(7)(ii)(A)) and will be required to report only the description, ownership, and/or beneficiary of such property, along with all other information necessary to establish the right of the estate to the deduction in accordance with §§ 20.2056(a)-1(b)(i) through (iii) and 20.2055-1(c), as applicable. However, this rule does not apply in certain circumstances as provided in this paragraph (a) and as may be further described in guidance issued from time to time by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). In particular, this rule does not apply to marital deduction property or charitable deduction property if—

(1) The value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property;

(2) The value of such property is needed to determine the estate's eligibility for the provisions of sections 2032, 2032A, or another estate or generation-skipping transfer tax provision of the Code for which the value of such property or the value of the gross estate or adjusted gross estate must be known (not including section 1014 of the Code);

(3) Less than the entire value of an interest in property includible in the decedent's gross estate is marital deduction property or charitable deduction property; or

(4) A partial disclaimer or partial qualified terminable interest property (QTIP) election is made with respect to a bequest,

devise, or transfer of property includible in the gross estate, part of which is marital deduction property or charitable deduction property.

(B) *Return requirements when reporting of value not required for certain property*. Paragraph (a)(7)(ii)(A) of this section applies only if the executor exercises due diligence to estimate the fair market value of the gross estate, including the property described in paragraph (a)(7)(ii)(A) of this section. Using the executor's best estimate of the value of properties to which paragraph (a)(7)(ii)(A) of this section applies, the executor must report on the estate tax return, under penalties of perjury, the amount corresponding to the particular range within which falls the executor's best estimate of the total gross estate, in accordance with the Instructions for Form 706.

(C) *Examples*. The following examples illustrate the application of paragraph (a)(7)(ii) of this section. In each example, assume that Husband (H) dies in 2015, survived by his wife (W), that both H and W are U.S. citizens, that H's gross estate does not exceed the excess of the applicable exclusion amount for the year of his death over the total amount of H's adjusted taxable gifts and any specific exemption under section 2521, and that H's executor (E) timely files Form 706 solely to make the portability election.

*Example 1.* (i) *Facts*. The assets includible in H's gross estate consist of a parcel of real property and bank accounts held jointly with W with rights of survivorship, a life insurance policy payable to W, and a survivor annuity payable to W for her life. H made no taxable gifts during his lifetime.

(ii) *Application*. E files an estate tax return on which these assets are identified on the proper schedule, but E provides no information on the return with regard to the date of death value of these assets in accordance with paragraph (a)(7)(ii)(A) of this section. To establish the estate's entitlement to the marital deduction in accordance with § 20.2056(a)-1(b) (except with regard to establishing the value of the property) and the instructions for the estate tax return, E includes with the estate tax return evidence to verify the title of each jointly held asset, to confirm that W is the sole beneficiary of both the life insurance policy and the survivor annuity, and to verify that the annuity is exclusively for W's life. Finally, E reports on the estate return E's best estimate, determined by exercising due diligence, of the fair market value of the gross estate in accordance with paragraph (a)(7)(ii)(B) of this section. The estate tax return is considered complete and properly prepared and E has elected portability.

*Example 2.* (i) *Facts*. H's will, duly admitted to probate and not subject to any proceeding to challenge its validity, provides that H's entire estate is to

be distributed outright to W. The non-probate assets includible in H's gross estate consist of a life insurance policy payable to H's children from a prior marriage, and H's individual retirement account (IRA) payable to W. H made no taxable gifts during his lifetime.

(ii) *Application.* E files an estate tax return on which all of the assets includible in the gross estate are identified on the proper schedule. In the case of the probate assets and the IRA, no information is provided with regard to date of death value in accordance with paragraph (a)(7)(ii)(A) of this section. However, E attaches a copy of H's will and describes each such asset and its ownership to establish the estate's entitlement to the marital deduction in accordance with the instructions for the estate tax return and § 20.2056(a)-1(b) (except with regard to establishing the value of the property). In the case of the life insurance policy payable to H's children, all of the regular return requirements, including reporting and establishing the fair market value of such asset, apply. Finally, E reports on the estate return E's best estimate, determined by exercising due diligence, of the fair market value of the gross estate in accordance with paragraph (a)(7)(ii)(B) of this section. The estate tax return is considered complete and properly prepared and E has elected portability.

*Example 3.* (i) *Facts.* H's will, duly admitted to probate and not subject to any proceeding to challenge its validity, provides that 50 percent of the property passing under the terms of H's will is to be paid to a marital trust for W and 50 percent is to be paid to a trust for W and their descendants.

(ii) *Application.* The amount passing to the non-marital trust cannot be verified without knowledge of the full value of the property passing under the will. Therefore, the value of the property of the marital trust relates to or affects the value passing to the trust for W and the descendants of H and W. Accordingly, the general return requirements apply to all of the property includible in the gross estate and the provisions of paragraph (a)(7)(ii) of this section do not apply.

(b) *Requirement for DSUE computation on estate tax return.* Section 2010(c)(5)(A) requires an executor of a decedent's estate to include a computation of the DSUE amount on the estate tax return to elect portability and thereby allow the decedent's surviving spouse to take into account that decedent's DSUE amount. This requirement is satisfied by the timely filing of a complete and properly prepared estate tax return, as long as the executor has not elected out of portability as described in paragraph(a)(3)(i) of this section. See paragraph (a)(7) of this section for the requirements for a return to be considered complete and properly prepared.

(c) *Computation of the DSUE amount—(1) General rule.* Subject to paragraphs (c)(2) through (4) of this section, the DSUE amount of a decedent with

a surviving spouse is the lesser of the following amounts—

(i) The basic exclusion amount in effect in the year of the death of the decedent; or

(ii) The excess of—

(A) The decedent's applicable exclusion amount; over

(B) The sum of the amount of the taxable estate and the amount of the adjusted taxable gifts of the decedent, which together is the amount on which the tentative tax on the decedent's estate is determined under section 2001(b)(1).

(2) *Special rule to consider gift taxes paid by decedent.* Solely for purposes of computing the decedent's DSUE amount, the amount of the adjusted taxable gifts of the decedent referred to in paragraph (c)(1)(ii)(B) of this section is reduced by the amount, if any, on which gift taxes were paid for the calendar year of the gift(s).

(3) *Impact of applicable credits.* An estate's eligibility under sections 2012 through 2015 for credits against the tax imposed by section 2001 does not impact the computation of the DSUE amount.

(4) *Special rule in case of property passing to qualified domestic trust—(i) In general.* When property passes for the benefit of a surviving spouse in a qualified domestic trust (QDOT) as defined in section 2056A(a), the DSUE amount of the decedent is computed on the decedent's estate tax return for the purpose of electing portability in the same manner as this amount is computed under paragraph (c)(1) of this section, but this DSUE amount is subject to subsequent adjustments. The DSUE amount of the decedent must be redetermined upon the occurrence of the final distribution or other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which estate tax is imposed under section 2056A. See § 20.2056A-6 for the rules on determining the estate tax under section 2056A. See § 20.2010-3(c)(3) regarding the timing of the availability of the decedent's DSUE amount to the surviving spouse.

(ii) *Surviving spouse becomes a U.S. citizen.* If the surviving spouse becomes a U.S. citizen and if the requirements of section 2056A(b)(12) and the correspond-

ing regulations are satisfied, the estate tax imposed under section 2056A(b)(1) ceases to apply. Accordingly, no estate tax will be imposed under section 2056A either on subsequent QDOT distributions or on the property remaining in the QDOT on the surviving spouse's death and the decedent's DSUE amount is no longer subject to adjustment.

(5) *Examples.* The following examples illustrate the application of this paragraph (c):

*Example 1. Computation of DSUE amount.* (i) *Facts.* In 2002, having made no prior taxable gift, Husband (H) makes a taxable gift valued at \$1,000,000 and reports the gift on a timely filed gift tax return. Because the amount of the gift is equal to the applicable exclusion amount for that year (\$1,000,000), \$345,800 is allowed as a credit against the tax, reducing the gift tax liability to zero. H dies in 2015, survived by Wife (W). H and W are U.S. citizens and neither has any prior marriage. H's taxable estate is \$1,000,000. The executor of H's estate timely files H's estate tax return and elects portability, thereby allowing W to benefit from H's DSUE amount.

(ii) *Application.* The executor of H's estate computes H's DSUE amount to be \$3,430,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$1,000,000 taxable estate and the \$1,000,000 amount of adjusted taxable gifts).

*Example 2. Computation of DSUE amount when gift tax paid.* (i) *Facts.* The facts are the same as in *Example 1* of this paragraph (c)(5) except that the value of H's taxable gift in 2002 is \$2,000,000. After application of the applicable credit amount, H owes gift tax on \$1,000,000, the amount of the gift in excess of the applicable exclusion amount for that year. H pays the gift tax owed on the 2002 transfer.

(ii) *Application.* On H's death, the executor of H's estate computes the DSUE amount to be \$3,430,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$1,000,000 taxable estate and \$1,000,000 of adjusted taxable gifts sheltered from tax by H's applicable credit amount). H's adjusted taxable gifts of \$2,000,000 were reduced for purposes of this computation by \$1,000,000, the amount of taxable gifts on which gift taxes were paid.

*Example 3. Computation of DSUE amount when QDOT created.* (i) *Facts.* Husband (H), a U.S. citizen, makes his first taxable gift in 2002, valued at \$1,000,000, and reports the gift on a timely filed gift tax return. No gift tax is due because the applicable exclusion amount for that year (\$1,000,000) equals the fair market value of the gift. H dies in 2015 with a gross estate of \$2,000,000. H's surviving spouse (W) is a resident, but not a citizen, of the United States and, under H's will, a pecuniary bequest of \$1,500,000 passes to a QDOT for the benefit of W. H's executor timely files an estate tax return and makes the QDOT election for the property passing to the QDOT, and H's estate is allowed a marital de-

duction of \$1,500,000 under section 2056(d) for the value of that property. H's taxable estate is \$500,000. On H's estate tax return, H's executor computes H's preliminary DSUE amount to be \$3,930,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$500,000 taxable estate and the \$1,000,000 adjusted taxable gifts). No taxable events within the meaning of section 2056A occur during W's lifetime with respect to the QDOT, and W makes no taxable gifts. At all times since H's death, W has been a U.S. resident. In 2017, W dies and the value of the assets of the QDOT is \$1,800,000.

(ii) *Application.* H's DSUE amount is redetermined to be \$2,130,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over \$3,300,000 (the sum of the \$500,000 taxable estate augmented by the \$1,800,000 of QDOT assets and the \$1,000,000 adjusted taxable gifts)).

*Example 4. Computation of DSUE amount when surviving spouse with QDOT becomes a U.S. citizen.* (i) *Facts.* The facts are the same as in *Example 3* of this paragraph (c)(5) except that W becomes a U.S. citizen in 2016 and dies in 2018. The U.S. Trustee of the QDOT notifies the IRS that W has become a U.S. citizen by timely filing a final estate tax return (Form 706-QDT). Pursuant to section 2056A(b)(12), the estate tax under section 2056A no longer applies to the QDOT property.

(ii) *Application.* Because H's DSUE amount no longer is subject to adjustment once W becomes a citizen of the United States, H's DSUE amount is \$3,930,000, as it was preliminarily determined as of H's death. Upon W's death in 2018, the value of the QDOT property is includable in W's gross estate.

(d) *Authority to examine returns of decedent.* The IRS may examine returns of a decedent in determining the decedent's DSUE amount, regardless of whether the period of limitations on assessment has expired for that return. See § 20.2010-3(d) for additional rules relating to the IRS's authority to examine returns. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry.

(e) *Effective/applicability date.* This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-2T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rule applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

## § 20.2010-2T [Removed]

Par. 9. Section 20.2010-2T is removed.

Par. 10. Section 20.2010-3 is added to read as follows:

## § 20.2010-3 Portability provisions applicable to the surviving spouse's estate.

### (a) *Surviving spouse's estate limited to DSUE amount of last deceased spouse—*

(1) *In general.* The deceased spousal unused exclusion (DSUE) amount of a decedent, computed under § 20.2010-2(c), is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), provided—

(i) Such decedent is the last deceased spouse of such surviving spouse within the meaning of § 20.2010-1(d)(5) on the date of the death of the surviving spouse; and

(ii) The executor of the decedent's estate elected portability (see § 20.2010-2(a) and (b) for applicable requirements).

(2) *No DSUE amount available from last deceased spouse.* If the last deceased spouse of such surviving spouse had no DSUE amount, or if the executor of such a decedent's estate did not make a portability election, the surviving spouse's estate has no DSUE amount (except as provided in paragraph (b)(1)(ii) of this section) to be included in determining the applicable exclusion amount, even if the surviving spouse previously had a DSUE amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse. See paragraph (b) of this section for a special rule in the case of multiple deceased spouses and a previously applied DSUE amount.

(3) *Identity of last deceased spouse unchanged by subsequent marriage or divorce.* A decedent is the last deceased spouse (as defined in § 20.2010-1(d)(5)) of a surviving spouse even if, on the date of the death of the surviving spouse, the surviving spouse is married to another (then-living) individual. If a surviving spouse marries again and that marriage ends in divorce or an annulment, the subsequent death of the divorced spouse does not end the status of the prior deceased spouse as the last deceased spouse of the surviving spouse. The divorced spouse, not being married to the surviving spouse at death, is not the last deceased spouse as that term is defined in § 20.2010-1(d)(5).

(b) *Special rule in case of multiple deceased spouses and previously-applied*

*DSUE amount—*(1) *In general.* A special rule applies to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied the DSUE amount of one or more deceased spouses to taxable gifts in accordance with § 25.2505-2(b) and (c). If a surviving spouse has applied the DSUE amount of one or more (successive) last deceased spouses to the surviving spouse's transfers during life, and if any of those last deceased spouses is different from the surviving spouse's last deceased spouse as defined in § 20.2010-1(d)(5) at the time of the surviving spouse's death, then the DSUE amount to be included in determining the applicable exclusion amount of the surviving spouse at the time of the surviving spouse's death is the sum of—

(i) The DSUE amount of the surviving spouse's last deceased spouse as described in paragraph (a)(1) of this section; and

(ii) The DSUE amount of each other deceased spouse of the surviving spouse, to the extent that such amount was applied to one or more taxable gifts of the surviving spouse.

(2) *Example.* The following example, in which all described individuals are U.S. citizens, illustrates the application of this paragraph (b):

*Example.* (i) *Facts.* Husband 1 (H1) dies in 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's DSUE amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is \$5,000,000. In 2012, W makes taxable gifts to her children valued at \$2,000,000. W reports the gifts on a timely filed gift tax return. W is considered to have applied \$2,000,000 of H1's DSUE amount to the amount of taxable gifts, in accordance with § 25.2505-2(c), and, therefore, W owes no gift tax. W has an applicable exclusion amount remaining in the amount of \$8,120,000 (\$3,000,000 of H1's remaining DSUE amount plus W's own \$5,120,000 basic exclusion amount). W marries Husband 2 (H2) in 2013. H2 dies in 2014. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be \$2,000,000. W dies in 2015.

(ii) *Application.* The DSUE amount to be included in determining the applicable exclusion amount available to W's estate is \$4,000,000, determined by adding the \$2,000,000 DSUE amount of H2 and the \$2,000,000 DSUE amount of H1 that was applied by W to W's 2012 taxable gifts. The \$4,000,000 DSUE amount added to W's \$5,430,000 basic exclusion amount (for 2015), causes W's applicable exclusion amount to be \$9,430,000.

(c) *Date DSUE amount taken into consideration by surviving spouse's estate—*

(1) *General rule.* A portability election made by an executor of a decedent's estate (see § 20.2010-2(a) and (b) for applicable requirements) generally applies as of the date of the decedent's death. Thus, such decedent's DSUE amount is included in the applicable exclusion amount of the decedent's surviving spouse under section 2010(c)(2) and will be applicable to transfers made by the surviving spouse after the decedent's death (subject to the limitations in paragraph (a) of this section). However, such decedent's DSUE amount will not be included in the applicable exclusion amount of the surviving spouse, even if the surviving spouse had made a transfer in reliance on the availability or computation of the decedent's DSUE amount:

(i) If the executor of the decedent's estate supersedes the portability election by filing a subsequent estate tax return in accordance with § 20.2010-2(a)(4);

(ii) To the extent that the DSUE amount subsequently is reduced by a valuation adjustment or the correction of an error in calculation; or

(iii) To the extent that the surviving spouse cannot substantiate the DSUE amount claimed on the surviving spouse's return.

(2) *Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.* If a surviving spouse becomes a citizen of the United States after the death of the surviving spouse's last deceased spouse, the DSUE amount of the surviving spouse's last deceased spouse becomes available to the surviving spouse on the date the surviving spouse becomes a citizen of the United States (subject to the limitations in paragraph (a) of this section). However, when the special rule regarding qualified domestic trusts in paragraph (c)(3) of this section applies, the earliest date on which a decedent's DSUE amount may be included in the applicable exclusion amount of such decedent's surviving spouse who becomes a U.S. citizen is as provided in paragraph (c)(3) of this section.

(3) *Special rule when property passes to surviving spouse in a qualified domestic trust—*(i) *In general.* When property passes from a decedent for the benefit of

the decedent's surviving spouse in one or more qualified domestic trusts (QDOT) as defined in section 2056A(a) and the decedent's executor elects portability, the DSUE amount available to be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the DSUE amount of the decedent as redetermined in accordance with § 20.2010-2(c)(4) (subject to the limitations in paragraph (a) of this section). The earliest date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the date of the occurrence of the final QDOT distribution or final other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which tax under section 2056A is imposed. However, the decedent's DSUE amount as redetermined in accordance with § 20.2010-2(c)(4) may be applied to certain taxable gifts of the surviving spouse. See § 25.2505-2(d)(3)(i).

(ii) *Surviving spouse becomes a U.S. citizen.* If a surviving spouse for whom property has passed from a decedent in one or more QDOTs becomes a citizen of the United States and the requirements in section 2056A(b)(12) and the corresponding regulations are satisfied, then the date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) (subject to the limitations in paragraph (a) of this section) is the date on which the surviving spouse becomes a citizen of the United States. See § 20.2010-2(c)(4) for the rules for computing the decedent's DSUE amount in the case of a qualified domestic trust.

(d) *Authority to examine returns of deceased spouses.* For the purpose of determining the DSUE amount to be included in the applicable exclusion amount of a surviving spouse, the Internal Revenue Service (IRS) may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return. The IRS's authority to examine re-

turns of a deceased spouse applies with respect to each transfer by the surviving spouse to which a DSUE amount is or has been applied. Upon examination, the IRS may adjust or eliminate the DSUE amount reported on such a return of a deceased spouse; however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment under section 6501 applicable to the tax shown on that return. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry. For purposes of these examinations to determine the DSUE amount, the surviving spouse is considered to have a material interest that is affected by the return information of the deceased spouse within the meaning of section 6103(e)(3).

(e) *Availability of DSUE amount for estates of nonresidents who are not citizens.* The estate of a nonresident surviving spouse who is not a citizen of the United States at the time of such surviving spouse's death shall not take into account the DSUE amount of any deceased spouse of such surviving spouse within the meaning of § 20.2010-1(d)(5) except to the extent allowed under any applicable treaty obligation of the United States. See section 2102(b)(3).

(f) *Effective/applicability date.* This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-3T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

#### § 20.2010-3T [Removed]

Par. 11. Section 20.2010-3T is removed.

#### PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 12. The authority citation for part 25 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Section 25.2505-2 also issued under 26 U.S.C. 2010(c)(6).

\* \* \* \* \*

Par. 13. Section 25.2505-0 is added to read as follows:

§ 25.2505-0 *Table of contents.*

This section lists the table of contents for §§ 25.2505-1 and 25.2505-2.

§ 25.2505-1 *Unified credit against gift tax; in general.*

- (a) General rule.
- (b) Applicable rate of tax.
- (c) Special rule in case of certain gifts made before 1977.
- (d) Credit limitation.
- (e) Effective/applicability date.

§ 25.2505-2 *Gifts made by a surviving spouse having a DSUE amount available.*

(a) Donor who is surviving spouse is limited to DSUE amount of last deceased spouse.

- (1) In general.
- (2) No DSUE amount available from last deceased spouse.
- (3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.

(b) Manner in which DSUE amount is applied.

(c) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.

- (1) In general.
- (2) Example.
- (d) Date DSUE amount taken into consideration by donor who is a surviving spouse.

- (1) General rule.
- (2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.
- (3) Special rule when property passes to surviving spouse in a qualified domestic trust.

(e) Authority to examine returns of deceased spouses.

(f) Availability of DSUE amount for nonresidents who are not citizens.

(g) Effective/applicability date.

§ 25.2505-0T [Removed]

Par. 14. Section 25.2505-0T is removed.

Par. 15. Section 25.2505-1 is added to read as follows:

§ 25.2505-1 *Unified credit against gift tax; in general.*

(a) *General rule.* Section 2505(a) allows a citizen or resident of the United States a credit against the tax imposed by section 2501 for each calendar year. The allowable credit is the applicable credit amount in effect under section 2010(c) that would apply if the donor died as of the end of the calendar year, reduced by the sum of the amounts allowable as a credit against the gift tax due for all preceding calendar periods. See §§ 25.2505-2, 20.2010-1, and 20.2010-2 for additional rules and definitions related to determining the applicable credit amount in effect under section 2010(c).

(b) *Applicable rate of tax.* In determining the amounts allowable as a credit against the gift tax due for all preceding calendar periods, the unified rate schedule under section 2001(c) in effect for such calendar year applies instead of the rates of tax actually in effect for preceding calendar periods. See sections 2505(a) and 2502(a)(2).

(c) *Special rule in case of certain gifts made before 1977.* The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(d) *Credit limitation.* The applicable credit amount allowed under paragraph (a) of this section for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(e) *Effective/applicability date.* This section applies to gifts made on or after June 12, 2015. See 26 CFR 25.2505-1T, as contained in 26 CFR part 25, revised as of April 1, 2015, for the rules applicable to gifts made on or after January 1, 2011, and before June 12, 2015. Insert.

§ 25.2505-1T [Removed]

Par. 16. Section 25.2505-1T is removed.

Par. 17. Section 25.2505-2 is added to read as follows:

§ 25.2505-2 *Gifts made by a surviving spouse having a DSUE amount available.*

(a) *Donor who is surviving spouse is limited to DSUE amount of last deceased spouse—(1) In general.* In computing a surviving spouse's gift tax liability with regard to a transfer subject to the tax imposed by section 2501 (taxable gift), a deceased spousal unused exclusion (DSUE) amount of a decedent, computed under § 20.2010-2(c), is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), provided:

(i) Such decedent is the last deceased spouse of such surviving spouse within the meaning of § 20.2010-1(d)(5) at the time of the surviving spouse's taxable gift; and

(ii) The executor of the decedent's estate elected portability (see § 20.2010-2(a) and (b) for applicable requirements).

(2) *No DSUE amount available from last deceased spouse.* If on the date of the surviving spouse's taxable gift the last deceased spouse of such surviving spouse had no DSUE amount or if the executor of the estate of such last deceased spouse did not elect portability, the surviving spouse has no DSUE amount (except as and to the extent provided in paragraph (c)(1)(ii) of this section) to be included in determining his or her applicable exclusion amount, even if the surviving spouse previously had a DSUE amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse. See paragraph (c) of this section for a special rule in the case of multiple deceased spouses.

(3) *Identity of last deceased spouse unchanged by subsequent marriage or divorce.* A decedent is the last deceased spouse (as defined in § 20.2010-1(d)(5)) of a surviving spouse even if, on the date of the surviving spouse's taxable gift, the surviving spouse is married to another (then-living) individual. If a surviving spouse marries again and that marriage ends in divorce or an annulment, the subsequent death of the divorced spouse does

not end the status of the prior deceased spouse as the last deceased spouse of the surviving spouse. The divorced spouse, not being married to the surviving spouse at death, is not the last deceased spouse as that term is defined in § 20.2010-1(d)(5).

(b) *Manner in which DSUE amount is applied.* If a donor who is a surviving spouse makes a taxable gift and a DSUE amount is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), such surviving spouse will be considered to apply such DSUE amount to the taxable gift before the surviving spouse's own basic exclusion amount.

(c) *Special rule in case of multiple deceased spouses and previously-applied DSUE amount—(1) In general.* A special rule applies to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied the DSUE amount of one or more deceased spouses. If a surviving spouse applied the DSUE amount of one or more (successive) last deceased spouses to the surviving spouse's previous lifetime transfers, and if any of those last deceased spouses is different from the surviving spouse's last deceased spouse as defined in § 20.2010-1(d)(5) at the time of the current taxable gift by the surviving spouse, then the DSUE amount to be included in determining the applicable exclusion amount of the surviving spouse that will be applicable at the time of the current taxable gift is the sum of—

(i) The DSUE amount of the surviving spouse's last deceased spouse as described in paragraph (a)(1) of this section; and

(ii) The DSUE amount of each other deceased spouse of the surviving spouse to the extent that such amount was applied to one or more previous taxable gifts of the surviving spouse.

(2) *Example.* The following example, in which all described individuals are U.S. citizens, illustrates the application of this paragraph (c):

*Example.* (i) *Facts.* Husband 1 (H1) dies in 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's deceased spousal unused exclusion (DSUE) amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is \$5,000,000. In 2012, W makes taxable gifts to her children valued at \$2,000,000. W reports the

gifts on a timely filed gift tax return. W is considered to have applied \$2,000,000 of H1's DSUE amount to the 2012 taxable gifts, in accordance with paragraph (b) of this section, and, therefore, W owes no gift tax. W is considered to have an applicable exclusion amount remaining in the amount of \$8,120,000 (\$3,000,000 of H1's remaining DSUE amount plus W's own \$5,120,000 basic exclusion amount). In 2013, W marries Husband 2 (H2). H2 dies on June 30, 2015. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be \$2,000,000.

(ii) *Application.* The DSUE amount to be included in determining the applicable exclusion amount available to W for gifts during the second half of 2015 is \$4,000,000, determined by adding the \$2,000,000 DSUE amount of H2 and the \$2,000,000 DSUE amount of H1 that was applied by W to W's 2012 taxable gifts. Thus, W's applicable exclusion amount during the balance of 2015 is \$9,430,000 (\$4,000,000 DSUE plus \$5,430,000 basic exclusion amount for 2015).

(d) *Date DSUE amount taken into consideration by donor who is a surviving spouse—(1) General rule.* A portability election made by an executor of a decedent's estate (see § 20.2010-2(a) and (b) for applicable requirements) generally applies as of the date of such decedent's death. Thus, the decedent's DSUE amount is included in the applicable exclusion amount of the decedent's surviving spouse under section 2010(c)(2) and will be applicable to transfers made by the surviving spouse after the decedent's death (subject to the limitations in paragraph (a) of this section). However, such decedent's DSUE amount will not be included in the applicable exclusion amount of the surviving spouse, even if the surviving spouse had made a taxable gift in reliance on the availability or computation of the decedent's DSUE amount:

(i) If the executor of the decedent's estate supersedes the portability election by filing a subsequent estate tax return in accordance with § 20.2010-2(a)(4);

(ii) To the extent that the DSUE amount subsequently is reduced by a valuation adjustment or the correction of an error in calculation; or

(iii) To the extent that the DSUE amount claimed on the decedent's return cannot be determined.

(2) *Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.* If a surviving spouse becomes a citizen of the United States after the death of the surviving spouse's last deceased spouse, the DSUE amount of the surviving spouse's last deceased spouse

becomes available to the surviving spouse on the date the surviving spouse becomes a citizen of the United States (subject to the limitations in paragraph (a) of this section). However, when the special rule regarding qualified domestic trusts in paragraph (d)(3) of this section applies, the earliest date on which a decedent's DSUE amount may be included in the applicable exclusion amount of such decedent's surviving spouse who becomes a U.S. citizen is as provided in paragraph (d)(3) of this section.

(3) *Special rule when property passes to surviving spouse in a qualified domestic trust—(i) In general.* When property passes from a decedent for the benefit of the decedent's surviving spouse in one or more qualified domestic trusts (QDOT) as defined in section 2056A(a) and the decedent's executor elects portability, the DSUE amount available to be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the DSUE amount of the decedent as redetermined in accordance with § 20.2010-2(c)(4) (subject to the limitations in paragraph (a) of this section). The earliest date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the date of the occurrence of the final QDOT distribution or final other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which tax under section 2056A is imposed. However, the decedent's DSUE amount as redetermined in accordance with § 20.2010-2(c)(4) may be applied to the surviving spouse's taxable gifts made in the year of the surviving spouse's death or, if the terminating event occurs prior to the surviving spouse's death, then in the year of that terminating event and/or in any subsequent year during the surviving spouse's life.

(ii) *Surviving spouse becomes a U.S. citizen.* If a surviving spouse for whom property has passed from a decedent in one or more QDOTs becomes a citizen of the United States and the requirements in section 2056A(b)(12) and the corresponding regulations are satisfied, then the date on which such decedent's DSUE amount

may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) (subject to the limitations in paragraph (a) of this section) is the date on which the surviving spouse becomes a citizen of the United States. See § 20.2010-2(c)(4) for the rules for computing the decedent's DSUE amount in the case of a qualified domestic trust.

(iii) *Example.* The following example illustrates the application of this paragraph (d)(3):

*Example.* (i) *Facts.* Husband (H), a U.S. citizen, dies in 2011 having made no taxable gifts during his lifetime. H's gross estate is \$3,000,000. H's wife (W) is not a citizen of the United States and, under H's will, a pecuniary bequest of \$2,000,000 passes to a QDOT for the benefit of W. H's executor timely files an estate tax return and makes the QDOT election for the property passing to the QDOT, and H's estate is allowed a marital deduction of \$2,000,000 under section 2056(d) for the value of that property. H's taxable estate is \$1,000,000. On H's estate tax return, H's executor computes H's preliminary DSUE amount to be \$4,000,000. No taxable events within the meaning of section 2056A occur during W's lifetime with respect to the QDOT, and W resides in the United States at all times after H's death. W makes a taxable gift of \$1,000,000 to X in 2012 and a taxable gift of \$1,000,000 to Y in January 2015, in each case from W's own assets rather than from the QDOT. W dies in September 2015, not having married again, when the value of the assets of the QDOT is \$2,200,000.

(ii) *Application.* H's DSUE amount is redetermined to be \$1,800,000 (the lesser of the \$5,000,000 basic exclusion amount for 2011, or the excess of H's \$5,000,000 applicable exclusion amount over \$3,200,000 (the sum of the \$1,000,000 taxable estate augmented by the \$2,200,000 of QDOT assets)). On W's gift tax return filed for 2012, W cannot apply any DSUE amount to the gift made to X. However, because W's gift to Y was made in the year that W died, W's executor will apply \$1,000,000 of H's redetermined DSUE amount to the gift on W's gift tax return filed for 2015. The remaining \$800,000 of H's redetermined DSUE amount is included in W's applicable exclusion amount to be used in computing W's estate tax liability.

(e) *Authority to examine returns of deceased spouses.* For the purpose of deter-

mining the DSUE amount to be included in the applicable exclusion amount of a surviving spouse, the Internal Revenue Service (IRS) may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return. The IRS's authority to examine returns of a deceased spouse applies with respect to each transfer by the surviving spouse to which a DSUE amount is or has been applied. Upon examination, the IRS may adjust or eliminate the DSUE amount reported on such a return of a deceased spouse; however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment under section 6501 applicable to the tax shown on that return. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry.

(f) *Availability of DSUE amount for nonresidents who are not citizens.* A non-resident surviving spouse who was not a citizen of the United States at the time of making a transfer subject to tax under chapter 12 of the Internal Revenue Code shall not take into account the DSUE amount of any deceased spouse except to the extent allowed under any applicable treaty obligation of the United States. See section 2102(b)(3).

(g) *Effective/applicability date.* This section applies to gifts made on or after June 12, 2015. See 26 CFR 25.2505-2T, as contained in 26 CFR part 25, revised as of April 1, 2015, for the rules applicable to gifts made on or after January 1, 2011, and before June 12, 2015.

**§ 25.2505-2T [Removed]**

Par. 18. Section 25.2505-2T is removed.

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

Par. 19. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 20. In § 602.101, paragraph (b) is amended by:

1. Removing the entry for 20.2010-2T.
2. Adding in numerical order an entry for 20.2010-2.

The addition reads as follows:

*§ 602.101 OMB Control numbers.*

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2010-2. . . . .	1545-0015
* * * * *	

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

Approved June 8, 2015.

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

(Filed by the Office of the Federal Register on June 12, 2015, 4:15 p.m., and published in the issue of the Federal Register for June 16, 2015, 80 F.R. 34279)

# Part III. Administrative, Procedural, and Miscellaneous

## Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

### Notice 2015-42

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I). The rates in this notice reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 (MAP-21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014, Public Law 113-159 (HATFA).

#### YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code specifies the minimum funding requirements that apply to single-employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provi-

sion, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from May 2015 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of May 2015 are, respectively, 1.38, 3.88, and 4.98.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) by the applicable percentage of the corresponding 25-year average segment rates. Section 2003(a) of HATFA amended the applicable percentages under § 430(h)(2)(C)(iv). This change generally applies to plan years beginning on or after January 1, 2013. However, pursuant to section 2003(e)(2) of HATFA, a plan sponsor can elect not to have the amendments made to the applicable percentages by section 2003 of

HATFA apply to any plan year beginning in 2013. These elections can be made either for all purposes or, alternatively, for purposes of determining the adjusted funding target attainment percentage under § 436. The 25-year average segment rates for plan years beginning in 2012, 2013, 2014 and 2015 were published in Notice 2012-55, 2012-36 I.R.B. 332, Notice 2013-11, 2013-11 I.R.B. 610, Notice 2013-58, 2013-40 I.R.B. 294, and Notice 2014-50, 2014-40 I.R.B. 590, respectively.

For plan years beginning in years 2012 through 2017, pursuant to the changes made by HATFA, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. These applicable percentages are referred to as HATFA applicable percentages. As described in the preceding paragraph, a special election is available for any plan year beginning in 2013 under which this change made by HATFA can be disregarded for all purposes or for limited purposes. To the extent such an election is made, the applicable minimum percentage for a plan year beginning in 2013 is 85% and the applicable maximum percentage for that plan year is 115%. These applicable percentages are referred to as MAP-21 applicable percentages.

#### 24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for June 2015 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	First Segment	Second Segment	Third Segment
June 2015	1.30	4.07	5.11

Based on § 430(h)(2)(C)(iv) as amended by section 2003 of HATFA, the 24-month averages applicable for June 2015 adjusted for the HATFA applicable percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month		Adjusted 24-Month Average Segment Rates, Based on the HATFA Applicable Percentage of 25-Year Average Rates		
			First Segment	Second Segment	Third Segment
2014	June	2015	4.99	6.32	6.99
2015	June	2015	4.72	6.11	6.81

### 30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose

must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for May 2015 is 2.96 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year

Treasury bond maturing in February 2045 determined each day through May 13, 2015, and the yield on the 30-year Treasury bond maturing in May 2045 determined each day for the balance of the month. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	Year		90%	to	105%
June	2015	3.19	2.87		3.35

### MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates

computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value seg-

ment rates determined for May 2015 are as follows:

First Segment	Second Segment	Third Segment
1.38	3.88	4.98

### DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Tax Exempt and Gov-

ernment Entities). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6391 or Tony

Montanaro at 202-317-8698 (not a toll-free number).

**Table I**  
 Monthly Yield Curve for May 2015  
 Derived from May 2015 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	0.32	20.5	4.64	40.5	5.03	60.5	5.16	80.5	5.23
1.0	0.62	21.0	4.66	41.0	5.03	61.0	5.16	81.0	5.23
1.5	0.90	21.5	4.68	41.5	5.03	61.5	5.16	81.5	5.23
2.0	1.15	22.0	4.69	42.0	5.04	62.0	5.17	82.0	5.23
2.5	1.36	22.5	4.71	42.5	5.04	62.5	5.17	82.5	5.23
3.0	1.55	23.0	4.72	43.0	5.05	63.0	5.17	83.0	5.23
3.5	1.73	23.5	4.74	43.5	5.05	63.5	5.17	83.5	5.23
4.0	1.90	24.0	4.75	44.0	5.06	64.0	5.17	84.0	5.23
4.5	2.06	24.5	4.77	44.5	5.06	64.5	5.18	84.5	5.24
5.0	2.22	25.0	4.78	45.0	5.07	65.0	5.18	85.0	5.24
5.5	2.39	25.5	4.79	45.5	5.07	65.5	5.18	85.5	5.24
6.0	2.55	26.0	4.80	46.0	5.07	66.0	5.18	86.0	5.24
6.5	2.70	26.5	4.81	46.5	5.08	66.5	5.18	86.5	5.24
7.0	2.85	27.0	4.82	47.0	5.08	67.0	5.19	87.0	5.24
7.5	3.00	27.5	4.83	47.5	5.08	67.5	5.19	87.5	5.24
8.0	3.14	28.0	4.85	48.0	5.09	68.0	5.19	88.0	5.24
8.5	3.28	28.5	4.86	48.5	5.09	68.5	5.19	88.5	5.24
9.0	3.40	29.0	4.87	49.0	5.10	69.0	5.19	89.0	5.25
9.5	3.52	29.5	4.87	49.5	5.10	69.5	5.19	89.5	5.25
10.0	3.63	30.0	4.88	50.0	5.10	70.0	5.20	90.0	5.25
10.5	3.73	30.5	4.89	50.5	5.11	70.5	5.20	90.5	5.25
11.0	3.83	31.0	4.90	51.0	5.11	71.0	5.20	91.0	5.25
11.5	3.91	31.5	4.91	51.5	5.11	71.5	5.20	91.5	5.25
12.0	3.99	32.0	4.92	52.0	5.11	72.0	5.20	92.0	5.25
12.5	4.07	32.5	4.93	52.5	5.12	72.5	5.20	92.5	5.25
13.0	4.13	33.0	4.93	53.0	5.12	73.0	5.21	93.0	5.25
13.5	4.19	33.5	4.94	53.5	5.12	73.5	5.21	93.5	5.25
14.0	4.25	34.0	4.95	54.0	5.13	74.0	5.21	94.0	5.26
14.5	4.29	34.5	4.95	54.5	5.13	74.5	5.21	94.5	5.26
15.0	4.34	35.0	4.96	55.0	5.13	75.0	5.21	95.0	5.26
15.5	4.38	35.5	4.97	55.5	5.13	75.5	5.21	95.5	5.26
16.0	4.42	36.0	4.97	56.0	5.14	76.0	5.21	96.0	5.26
16.5	4.45	36.5	4.98	56.5	5.14	76.5	5.22	96.5	5.26
17.0	4.48	37.0	4.99	57.0	5.14	77.0	5.22	97.0	5.26
17.5	4.51	37.5	4.99	57.5	5.14	77.5	5.22	97.5	5.26
18.0	4.54	38.0	5.00	58.0	5.15	78.0	5.22	98.0	5.26
18.5	4.56	38.5	5.00	58.5	5.15	78.5	5.22	98.5	5.26
19.0	4.58	39.0	5.01	59.0	5.15	79.0	5.22	99.0	5.26
19.5	4.61	39.5	5.01	59.5	5.15	79.5	5.22	99.5	5.27
20.0	4.63	40.0	5.02	60.0	5.16	80.0	5.22	100.0	5.27

# Credit for Carbon Dioxide Sequestration 2015 Section 45Q Inflation Adjustment Factor

## Notice 2015-44

### SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO<sub>2</sub>) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2015. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified  $b_{>2}$  taken into account for purposes of § 45Q.

### SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified CO<sub>2</sub> that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term “qualified carbon dioxide” as CO<sub>2</sub> captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO<sub>2</sub> includes the initial deposit of captured CO<sub>2</sub> used as a tertiary injectant but does not include CO<sub>2</sub> that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term “qualified facility” as an industrial facility that is owned by the taxpayer, where carbon capture equipment is placed in service, and where at least 500,000 metric tons of CO<sub>2</sub> is captured during the taxable year.

Section 45Q(d)(2) provides that the Secretary, in consultation with the Admin-

istrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO<sub>2</sub> under § 45Q(a)(1)(B) or (a)(2)(C) such that the CO<sub>2</sub> does not escape into the atmosphere. See section 5 of Notice 2009-83, 2009-2 C.B. 588, for procedures regarding secure geological storage.

Section 45Q(d)(5) allows the § 45Q credit to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified CO<sub>2</sub>.

Under § 45Q(d)(7), for taxable years beginning in a calendar year after 2009, the dollar amount contained in § 45Q(a) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(d)(7), with respect to 2015 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2014 (108.407) and the denominator of which is the GNP implicit price deflator for 2008 (99.239).

Section 45Q(e) provides that the § 45Q credit will apply with respect to qualified CO<sub>2</sub> before the end of the calendar year in which the Secretary, in consultation with the EPA, certifies that 75,000,000 metric tons of qualified CO<sub>2</sub> have been taken into account in accordance with § 45Q(a).

### SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2015 is 1.0924. The § 45Q credit for calendar year 2015 is \$21.85 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(1) and \$10.92 per metric ton of qualified CO<sub>2</sub> under § 45Q(a)(2).

### SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83 requires taxpayers to file annual reports that provide (among other information) the amounts (in metric tons) of qualified CO<sub>2</sub> for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the annual reports filed with the Service as of June 9, 2015, the aggregate amount of qualified CO<sub>2</sub> taken into account for purposes of § 45Q is 34,934,796 metric tons.

### SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 317-6853 (not a toll-free number).

## 2014 Section 45K(d)(2)(C) Reference Price

### Notice 2015-45

#### SECTION 1. PURPOSE

This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year 2014. The credit period for the nonconventional source production credit under § 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit under § 45I, and the percentage depletion in case of oil and natural gas produced from marginal properties under § 613A.

## SECTION 2. BACKGROUND

Section 45K(d)(2)(C) provides that the term “reference price” means, with respect to a calendar year, the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 43(a) provides that, for purposes of § 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer’s qualified enhanced oil recovery costs for such taxable year.

Section 43(b)(1) provides that the amount of enhanced oil recovery credit for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as – (A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds \$28, bears to (B) \$6. Section 43(b)(2) provides that the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

Section 45I(a) provides that, for purposes of § 38, the marginal well production credit for any taxable year is an amount equal to the product of the credit amount and the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

Section 45I(b)(1) provides that the amount of the marginal well production credit is \$3 per barrel of qualified crude oil production, and 50 cents per 1,000 cubic feet of qualified natural gas production.

Section 45I(b)(2) provides that the \$3 and 50 cents amounts under § 45I(b)(1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as – (i) the excess (if any) of the applicable reference price over \$15 (\$1.67 for qualified natural gas production), bears to (ii) \$3 (\$0.33 for qualified natural gas production). The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

Section 45I(c) provides that the term reference price means, with respect to any calendar year – (i) in the case of qualified crude oil production, the reference price determined under § 45K(d)(2)(C).

Section 613A(c)(6)(A) provides, in general, the allowance for depletion under § 611 shall be computed in accordance with § 613 with respect to – (i) so much of the taxpayer’s average daily marginal production of domestic crude oil as does not exceed the taxpayer’s depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and (ii) so much of the taxpayer’s average daily marginal production of domestic natural gas as does not

exceed the taxpayer’s depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)), and the applicable percentage shall be deemed to be specified in subsection (b) of § 613 for purposes of subsection (a) of that section.

Section 613A(c)(6)(C) provides that the term “applicable percentage” means the percentage (not greater than 25 percent) equal to the sum of – (i) 15 percent, plus (ii) 1 percentage point for each whole dollar by which \$20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins. For purposes of this paragraph, the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

## SECTION 3. REFERENCE PRICE

The reference price under § 45K(d)(2)(C) for calendar year 2014 is \$87.39.

## SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Bernardini on (202) 317-6853 (not a toll-free number).

**NOTE.** This revenue procedure will be reproduced as the next revision of IRS Publication 1179, General Rules and Specifications for Substitute Forms and Schedules.

26 CFR 601.602: *Forms and instructions.*

(Also Part 1, Sections 170, 220, 401(a), 403(a), 403(b), 408, 408A, 457(b) 529, 530, 853A, 1441, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, 6050N, 6050P, 6050Q, 6050R, 6050S, 6050W, 1.401(a)(9), 1.408-5, 1.408-7, 1.408A-7, 1.1441-1 through 1.1441-5, 1.6041-1, 7.6041-1, 1.6042-2, 1.6042-4, 1.6044-2, 1.6044-5, 1.6045-1, 5f.6045-1, 1.6045-2, 1.6045-4, 1.6047-1, 1.6049-4, 1.6049-6, 1.6049-7, 1.6050A-1, 1.6050B-1, 1.6050D-1, 1.6050E-1, 1.6050H-1, 1.6050H-2, 1.6050J-1T, 1.6050N-1, 1.6050P-1, 1.6050W-1.)

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#### Part 1 General Information

#### Section 1.1 – Overview of Revenue Procedure 2015-35/What’s New

##### 1.1.1

##### Purpose

The purpose of this revenue procedure to set forth the 2015 requirements for:

- Using official Internal Revenue Service (IRS) forms to file information returns with the IRS,
- Preparing acceptable substitutes of the official IRS forms to file information returns with the IRS, and
- Using official or acceptable substitute forms to furnish information to recipients.

**1.1.2  
Which Forms Are Covered?**

This revenue procedure contains specifications for these information returns:

<b>Form</b>	<b>Title</b>
1096	Annual Summary and Transmittal of U.S. Information Returns
1097-BTC	Bond Tax Credit
1098	Mortgage Interest Statement
1098-C	Contributions of Motor Vehicles, Boats, and Airplanes
1098-E	Student Loan Interest Statement
1098-MA	Mortgage Assistance Payments
1098-Q	Qualifying Longevity Annuity Contract Information
1098-T	Tuition Statement
1099-A	Acquisition or Abandonment of Secured Property
1099-B	Proceeds From Broker and Barter Exchange Transactions
1099-C	Cancellation of Debt
1099-CAP	Changes in Corporate Control and Capital Structure
1099-DIV	Dividends and Distributions
1099-G	Certain Government Payments
1099-INT	Interest Income
1099-K	Payment Card and Third Party Network Transactions
1099-LTC	Long-Term Care and Accelerated Death Benefits
1099-MISC	Miscellaneous Income
1099-OID	Original Issue Discount
1099-PATR	Taxable Distributions Received From Cooperatives
1099-Q	Payments From Qualified Education Programs (Under Sections 529 and 530)
1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
1099-S	Proceeds From Real Estate Transactions
1099-SA	Distributions From an HSA, Archer MSA, or Medicare Advantage MSA
3921	Exercise of an Incentive Stock Option Under Section 422(b)
3922	Transfer of Stock Acquired Through An Employee Stock Purchase Plan Under Section 423(c)
5498	IRA Contribution Information
5498-ESA	Coverdell ESA Contribution Information
5498-SA	HSA, Archer MSA, or Medicare Advantage MSA Information
W-2G	Certain Gambling Winnings
1042-S	Foreign Person's U.S. Source Income Subject to Withholding

**1.1.3  
Scope**

For purposes of this revenue procedure, a substitute form or statement is one that is not published by the IRS. For a substitute form or statement to be acceptable to the IRS, it must conform to the official form or the specifications outlined in this revenue procedure. Do not submit any substitute forms or statements listed above to the IRS for approval. Privately published forms may not state, "This is an IRS approved form."

Filers making payments to certain recipients during a calendar year are required by the Internal Revenue Code (the Code) to file information returns with the IRS for these payments. These filers must also provide this information to their recipients. In some cases, this also applies to payments received. See *Part 4* for specifications that apply to recipient statements (generally Copy B).

In general, section 6011 of the Code contains requirements for filers of information returns. A filer must file information returns electronically or on paper. A filer who is required to file 250 or more information returns of any one type during a calendar year must file those returns electronically.

**Caution.** Beginning January 1, 2014, financial institutions that are required to report payments made under chapters 3 or 4 **must** file Forms 1042-S electronically, regardless of the number of forms to file.

**Note.** If you file electronically, do not file the same returns on paper.

Although not required, small volume filers (fewer than 250 returns during a calendar year) may file the forms electronically. See the requirements for filing information returns (and providing a copy to a payee) in the 2015

General Instructions for Certain Information Returns and the 2015 Instructions for Form 1042-S. In addition, see the current revision of Publication 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, for electronic filing through the IRS FIRE system.

#### 1.1.4 For More Information

The IRS prints and provides the forms on which various payments must be reported. See *Section 5.3*, later, for ordering forms and instructions. Alternatively, filers may prepare substitute copies of these IRS forms and use such forms to report payments to the IRS.

- The Internal Revenue Service/Information Returns Branch (IRS/IRB) maintains a centralized customer service call site to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.). You can reach the call site at 1-866-455-7438 (toll-free) or outside the U. S. 304-263-8700 (not a toll-free number). Persons with a hearing or speech disability with access to TTY/TDD equipment can call 304-579-4827 (not a toll-free number). You may also send questions to the call site via the Internet at [mccirp@irs.gov](mailto:mccirp@irs.gov).

**Note.** IRS/IRB does not process information returns which are filed on paper forms. See Publication 1220, Specifications for Electronic Filing of Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, and W-2G, for information on waivers and extensions of time.

- For other tax information related to business returns or accounts, call 1-800-829-4933. Persons with hearing or speech disabilities with access to TTY/TDD equipment can call 1-800-829-4059 to ask tax account questions or to order forms and publications.

**Note.** Further information impacting Publication 1179, such as issues arising after its final release, will be posted on IRS.gov at [www.irs.gov/pub1179](http://www.irs.gov/pub1179).

#### 1.1.5 What's New

The following changes have been made to this year's revenue procedure.

**FATCA filing requirements of certain foreign financial institutions (FFIs).** An FFI with a chapter 4 requirement to report a U.S. account maintained by the FFI that is held by a specified U.S. person may satisfy this requirement by reporting on Form(s) 1099 (listed below) under the election described in Regulations section 1.1471-4(d)(5)(i)(A) or (B). Additionally, a U.S. payer may satisfy its chapter 4 requirement to report such a U.S. account by reporting on Form(s) 1099. See Regulations section 1.1471-4(d)(2)(iii)(A).

Information for these FFIs has been added to the General Instructions for Certain Information Returns.

- Form 1099-DIV Dividends and Distributions,
- Form 1099-INT Interest Income,
- Form 1099-MISC Miscellaneous Income,
- Form 1099-OID Original Issue Discount, and
- Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding.

**Truncating taxpayer identifying numbers on payee statements.** Final regulations have been issued that allow issuers to truncate payee identifying numbers on all payee statements covered by these instructions, except for Form W2-G. See *Recipient Information* under Instructions for Preparing Paper Forms That Will Be Filed With the IRS, later.

**Substitute forms for Form 1042-S.** As of 2015 paper substitutes for Form 1042-S may no longer contain multiple income types for the same recipient (except Copy E retained by the withholding agent). Copies B, C, and D **must** be identical to the IRS form. See *Part 5*, later.

**New Form 1098-Q.** New Form 1098-Q, Qualifying Longevity Annuity Contract Information, is used to report the status of longevity annuity contracts held by defined contribution plans, IRAs, and eligible governmental plans, to participants. See Form 1098-Q and its instructions for more information available at [www.irs.gov/form1098q](http://www.irs.gov/form1098q).

**Editorial changes.** We made editorial changes throughout, including updated references. Redundancies were eliminated as much as possible.

## Section 1.2 – Definitions

- 1.2.1  
Form Recipient** Form recipient means the person to whom you are required by law to furnish a copy of the official form or information statement. The form recipient may be referred to by different names on various Forms 1099 and related forms (“beneficiary,” “borrower,” “debtor,” “donor,” “employee,” “homeowner,” “insured,” “participant,” “payee,” “payer/borrower,” “policyholder,” “shareholder,” “student,” “transferor,” or, in the case of Form W-2G, the “winner”). See *Section 1.3.4*.
- 1.2.2  
Filer** Filer means the person or organization required by law to file with the IRS a form listed in *Section 1.1.2* with the IRS. As outlined earlier, a filer may be a payer, creditor, payment settlement entity, recipient of mortgage or student loan interest payments, educational institution, broker, barter exchange, person reporting real estate transactions; trustee or issuer of any educational savings account, individual retirement arrangement or medical savings account; lender who acquires an interest in secured property or who has reason to know that the property has been abandoned, corporation reporting a change in control and capital structure or transfer of stock to an employee, or certain donees of motor vehicles, boats, and airplanes.
- 1.2.3  
Substitute Form** Substitute form means a paper substitute of Copy A of an official form listed in *Section 1.1.2* that totally conforms to the provisions in this revenue procedure.
- 1.2.4  
Substitute Form Recipient Statement** Substitute form recipient statement means a paper statement of the information reported on a form listed in *Section 1.1.2*. This statement must be furnished to a person (form recipient), as defined under the applicable provisions of the Code and the applicable regulations.
- 1.2.5  
Composite Substitute Statement** Composite substitute statement means one in which two or more required statements (for example, Forms 1099-INT and 1099-DIV) are furnished to the recipient on one document. However, each statement must be designated separately and must contain all the requisite Form 1099 information except as provided under *Section 4.2*. A composite statement may not be filed with the IRS.

## Section 1.3 – General Requirements for Acceptable Substitute Forms 1096, 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, and 1042-S

- 1.3.1  
Introduction** Paper substitutes for Form 1096 and Copy A of Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, and 1042-S that totally conform to the specifications listed in this revenue procedure may be privately printed and filed as returns with the IRS. The reference to the Department of the Treasury-Internal Revenue Service should be included on all such forms.

If you are uncertain of any specification and want it clarified, you may submit a letter citing the specification, stating your understanding and interpretation of the specification, and enclosing an example of the form (if appropriate) to:

Internal Revenue Service  
Attn: Substitute Forms Program  
SE:W:CAR:MP:P:TP  
5000 Ellin Road, C6-440  
Lanham, MD 20706

**Note.** Allow at least 30 days for the IRS to respond.

You may also contact the Substitute Forms Program via e-mail at

*substituteforms@irs.gov*. Please enter “Substitute Forms” on the Subject Line.

Forms 1096, 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, and 1042-S are subject to annual review and possible change. Therefore, filers are cautioned against overstocking supplies of privately printed substitutes.

### **1.3.2 Logos, Slogans, and Advertisements**

Some Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, and 1042-S that include logos, slogans and advertisements may not be recognized as important tax documents. A payee may not recognize the importance of the payee copy for tax reporting purposes due to the use of logos, slogans, and advertisements. Thus, the IRS has determined that logos, slogans and advertising will not be allowed on Forms 1096 or Copy A of Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, 1042-S, or any payee copies, with the following exceptions:

- The exact name of the payer, broker, or agent, primary trade name, trademark, service mark, or symbol of the payer, broker, or agent, an embossment or watermark on the information return and payee copies that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the payer, broker, or agent,
- Presented in any typeface, font, stylized fashion, or print color normally used by the payer, broker, or agent, and used in a non-intrusive manner, and
- As long as these items do not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the payee copies.

The IRS e-file logo on the IRS official payee copies may be included, but it is not required, on any of the substitute form copies.

The information return and payee copies must clearly identify the payer’s name associated with its employer identification number.

Logos and slogans, may be used on permissible enclosures, such as a check or account statement, other than information returns and payee copies.

As indicated in *Sections 1.3.1 and 5.1.3*, of this revenue procedure, Forms 1096, 1097-BTC, 1098, 1099, 3921, 3922, 5498, W-2G, and 1042-S are subject to annual review and possible change. If you have comments about the restrictions on including logos, slogans, and advertising on information returns and payee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:P:TP, 5000 Ellin Road, C6-440, Lanham, MD 20706 or *substituteforms@irs.gov*.

### **1.3.3 Copy A Specifications**

Proposed substitutes of Copy A must be exact replicas of the official IRS form with respect to layout and content. Proposed substitutes for Copy A that do not conform to the specifications in this revenue procedure are not acceptable. Further, if you file such forms with the IRS, you may be subject to a penalty for failure to file a correct information return under section 6721 of the Code. The amount of the penalty is based on when you file the correct information return. The penalty is:

- \$30 per information return if you correctly file within 30 days of the due date of the return; maximum penalty \$250,000 per year (\$75,000 for small businesses).
- \$60 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for small businesses).

- \$100 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$1.5 million per year (\$500,000 for small businesses).

**1.3.4  
Copy B and  
Copy C Specifications**

Copy B and Copy C of the following forms must contain the information in *Part 4* to be considered a “statement” or “official form” under the applicable provisions of the Code. The format of this information is at the discretion of the filer with the exception of the location of the tax year, form number, form name, and the information for composite Form 1099 statements as outlined under *Section 4.2*.

Copy B, of the forms below, are for the following recipients.

<b>Form</b>	<b>Recipient</b>
1098	For Payer/Borrower
1098-C	For Donor
1098-E; 1099-A	For Borrower
1098-MA	For Homeowner
1098-Q	For Participant
1098-T	For Student
1099-C	For Debtor
1099-CAP	For Shareholder
1099-K	For Payee
1099-LTC	For Policyholder
1099-R; W-2G	Indicates that these forms may require Copy B to be attached to the federal income tax return.
1099-S	For Transferor
All remaining Forms 1099; 1097- BTC; 1042-S; 3921; 3922	For Recipient
5498; 5498-SA	For Employee
5498-ESA	For Participant
	For Beneficiary

Copy C of the following forms are:

<b>Form</b>	<b>Recipient</b>
1097-BTC;	For Payer
1098	For Recipient/Lender
1098-C	For Donor’s Records
1098-E; 1042-S	For Recipient
1098-MA; 1098-T; 1099-K	For Filer
1098-Q	For Issuer
1099-CAP; 3921; 3922	For Corporation
1099-LTC	For Insured
1099-R	For Recipient’s Records
All other Forms 1099	See <i>Section 4.5.2</i>
5498	For Trustee or Insurer
5498-ESA, 5498-SA	For Trustee
W-2G	For Winner’s Records

**Note.** On Copy C, Form 1099-LTC, you may reverse the locations of the policyholder's and the insured's name, street address, city, state, and ZIP code for easier mailing.

**Part 2**  
**Specifications for Substitute Forms 1096 and Copies**  
**A of Forms 1097-BTC, 1098, 1099, 3921, 3922, and 5498**  
**(All Filed With the IRS)**

**Section 2.1 – Specifications**

**2.1.1**  
**General Requirements**

Form identifying numbers (for example, 9191 for Form 1099-DIV) must be printed in nonreflective black carbon-based ink in print positions 15 through 19 using an OCR A font. The check boxes to the right of the form identifying numbers must be 10-point boxes. The “VOID” checkbox is in print position 25 (1.9” from left vertical line of the form). The “CORRECTED” check box is in print position 33 (2.7” from left vertical line of the form). Measurements are generally from the left edge of the paper, not including the perforated strip.

The substitute form Copy A must be an exact replica of the official IRS form with respect to layout and content. To determine the correct form measurements, see *Exhibits A through EE* at the end of this publication.

Hot wax and cold carbon spots are not permitted on any of the internal form plies. These spots are permitted on the back of a mailer top envelope ply.

Use of chemical transfer paper for Copy A is acceptable.

The Government Printing Office (GPO) symbol must be deleted.

**2.1.2**  
**Color and Paper v**

Color and paper quality for Copy A (cut sheets and continuous pinfeed forms) as specified by JCP Code 0-25, dated November 29, 1978, must be white 100% bleached chemical wood, optical character recognition (OCR) bond produced in accordance with the following specifications.

**Note.** Reclaimed fiber in any percentage is permitted provided the requirements of this standard are met.

Acidity: Ph value, average, not less than	4.5
Basis Weight: 17 x 22-500 cut sheets	18-20
Metric equivalent-g/m <sup>2</sup>	75
A tolerance of ±5 pct. is allowed.	
Stiffness: Average, each direction, not less than-milligrams	50
Tearing strength: Average, each direction, not less than-grams	40
Opacity: Average, not less than-percent	82
Thickness: Average-inch	0.0038
Metric equivalent-mn	0.097
A tolerance of +0.0005 inch (0.0127 mm) is allowed. Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other.	
Porosity: Average, not less than-seconds	10
Finish (smoothness): Average, each side-seconds	20-55
For information only, the Sheffield equivalent-units	170-100
Dirt: Average, each side, not to exceed-parts per million	8

**2.1.3**  
**Chemical Transfer Paper**

Chemical transfer paper is permitted for Copy A only if the following standards are met:

- Only chemically backed paper is acceptable for Copy A. Front and back chemically treated paper cannot be processed properly by machine.
- Carbon-coated forms are not permitted.
- Chemically transferred images must be black.

All copies must be clearly legible. Fading must be minimized to assure legibility.

### 2.1.4 Printing

All print on Copy A of Forms 1097–BTC, 1098, 1099, 3921, 3922, 5498, and the print on Form 1096 above the statements, “Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.” must be in Flint J–6983 red OCR dropout ink or an exact match. However, the four-digit form identifying number must be in nonreflective carbon-based black ink in OCR A font.

The shaded areas of any substitute form should generally correspond to the format of the official form.

The printing for the Form 1096 statement and the following text may be in any shade or tone of black ink. Black ink should only appear on the lower part of the reverse side of Form 1096, where it will not bleed through and interfere with scanning.

**Note.** The instructions on the front and back of Form 1096, which include filing addresses, must be printed.

Separation between fields must be 0.1 inch.

Other printing requirements are discussed below.

### 2.1.5 OCR Specifications

You must initiate or have a quality control program to assure OCR ink density. Readings will be made when printed on approved 20 lb. white OCR bond with a reflectance of not less than 80%. Black ink must not have a reflectance greater than 15%. These readings are based on requirements of the “Scan-Optics Series 9000” Optical Scanner using Flint J–6983 red OCR dropout ink or an exact match.

The following testers and ranges are acceptable:

**Important information:** The forms produced under these specifications must be guaranteed to function properly when processed through High Speed Scan-Optics 9000 mm scanners. Forms require precision spacing, printing, and trimming.

Density readings on the solid J–6983 (red) must be between the ranges of 0.95 to 0.90. The optimal scanning range is 0.93. Density readings on the solid black must be between the ranges of 112 to 108. The optimal scanning range is 110.

**Note.** The readings are taken using an Ex-Rite 500 series densitometer, in Status T with Obsolute or – paper setting under an Illuminate 5000 Kelvin Watt Light. You must maintain print contrast specification of ink and densitometer reflectivity reading throughout entire production run.

- *MacBeth PCM-II.* The tested Print Contrast Signal (PCS) values when using the MacBeth PCM-II tester on the “C” scale must range from .01 minimum to .06 maximum.
- *Kidder 082A.* The tested PCS values when using the Kidder 082A tester on the Infra Red (IR) scale must range from .12 minimum to .21 maximum. White calibration disc must be 100%. Sensitivity must be set at one (1).
- Alternative testers must be approved by the IRS to establish tested PCS values. You may obtain approval by writing to the following address:

Commissioner of Internal Revenue  
Attn: SE:W:CAR:MP:P:TP  
Business Publishing – Tax Products  
5000 Ellin Road  
Lanham, MD 20706

### 2.1.6 Typography

Type must be substantially identical in size and shape to the official form. All rules are either ½-point or ¾-point. Rules must be identical to those on the official IRS form.

**Note.** The form identifying number must be nonreflective carbon-based black ink in OCR A font.

### 2.1.7 Dimensions

Generally, three copies A of Forms 1098, 1099, 3921, and 3922 are contained on a single page, 8 inches wide (without any snap-stubs and/or pinfeed holes) by 11 inches deep.

**Exceptions.** Forms 1097–BTC, 1098–Q, 1099–B, 1099–DIV, 1099–INT, 1099–K, 1099–MISC, 1099–OID, 1099–R, 5498, and 1042–S contain two documents per page. Form 1098–C is a single page document.

There is a .33 inch top margin from the top of the corrected box, and a .2 to .25 inch right margin, with a +/- 1/20 (0.05) inch tolerance for the right margin. If the right and top margins are properly aligned, the left margin for all forms will be correct. All margins must be free of print. See *Exhibits A through EE* in this revenue procedure for correct form measurements.

These measurements are constant for certain Forms 1098, 1099, and 5498. These measurements are shown only once in this publication, on Form 1098 (*Exhibit C*). Exceptions to these measurements and form-specific measurements are shown on the rest of the exhibits.

The depth of the individual trim size of each form on a page must be 3<sup>2</sup> 3 inches, the same depth as the official form, or otherwise indicated.

**Exceptions.** The depth of Forms 1097–BTC, 1098–Q, 1099–B, 1099–DIV, 1099–INT, 1099–K, 1099–MISC, 1099–OID, 1099–R, 5498, and 1042–S is 5-1/2 inches.

### 2.1.8 Perforation

Copy A (three per page and two per page) of privately printed continuous substitute forms must be perforated at each 11" page depth. No perforations are allowed between forms on the Copy A page.

**Exception:** Copy A of Form W–2G may be perforated.

The words “Do Not Cut or Separate Forms on This Page” must be printed in red dropout ink (as required by form specifications) between the three or two forms per page. This statement should not be included after the last form on the page.

Separations are required between all the other individual copies (Copies B and C, and Copies 1 and 2 of Forms 1099–B, 1099–DIV, 1099–G, 1099–INT, 1099–K, 1099–MISC, 1099–OID, 1099–R, and copy D for Forms 1099–LTC, 1099–R, and 1042–S) in the set. Any recipient copies printed on a single sheet of paper must be easily separated. The best method of separation is to provide perforations between the individual copies. Each copy should be easily distinguished whatever method of separation is used.

**Note.** Perforation does not apply to printouts of copies that are furnished electronically to recipients (as described in Regulations section 31.6051–1(k)). However, these recipients should be cautioned to carefully separate any copies. See *Section 4.6.1*, later, for information on electronically furnishing statements to recipients.

### 2.1.9 Required Inclusions/ Exclusions

You must include the OMB Number on Copies A and Form 1096 in the same location as on the official form.

The following Privacy Act and Paperwork Reduction Act Notice phrases must be printed on Copy A of the forms as follows. It also must be printed on the copy of the form (C, D, or E) retained by the filer.

- “For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns” on Forms 3921 and 3922;
- “For more information and the Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns” on Form 1096;
- “For Privacy Act and Paperwork Reduction Act Notice, see instructions” on Form 1042–S; and
- “For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns” must be printed on all other forms listed in *Section 1.1.2*.

A postal indicia may be used if it meets the following criteria:

- It is printed in the OCR ink color prescribed for the form, and
- No part of the indicia is within one print position of the scannable area.

The printer's symbol (GPO) must not be printed on substitute Copy A. Instead, the employer identification number (EIN) of the form's printer must be entered in the bottom margin on the face of each individual form of Copy A, or on the bottom margin on the back of each Form 1096.

The Catalog Number (Cat. No.) shown on the forms is used for IRS distribution purposes and should not be printed on any substitute forms.

The form must not contain the statement "IRS approved" or any similar statement.

## Section 2.2 – Instructions for Preparing Paper Forms That Will Be Filed With the IRS

### 2.2.1 Recipient Information

The form recipient's name, street address, city, state, ZIP code, and telephone number (if required) should be typed or machine printed in black ink in the same format as shown on the official IRS form. The city, state, and ZIP code must be on the same line.

The following rules apply to the form recipient's name(s):

- The name of the appropriate form recipient must be shown on the first or second name line in the area provided for the form recipient's name.
- No descriptive information or other name may precede the form recipient's name.
- Only one form recipient's name may appear on the first name line of the form.
- If multiple recipients' names are required on the form, enter on the first name line the recipient name that corresponds to the recipient taxpayer identification number (TIN) shown on the form. Place the other form recipients' names on the second name line (only 2 name lines are allowable).

Because certain states require that trust accounts be provided in a different format, filers generally should provide information returns reflecting payments to trust accounts with the:

- Trust's employer identification number (EIN) in the recipient's TIN area,
- Trust's name on the recipient's first name line, and
- Name of the trustee on the recipient's second name line.

Although handwritten forms will be accepted, the IRS prefers that filers type or machine print data entries. Also, filers should insert data as directed by shading, or in the middle of blocks, well separated from other printing and guidelines, and take measures to guarantee clear, dark black, sharp images. Photocopies are not acceptable.

**Truncating payee identification number on payee statements.** Where permitted, filers may truncate a payee's identification number (SSN, ITIN, ATIN, or EIN) on the payee statement (including substitute and composite substitute statements) furnished to the payee in paper form or electronically. Generally, the payee statement is that copy of an information return designated "Copy B" on the form. To truncate where allowed, replace the first 5 digits of the 9-digit number with asterisks (\*) or Xs (for example, an SSN xxx-xx-xxxx would appear on the paper payee statement as \* \* \* -\* \*-xxxx or XXX-XX-xxxx). See Treasury Decision 9675, 2014-31 I.R.B. 242, available at [www.irs.gov/irb/2014-31\\_IRB/ar07.html](http://www.irs.gov/irb/2014-31_IRB/ar07.html).

**Caution.** Recipient TINs must **not** be truncated on Copy A filed with the IRS.

### 2.2.2 Account Number Box

Use the account number box on all Forms 1098, 1099, 3921, 3922, 5498, and W-2G for an account number designation when required by the official IRS form. The account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type. Additionally, the IRS encourages you to include the recipients' account numbers on paper forms if your system of records uses the account number rather than the name or TIN for identification purposes. Also, the IRS will include the account number in future notices to you about backup withholding. If you are using window envelopes to

mail statements to recipients and using reduced rate mail, be sure the account number does not appear in the window. The Postal Service may not accept these for reduced rate mail.

**Exception.** Form 1098–T can have third-party provider information.

### 2.2.3 Specifications and Restrictions

Machine-printed forms should be printed using a 6 lines/inch option, and should be printed in 10 pitch pica (10 print positions per inch) or 12 pitch elite (12 print positions per inch). Proportional spaced fonts are unacceptable.

Substitute forms prepared in continuous or strip form must be burst and stripped to conform to the size specified for a single sheet before they are filed with the IRS. The size specified does not include pin feed holes. Pin feed holes must not be present on forms filed with the IRS.

- Do **not** use a felt tip marker. The machine used to “read” paper forms generally cannot read this ink type.
- Do **not** use dollar signs (\$), ampersands (&), asterisks (\*), commas (,), or other special characters in the numbered money boxes. **Exception.** Use decimal points to indicate dollars and cents (for example, 2000.00 is acceptable).
- Do **not** use apostrophes (’), asterisks (\*), or other special characters on the payee name line.
- Do **not** fold Forms 1097–BTC, 1098, 1099, 3921, 3922, or 5498 mailed to the IRS. Mail these forms flat in an appropriately sized envelope or box. Folded documents cannot be readily moved through the machine used in IRS processing.
- Do **not** staple Forms 1096 to the transmitted returns. Any staple holes near the return code number may impair the IRS’s ability to machine scan the type of documents.
- Do **not** type other information on Copy A.
- Do **not** cut or separate the individual forms on the sheet of forms of Copy A (except Forms W–2G).

### 2.2.4 Where To File

Mail completed paper forms to the IRS service center shown in the Instructions for Form 1096 and in the 2015 General Instructions for Certain Information Returns. Specific information needed to complete the forms mentioned in this revenue procedure are given in the specific form instructions. A chart showing which form must be filed to report a particular payment is included in the 2015 General Instructions for Certain Information Returns.

## Part 3 Specifications for Substitute Form W–2G (Filed With the IRS)

### Section 3.1 – General

#### 3.1.1 Purpose

The following specifications give the format requirements for substitute Form W–2G (Copy A only), which is filed with the IRS.

A filer may use a substitute Form W–2G to file with the IRS (referred to as “substitute Copy A”). The substitute form must be an exact replica of the official form with respect to layout and content.

### Section 3.2 – Specifications for Copy A of Form W–2G

#### 3.2.1 Substitute Form W–2G (Copy A)

You must follow these specifications when printing substitute Copy A of the Form W–2G.

**Caution.** The payee’s TIN (SSN, ITIN, ATIN, or EIN) must **not** be truncated on Form W2–G.

<b>Item</b>	<b>Substitute Form W-2G (Copy A)</b>
Paper Color and Quality	Paper for Copy A must be white chemical wood bond, or equivalent, 20 pound (basis 17 x 22-500), plus or minus 5 percent. The paper must consist substantially of bleached chemical wood pulp. It must be free from unbleached or ground wood pulp or post-consumer recycled paper. It also must be suitably sized to accept ink without feathering.
Ink Color and Quality	All printing must be in a high quality non gloss black ink.
Typography	The type must be substantially identical in size and shape to the official form. All rules on the document are either ½ point (.007 inch), 1 point (0.015 inch), or 3 point (0.045). Vertical rules must be parallel to the left edge of the document, horizontal rules to the top edge.
Dimensions	The official form is 8 inches wide x 5½ inches deep, exclusive of a snap stub. Any substitute Copy A can be between 8 inches and 8½ inches wide by 5½ inches deep. The snap feature is not required on substitutes. All margins must be free of print. There is a .33 inch top margin from the top of the corrected box, and a ½ inch left margin. If the top and left margins are properly aligned, the right margin for all forms will be correct. If the substitute forms are in continuous or strip form, they must be burst and stripped to conform to the size specified for a single form.
Hot Wax and Cold Carbon Spots	Hot wax and cold carbon spots are not permitted on any of the internal form plies. These spots are permitted on the back of a mailer top envelope ply.
Printer's Symbol	The Government Printing Office (GPO) symbol must not be printed on substitute Forms W-2G. Instead, the employer identification number (EIN) of the forms printer must be printed in the bottom margin on the face of each individual Copy A on a sheet. The form must not contain the statement "IRS approved" or any similar statement.
Catalog Number	The Catalog Number (Cat. No.) shown on Form W-2G is used for IRS distribution purposes and should not be printed on any substitute forms.

**Part 4**  
**Substitute Statements to Form Recipients and Form Recipient Copies**

**Section 4.1 – Specifications**

**4.1.1 Introduction**

If you do not use the official IRS form to furnish statements to recipients, you must furnish an acceptable substitute statement. Information presented in substitute statements should be in a point size large enough to be easily read by recipients. To be acceptable, your substitute statement must comply with the rules in this Part. If you are furnishing a substitute form, see Regulations sections 1.6042-4, 1.6044-5, 1.6049-6, and 1.6050N-1 to determine how the following statements must be provided to recipients for most Forms 1099-DIV and 1099-INT, all Forms 1099-OID and 1099-PATR, and Form 1099-MISC or 1099-S for royalties. Generally, information returns may be furnished electronically with the consent of the recipient. See *Section 4.6.1*.

**Note.** A trustee of a grantor-type trust may choose to file Forms 1099 and furnish a statement to the grantor under Regulations sections 1.671-4(b)(2)(iii) and (b)(3)(ii). The statement required by those regulations is not subject to the requirements outlined in this section.

**4.1.2  
Substitute Statements to  
Recipients for Certain  
Forms 1099-B, 1099-DIV,  
1099-INT, 1099-OID and  
1099-PATR**

The rules in this section apply to Form 1099-B, 1099-DIV (except for section 404(k) dividends), 1099-INT (except for interest reportable under section 6041), 1099-OID, and 1099-PATR only. You may furnish form recipients with Copy B of the official Form 1099 or a substitute Form 1099 (form recipient statement) if it contains the same information as the official IRS form (such as aggregate amounts paid to the form recipient, any backup withholding, the name, address, and TIN of the person making the return, and any other information required by the official form). Information not required by the official form should not be included on the substitute form except for state income tax withholding information.

**Note.** Many of the information returns now include boxes for providing state withholding information as part of the official form, with additional copies for convenience. payers may, however, provide the state withholding information separately (such as on a separate page or section) in order to assist the payee with completing a state income tax return that requires the attachment of any information return that includes state withholding amounts and payer numbers.

**Exception for supplementary information.** The substitute form may include supplementary information that will assist the payee with completing his or her tax return. Such information could include expense and cost basis factors related to the reporting for widely held fixed investment trusts (WHFITs), as required under Regulation section 1.671-5. The substitute statement should disclose to the payee that such supplementary information is not furnished to the IRS. See *Section 4.3* for additional requirements when providing supplemental information with the Form 1099-B that is not furnished to the IRS.

**Form 1099-B.** For transactions reportable on Form 8949, brokers that use substitute statements should segregate dispositions of noncovered securities from covered securities, and further segregate long-term and short-term dispositions of covered securities. They may also segregate long-term from short-term dispositions of noncovered securities, to the extent that date acquired is known. For 2015 dispositions, the substitute Forms 1099-B may have up to five separate sections, each with a heading identifying which securities are included in the list, and each separately totaled. Each section, after totaling or within the heading for the section, should indicate how to report the transactions on Form 8949, as indicated.

1. Short-term transactions for which basis **is** reported to the IRS— Report on Form 8949, **Part I**, with **Box A** checked.
2. Short-term transactions for which basis **is not** reported to the IRS— Report on Form 8949, **Part I**, with **Box B** checked.
3. Long-term transactions for which basis **is** reported to the IRS— Report on Form 8949, **Part II**, with **Box D** checked.
4. Long-term transactions for which basis **is not** reported to the IRS— Report on Form 8949, **Part II**, with **Box E** checked.
5. Transactions for which basis **is not** reported to the IRS and for which short-term or long-term determination is unknown (to Broker)-You must determine short-term or long-term based on your records and report on Form 8949, Part I, with **Box B** checked, or on Form 8949, Part II, with **Box E** checked, as appropriate.

For each section, each transaction may include information not reported to the IRS, such as basis, date acquired, and gain or loss. Therefore, for short-term dispositions where basis was not reported to the IRS, basis and date acquired may be shown just as it would be shown for short-term dispositions where basis was reported to the IRS.

For 2015 dispositions, each of the applicable sections must have Sales Price and Cost or Other Basis (if known) separately totaled. Net gain or loss, if included for any of the sections, may also be totaled.

Brokers may also use substitute Form 1099-B for transactions that are not directly reported on Form 8949. Examples include transactions involving regulated futures contracts, foreign currency contracts, and section 1256 option contracts. Any additional sections created for this purpose should be segregated from those transactions reportable on Form 8949.

The substitute form requirements in the following paragraphs also apply to Form 1099–B.

**Form 1099–INT, DIV, OID, and PATR.** A substitute form recipient statement for Forms 1099–INT, 1099–DIV, 1099–OID, or 1099–PATR must comply with the following requirements:

1. Box captions and numbers that are applicable must be clearly identified, using the same wording and numbering as on the official form.
2. The form recipient statement (Copy B) must contain all applicable form recipient instructions provided on the front and back of the official IRS form. You may provide those instructions on a separate sheet of paper.
3. The form recipient statement must contain the following in bold and conspicuous type:  
**This is important tax information and is being furnished to the Internal Revenue Service (except as indicated). If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.**
4. The box caption “**Federal income tax withheld**” must be in boldface type or otherwise highlighted on the form recipient statement.
5. The form recipient statement must contain the Office of Management and Budget (OMB) number as shown on the official IRS form. See *Part 5*.
6. The form recipient statement must contain the tax year (for example, 2015), form number (for example, Form 1099–INT), and form name (for example, Interest Income) of the official IRS Form 1099. This information must be displayed prominently together in one area of the statement. For example, the tax year, form number, and form name could be shown in the upper right part of the statement. Each copy must be appropriately labeled (such as Copy B, For Recipient). See *Section 4.5* for applicable labels and arrangement of assembly of forms. **Note.** Do not include the words “Substitute for” or “In lieu of” on the form recipient statement.
7. Layout and format of the form is at the discretion of the filer. However, the IRS encourages the use of boxes so that the statement has the appearance of a form and can be easily distinguished from other non-tax statements.
8. Each recipient statement of Forms 1099–B, 1099–DIV, 1099–INT, 1099–OID, and 1099–PATR must include the direct access telephone number of an individual who can answer questions about the statement. Include that telephone number conspicuously anywhere on the recipient statement.
9. A mutual fund family may state separately on one document (for example, one piece of paper) the dividend income earned by a recipient from each fund within the family of funds as required by Form 1099–DIV. However, each fund and its earnings must be stated separately. The form must contain an instruction to the recipient that each fund’s dividends and name, not the name of the mutual fund family, must be reported on the recipients tax return. The form cannot contain an aggregate total of all funds. In addition, a mutual fund family may furnish a single statement (as a single filer) for Forms 1099–INT, 1099–DIV, and 1099–OID information. Each fund and its earnings must be stated separately. The form must contain an instruction to the recipient that each fund’s earnings and name, not the name of the mutual fund family, must be reported on the recipients tax return. The form cannot contain an aggregate total of all funds.

You may enter a total of the individual accounts listed on the form only if they have been paid by the same payer. For example, if you are listing interest paid on several accounts by one financial institution on Form 1099–INT, you may also enter the total interest amount. You may also enter a date next to the corrected box if that box is checked.

#### **4.1.3 Substitute Statements to Recipients for Certain Forms 1098, 1099, 5498, and W–2G**

Statements to form recipients for Forms 1097–BTC, 1098, 1098–C, 1098–E, 1098–MA, 1098–Q, 1098–T, 1099–A, 1099–C, 1099–CAP, 1099–G, 1099–K, 1099–LTC, 1099–MISC, 1099–Q, 1099–R, 1099–S, 1099–SA, 3921, 3922, 5498, 5498–ESA, 5498–SA, W–2G, 1099–DIV (only for section 404(k) dividends reportable under section 6047), and 1099–INT (only for interest of \$600 or more made in the course of a trade or business reportable under section 6041) can be copies of the official forms or an acceptable substitute.

**Caution.** The IRS does not require a donee to use Form 1098–C as the written acknowledgment for contributions of motor vehicles, boats, and airplanes. However, if you choose to use copies of Form 1098–C or an acceptable substitute as the written acknowledgment, then you must follow the requirements of this *Section 4.1.3*.

To be acceptable, a substitute form recipient statement must meet the following requirements.

1. The tax year, form number, and form name must be the same as the official form and must be displayed prominently together in one area on the statement. For example, they may be shown in the upper right part of the statement.
2. The statement must contain the same information as the official IRS form, such as aggregate amounts paid to the form recipient, any backup withholding, the name, address, and TIN of the filer and of the recipient, and any other information required by the official form.
3. Each substitute recipient statement for Forms W-2G, 1097-BTC, 1098, 1098-C, 1098-E, 1098-T, 1099-A, 1099-C, 1099-CAP, 1099-DIV, 1099-G (excluding state and local income tax refunds), 1099-K, 1099-INT, 1099-LTC, 1099-MISC (excluding fishing boat proceeds), 1099-Q, 1099-S, 1099-SA, and 5498-SA must include the direct access telephone number of an individual who can answer questions about the statement. Include the telephone number conspicuously anywhere on the recipient statement. Although not required, payers reporting on Forms 1099-R, 3921, 3922, 5498, and 5498-ESA are encouraged to furnish telephone numbers at which recipients of the forms(s) can reach a person familiar with information reported.
4. All applicable money amounts and information, including box numbers, required to be reported to the form recipient must be titled on the form recipient statement in substantially the same manner as those on the official IRS form. The box caption "**Federal income tax withheld**" must be in boldface type on the form recipient statement.

**Exception.** If you are reporting a payment as "Other income" in box 3 of Form 1099-MISC, you may substitute appropriate language for the box title. For example, for payments of accrued wages and leave to a beneficiary of a deceased employee, you might change the title of box 3 to "Beneficiary payments" or something similar. **Note.** You cannot make this change on Copy A.

**Note.** If federal income tax is withheld and shown on Form 1099-R or W-2G, Copy B and Copy C must be furnished to the recipient. If federal income tax is not withheld, only Copy C of Form 1099-R and W-2G must be furnished. However, for Form 1099-R, instructions similar to those on the back of the official Copy B and Copy C of Form 1099-R must be furnished to the recipient. For convenience, you may choose to provide both Copies B and C of Form 1099-R to the recipient.

5. You must provide appropriate instructions to the form recipient similar to those on the official IRS form, to aid in the proper reporting on the form recipients income tax return. For payments reported on Forms 1099-B, and 1099-CAP, the requirement to include instructions substantially similar to those on the official IRS form may be satisfied by providing form recipients with a single set of instructions for all Forms 1099-B and 1099-CAP statements required to be furnished in a calendar year.
6. If you use carbonless sets to produce recipient statements, the quality of each copy in the set must meet the following standards:
  - All copies must be clearly legible,
  - All copies must be able to be photocopied, and
  - Fading must not diminish legibility and the ability to photocopy.

In general, black chemical transfer inks are preferred, but other colors are permitted if the above standards are met. Hot wax and cold carbon spots are not permitted on any of the internal form plies. The back of a mailer top envelope ply may contain these spots.

7. You may use a Settlement Statement (under the Real Estate Settlement Procedures Act of 1974 (RESPA)) for Form 1099-S. The Settlement Statement is acceptable as the written statement to the transferor if you include the legend for Form 1099-S found in *Section 4.4.2* and indicate which information on the Settlement Statement is being reported to the IRS on Form 1099-S.
8. For reporting state income tax withholding and state payments, you may add an additional box(es) to recipient copies as appropriate. In addition, the state withholding information may be provided separate and apart from the other information in the event the recipient must attach a copy to the recipient's tax return. **Note.** You cannot make this change on Copy A.
9. On Copy C of Form 1099-LTC, you may reverse the location of the policyholder's and the insured's name, street address, city, state, and ZIP code for easier mailing.
10. If an institution insurer uses a third party service provider to file Form 1098-T, then in addition to the institution or insurers name, address, and telephone number, the same information may be included for the third party service provider in the space provided on the form.

11. Forms 1099–A and 1099–C transactions, if related, may be combined on Form 1099–C.

## Section 4.2 – Composite Statements

### 4.2.1 Composite Substitute Statements for Certain Forms 1099–B, 1099–DIV, 1099–INT, 1099–MISC, 1099–OID, 1099–PATR and 1099–S

A composite form recipient statement is permitted for reportable payments consisting of the proceeds of brokerage and barter transactions, dividends, interest, original issue discount, patronage dividends, and royalties. The following forms may be included on a composite substitute statement, when one payer is reporting more than one of these payments during a calendar year to the same form recipient.

- Form 1099–B.
- Form 1099–DIV (except for section 404(k) dividends).
- Form 1099–INT (except for interest reportable under section 6041).
- Form 1099–MISC (only for royalties or substitute payments in lieu of dividends and interest).
- Form 1099–OID.
- Form 1099–PATR.
- Form 1099–S (only for royalties).

Generally, do not include any other Form 1099 information (for example, 1098 or 1099–A) on a composite statement with the information required on the forms listed in the preceding sentence.

Although the composite form recipient statement may be on one sheet, the format of the composite form recipient statement must satisfy the following requirements in addition to the requirements listed earlier in *Section 4.1.2, 4.3 and 4.4, as applicable*.

- All information pertaining to a particular type of payment must be located and blocked together on the form and separate from any information covering other types of payments included on the form. For example, if you are reporting interest and dividends, the Form 1099–INT information must be presented separately from the Form 1099–DIV information.
- The composite form recipient statement must prominently display the form number and form name of the official IRS form together in one area at the beginning of each appropriate block of information. The tax year must only be placed on each block of information if it is not prominently displayed elsewhere on the page on which the information appears.
- Any information required by the official IRS forms that would otherwise be repeated in each information block is required to be listed only once in the first information block on the composite form. For example, there is no requirement to report the name of the filer in each information block. This rule does not apply to any money amounts (for example, federal income tax withheld) or to any other information that applies to money amounts.
- A composite statement is an acceptable substitute only if the type of payment and the recipient’s tax obligation with respect to the payment are as clear as if each required statement were furnished separately on an official form.

### 4.2.2 Composite Substitute Statements to Recipients for Forms Specified in Section 4.1.3

A composite form recipient statement for the forms specified in *Section 4.1.3* is permitted when one filer is reporting more than one type of payment during a calendar year to the same form recipient. A composite statement is not allowed for a combination of forms listed in *Section 4.1.3* and forms listed in *Section 4.1.2*.

#### Exceptions:

- Substitute payments in lieu of dividends or interest reported in Box 8 of Form 1099–MISC may be reported on a composite substitute statement with Form 1099–DIV.
- Form 1099–B information may be reported on a composite form with the forms specified in *Section 4.1.2* as described in *Section 4.2.1*.
- Royalties reported on Form 1099–MISC or 1099–S may be reported on a composite form only with the forms specified in *Section 4.1.2*.

Although the composite form recipient statement may be on one sheet, the format of the composite form recipient statement must satisfy the requirements listed in *Section 4.2.1* as well as the requirements in *Section 4.1.3*. A composite statement of Forms 1098 and 1099–INT (for interest reportable under section 6049) is not allowed.

## Section 4.3 – Additional Information for Substitute and Composite Forms 1099– B

### 4.3.1 General Requirements for Presenting Additional 1099– B Information

A filer may include Form 1099–B information on a composite form with the forms listed in *Section 4.1.2*. Therefore, supporting, explanatory, or comparable relevant information for covered and noncovered lots on the 1099–B portion of the composite statement can be included. This information includes display on the payee statement of data elements such as basis for noncovered lots, explanatory remarks on permissible basis adjustments for covered lots descriptions of the type of transaction (merger, buy to close, redemption, etc.), identification of contingent payment debt obligations, and lot relief methods.

If you wish to provide additional information to the investor on the same substitute recipient Form 1099–B, the form must follow the rules set forth in this *Section 4.3* and should clearly delineate how the information is presented. Any information presented should make reference to its corresponding number on the official form as appropriate. You should clearly categorize each type of information you are reporting.

### 4.3.2 Added Legend for Providing Additional 1099– B Information

An additional separate legend is required that explains exactly which pieces of information are and which are not reported to the IRS to the extent, if any, the information is not already identified as not being reported to the IRS as described in *Section 4.1.2*. It should clearly explain how the information is presented. You may present this legend in a way that is consistent with your design as long as it clearly indicates which information is being provided to the IRS. Additionally, a reminder to taxpayers that they are ultimately responsible for the accuracy of their tax returns is also required.

## Section 4.4 – Required Legends

### 4.4.1 Required Legends for Forms 1098

Form 1098 recipient statements (Copy B) must contain the following legends:

- Form 1098
  1. “The information in boxes 1, 2, and 3 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return.”
  2. **Caution.** “The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.”
- Form 1098–C -: Copy B -“In order to take a deduction of more than \$500 for this contribution, you must attach this copy to your federal tax return. **Unless box 5a or 5b is checked, your deduction cannot exceed the amount in box 4c.**” Copy C -“This information is being furnished to the Internal Revenue Service unless box 7 is checked.”
- Form 1098–E -“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for student loan interest.”
- Form 1098–MA -“This is important tax information and is being furnished to the Internal Revenue Service.”
- Form 1098–Q -“This information is being furnished to the Internal Revenue Service.”
- Form 1098–T -“This is important tax information and is being furnished to the Internal Revenue Service.”

### 4.4.2 Required Legends for Forms 1099 and W–2G

- Forms 1099–A, 1099–C, and 1099–CAP: Copy B -“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.”
- Forms 1099–B, 1099–DIV, 1099–G, 1099–INT, 1099–K, 1099–MISC, 1099–OID, 1099–PATR, and 1099–Q: Copy B- “This is important tax information and is being furnished to the

Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.”

- Form 1099–LTC: Copy B - “This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.” Copy C - “Copy C is provided to you for information only. Only the policyholder is required to report this information on a tax return.”
- Form 1099–R: Copy B - “Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return.” Copy C - “This information is being furnished to the Internal Revenue Service.”
- Form 1099–S: Copy B - “This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”
- Form 1099–SA: Copy B - “This information is being furnished to the Internal Revenue Service.”
- Form W–2G: Copy B - “This information is being furnished to the Internal Revenue Service. Report this income on your federal tax return. If this form shows federal income tax withheld in box 2, attach this copy to your return.” Copy C- “This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.”

#### 4.4.3 Required Legends for Forms 1097–BTC, 3921, 3922, and 5498

Recipient statements for these forms must contain the following legends:

- Form 1097–BTC -“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if an amount of tax credit exceeding the amount reported on this form is claimed on your income tax return.”
- Form 3921: Copy B -“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.” Copy C- “This copy should be retained by the corporation whose stock has been transferred under Section 422(b).”
- Form 3922: Copy B -“This is important tax information and is being furnished to the Internal Revenue Service.” Copy C- “This copy should be retained by the corporation.”
- Form 5498 -“This information is being provided to the Internal Revenue Service.” **Note.** If you do not provide another statement to the participant because no contributions were made for the year, the statement of the fair market value and any required minimum distribution, of the account must contain this legend and a designation of which information is being provided to the IRS.
- Form 5498–ESA -“The information in boxes 1 and 2 is being furnished to the Internal Revenue Service.”
- Form 5498–SA -“The information in boxes 1 through 6 is being furnished to the Internal Revenue Service.”

### Section 4.5 – Miscellaneous Instructions for Copies B, C, D, E, 1, and 2

#### 4.5.1 Copies

Copies B, C, and in some cases, D, E, 1, and 2 are included in the official assembly for the convenience of the filer. You are not legally required to include all these copies with the privately printed substitute forms. Furnishing Copies B and, in some cases, C will satisfy the legal requirement to provide statements of information to form recipients.

**Note.** If an amount of federal income tax withheld is shown on Form 1099–R or W–2G, Copy B (to be attached to the tax return) and Copy C must be furnished to the recipient. Copy D (Forms 1099–R and W–2G) may be used for payer records. Only Copy A should be filed with the IRS.

#### 4.5.2 Arrangement of Assembly

Copy A (“For Internal Revenue Service Center”) of all forms must be on top. The rest of the assembly must be arranged, from top to bottom, as follows. For:

<b>Form</b>	<b>Title</b>
1098	Copy B “For Payer/Borrower”; Copy C “For Recipient/ Lender.”
1098-C	Copy B “For Donor”; Copy C “For Donor’s Records”; Copy D “For Donee.”
1098-E	Copy B “For Borrower”; Copy C “For Recipient.”
1098-MA	Copy B “For Homeowner”; Copy C “For Filer.”
1098-Q	Copy B “For Participant”; Copy C “For Issuer”
1098-T	Copy B “For Student”; Copy C “For Filer.”
1099-A	Copy B “For Borrower”; Copy C “For Lender.”
1097-BTC, 1099-PATR, and 1099-Q	Copy B “For Recipient”; Copy C “For Payer.”
1099-C	Copy B “For Debtor”; Copy C “For Creditor.”
1099-CAP	Copy B “For Shareholder”; Copy C “For Corporation.”
1099- B,1099-DIV, 1099-G, 1099-INT, 1099-MISC and 1099- OID	Copy 1 “For State Tax Department”; Copy B “For Recipient”; Copy 2 “To be filed with recipient’s state income tax return, when required”; and Copy C “For Payer.”
1099-K	Copy 1 “For State Tax Department”; Copy B “For Payee”; Copy 2 “To be filed with the recipient’s state income tax return, when required”; Copy C “For Filer”.
1099-LTC	Copy B “For Policyholder”; Copy C “For Insured”; and Copy D “For Payer.”
1099-R	Copy 1 “For State, City, or Local Tax Department”; Copy B “Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return”; Copy C “For Recipient’s Records”; Copy 2 “File this copy with your state, city, or local income tax return, when required”; Copy D “For Payer.”
1099-S	Copy B “For Transferor”; Copy C “For Filer.”
1099-SA	Copy B “For Recipient”; Copy C “For Trustee/Payer.”
3921	Copy B “For Employee”; Copy C “For Corporation”; Copy D “For Transferor.”
3922	Copy B “For Employee”; Copy C “For Corporation.”
5498	Copy B “For Participant”; Copy C “For Trustee or Issuer.”
5498-ESA	Copy B “For Beneficiary”; Copy C “For Trustee.”
5498-SA	Copy B “For Participant”; Copy C “For Trustee.”
W-2G	Copy 1 “For State, City, or Local Tax Department”; Copy B “Report this income on your federal tax return. If this form shows federal income tax withheld in box 2, attach this copy to your return”; Copy C “For Winner’s Records”; Copy 2 “Attach this copy to your state, city, or local income tax return, if re- quired”; Copy D “For Payer.”
1042-S	Copy B “For Recipient”; Copies C and D “For Recipient” and “Attach to any Federal Tax return you file”; Copy E: “For With- holding Agent”.

#### 4.5.3 Perforations

Instructions for perforation of forms can be found in *Section 2.1.8*, earlier.

## Section 4.6 – Electronic Delivery of Recipient Statements

### 4.6.1 Electronic Recipient Statements

If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms 1098, 1098–E, 1098–MA, 1098–Q, 1098–T, 1099–A, 1099–B, 1099–C, CAP, DIV, G, H, INT, K, LTC, MISC, OID, PATR, Q, R, S, SA, 3921, 3922, 5498, 5498–ESA, and 5498–SA. It also includes Form W–2G (except for horse and dog racing, jai alai, sweepstakes, wagering pools, and lotteries).

**Note.** Until further guidance is issued, you can not furnish Form 1098–C electronically. Perforation (see *Section 2.1.8*) does not apply to printouts of copies of forms that are furnished electronically to recipients. However, recipients should be cautioned to carefully separate the copies.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

### 4.6.2 Consent

The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished. You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after the new hardware or software is put into service. Prior to furnishing the statements electronically, you must provide the recipient a statement with the following statements prominently displayed:

- If the recipient does not consent to receive the statement electronically, a paper copy will be provided.
- The scope and duration of the consent. For example, whether the consent applies to every year the statement is furnished or only for the January 31 (February 15 for Forms 1099–B, 1099–S, and 1099–MISC with payments reported in boxes 8 or 14) immediately following the date of the consent.
- How to obtain a paper copy after giving consent.
- How to withdraw the consent. The consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. Confirmation of the withdrawal also will be in writing (electronically or on paper).
- Notice of termination. The notice must state under what conditions the statements will no longer be furnished to the recipient.
- Procedures to update the recipients information.
- A description of the hardware and software required to access, print and retain a statement, and a date the statement will no longer be available on the website.

### 4.6.3 Format, Posting, and Notification

Additionally, you must:

- Ensure the electronic format contains all the required information and complies with the guidelines in this document.
- Post, on or before the January 31 (February 15 for Forms 1099–B, 1099–S, and 1099–MISC with payments reported in boxes 8 or 14) due date, the applicable statement on a website accessible to the recipient through October 15 of that year.
- Inform the recipient, electronically or by mail, of the posting and how to access and print the statement.

For more information, see Regulations section 31.6051–1. For electronic furnishing of Forms 1098–E and 1098–T, see Regulations sections 1.6050S–2 and 1.6050S–4. For electronic furnishing of Forms 1099–R, 1099–SA, 1099–Q, 5498, 5498–ESA, and 5498–SA, see Notice 2004–10, 2004–1 C.B. 433.

## Part 5

### Additional Instructions for Substitute Forms 1098, 1097–BTC, 1099, 5498, W–2G, and 1042–S

## Section 5.1 – Paper Substitutes for Form 1042–S

### 5.1.1 Paper Substitutes

Paper substitutes of Copies A, B, C, and D for Form 1042–S, Foreign Person’s U.S. Source Income Subject to Withholding, that totally conform to the format and size of the official form may be privately printed without prior approval from the Internal Revenue Service.

**Note.** Copies A, B, C, and D of Form 1042–S may not contain multiple income types for the same recipient, that is, multiple rows of the top boxes 1–11 of the form.

**5.1.2  
Revisions**

Form 1042–S is subject to annual review and possible change. Withholding agents and form suppliers are cautioned against overstocking supplies of the privately printed substitutes.

**5.1.3  
Obtaining Copies**

Copies of the official form for the reporting year may be obtained from most Service offices. The Service provides only cut sheets of these forms. Continuous fan-fold/pin-fed forms are not provided.

**5.1.4  
Instructions For  
Withholding Agents**

Instructions for withholding agents:

- Only original copies may be filed with the Service. Reproductions are not acceptable.
- The term “Recipient’s U.S. TIN” for an individual means the social security number (SSN) or IRS individual taxpayer identification number (ITIN), consisting of nine digits separated by hyphens as follows: 000-00-0000. For all other recipients, the term means employer identification number (EIN) or qualified intermediary employer identification number (QI–EIN). The QI–EIN designation includes a withholding foreign partnership employer identification number (WP–EIN) and a withholding foreign trust employer identification number (WT–EIN). The EIN and QI–EIN consist of nine digits separated by a hyphen as follows: 00-0000000. The taxpayer identification number (TIN) must be in one of these formats. **Note.** Digits must be separated by hyphens on paper statements in the formats listed.
- The term “Recipient’s GIIN” means the global intermediary identification number assigned to a recipient that is a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), or other entity for chapter 4 purposes.
- Withholding agents are requested to type or machine print whenever possible, provide quality data entries on the forms (that is, use black ink and insert data in the middle of blocks well separated from other printing and guidelines), and take other measures to guarantee a clear, sharp image. Withholding agents are not required, however, to acquire special equipment solely for the purpose of preparing these forms.
- The “AMENDED” and “PRO-RATA BASIS REPORTING” boxes must be printed at the top center of the form under the title and checked, if applicable.
- Substitute forms prepared in continuous or strip form must be burst and stripped to conform to the size specified for a single form before they are filed with the Service. The dimensions are found in *Section 5.1.6*, following. Computer cards are acceptable provided they meet all requirements regarding layout, content, and size.

**5.1.5  
Substitute Form  
1042–S Format  
Requirements**

Property	Substitute Form 1042–S Format Requirements
Printing	Privately printed substitute Forms 1042–S must be exact replicas of the official forms with respect to layout and content. Only the dimensions of the substitute form may differ. The Government Printing Office (GPO) symbol must be deleted. The exact dimensions are found below.
Box Entries	Only one type of income may be represented on Copies A, B, C, and D submitted to the IRS or furnished to recipients. Multiple income types may be shown on Copy E retained by withholding agents. All boxes on Copy A file with the IRS, and Copies B, C, and D furnished to recipients on the substitute form, must conform to the official IRS form.
Color and Quality of Ink	All printing must be in high quality non-gloss black ink.

Property	Substitute Form 1042-S Format Requirements
Typography	Type must be substantially identical in size and shape to corresponding type on the official form. All rules on the document are either 1 point (0.015") or 3 point (0.045"). Vertical rules must be parallel to the left edge of the document; horizontal rules must be parallel to the top edge.
Assembly	If all five parts are present, the parts of the assembly shall be arranged from top to bottom as follows: Copy A (Original) "for Internal Revenue Service," Copies B, C, and D "for Recipient," and Copy E "for Withholding Agent."
Color Quality of Paper	Paper for Copy A must be white chemical wood bond, or equivalent, 20 pound (basis 17 x 22-500), plus or minus 5 percent; or offset book paper, 50 pound (basis 25 x 38-500). No optical brighteners may be added to the pulp or paper during manufacture. The paper must consist of principally bleached chemical wood pulp or recycled printed paper. It also must be suitably sized to accept ink without feathering.
Dimensions	<ul style="list-style-type: none"> <li>● The dimensions for substitute Copies A, B, C, and D must match the IRS Form 1042-S in size and format.</li> <li>● The official form is 8 inches wide x 5½ inches deep, exclusive of a ½ inch snap stub on the left side of the form. The snap feature is not required on substitutes.</li> <li>● Copies A, B, C, and D, must conform to the official IRS form. No size variations are permitted.</li> </ul>
Other Copies	Copies B, C, and D must be furnished for the convenience of payees who must send a copy of the form with other federal and state returns they file. Copy E may be used as a withholding agent's record/copy.

## Section 5.2 – OMB Requirements for All Forms in This Revenue Procedure

### 5.2.1 OMB Requirements

The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires that:

- OMB approves all IRS tax forms that are subject to the Act. Each IRS form contains (in or near the upper right corner) the OMB approval number, if any. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in the exhibits in *Part 6*.)
- Each IRS form (or its instructions) states:
  1. Why the IRS needs the information,
  2. How it will be used, and
  3. Whether or not the information is required to be furnished to the IRS.

This information must be provided to any users of official or substitute IRS forms or instructions.

### 5.2.2 Substitute Form Requirements

The OMB requirements for substitute IRS forms are:

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Copy A, the OMB number must appear exactly as shown on the official IRS form.
- For any copy other than Copy A, the OMB number must use one of the following formats.
  1. OMB No. 1545-xxxx (preferred), or
  2. OMB # 1545-xxxx (acceptable).

**Caution.** These requirements do **not** apply to substitute Forms 1042-S. See *Section 5.1.5*, earlier.

### 5.2.3 Required Explanation to Users

All substitute forms must state the Privacy Act and Paperwork Reduction Act Notice as listed in *Section 2.1.9*, earlier.

If no instructions are provided to users of your forms, you must furnish them with the exact text of the Privacy Act and Paperwork Reduction Act Notice.

### Section 5.3 – Ordering Forms and Instructions

You can order official IRS Forms (Forms 1096, 1098, 1099's, W-2G, 1042S, and any other forms mentioned in this publication), instructions, and information copies of federal tax material by going to [www.irs.gov/Forms- &- Pubs/Order-Products](http://www.irs.gov/Forms-&-Pubs/Order-Products).

**Note.** Some forms on the internet are intended as information only and may not be submitted as an official IRS form (for example, Forms 1099, W-2, and W-3). Form 1096 and Copy A of 1098 series, 1099 series, 5498 series, and Forms 3921 and 3922 cannot be used for filing with the IRS when printed from a conventional printer. These forms contain drop-out ink requirements as described in *Part 2* of this publication.

**Exception.** Forms 1098-MA and 1042-S can be printed in black ink as specified in *Section 5.1.6*, earlier.

### Section 5.4 – Effect on Other Revenue Procedures

**5.4.1 Other Revenue procedures** Revenue Procedure 2014-44, 2014-32, I.R.B. 270, dated August 4, 2014, is superseded by this revenue procedure.

## Part 6 Exhibits

### Section 6.1 – Exhibits of Forms in the Revenue Procedure

**6.1.1 Purpose** *Exhibits A through EE* illustrate some of the specifications that were discussed earlier in this revenue procedure. The dimensions apply to the actual size forms, but the exhibits have been reduced in size.

Generally, the illustrated dimensions apply to all like forms. For example, *Exhibit C* shows 11.00" from the top edge to the bottom edge of Form 1098 and .85" between the bottom rule of the top form and the top rule of the second form on the page. These dimensions apply to all forms that are printed three to a page.

*Exhibit B* contains the general measurements for forms printed 2-to-a-page. All 2-to-1-page forms, except Form 1042-S, are 4.5" in height within the border lines. Form 1042-S is 4.25" in height within the border lines. *Exhibit C* contains the general measurements for forms printed 3-to-a-page. All 3-to-a-page forms are 2.83" in height within the border lines. The printed area of all forms is 7.3" wide.

All of the exhibits in this publication were updated to include all of the 2015 revisions for those forms that have been revised.

**6.1.2 Guidelines** Keep in mind the following guidelines when printing substitute forms.

- Closely follow the specifications to avoid delays in processing the forms.
- Always use the specifications as outlined in this revenue procedure and illustrated in the exhibits.
- Do not add the text line "Do Not Cut or Separate Forms on This Page" to the bottom form. This will be inconsistent with the specifications.

**6.2 Exhibits** The following exhibits provide specifications for the forms listed in the *Section 1.1.2*. Exhibits A through D contain the general measurements for all of the forms. The remaining exhibits represent the images and may contain unique measurements as required by the form.

# Exhibit A

Do Not Staple **6969**

Form **1096**  
Department of the Treasury  
Internal Revenue Service

**Annual Summary and Transmittal of  
U.S. Information Returns**

OMB No. 1545-0108  
**2015**

FILER'S name

Street address (including room or suite number)

City or town, state or province, country, and ZIP or foreign postal code

Name of person to contact

Email address

Telephone number

Fax number

**For Official Use Only**

1 Employer identification number

2 Social security number

3 Total number of forms

4 Federal income tax withheld

5 Total amount reported with this Form 1096

6 Enter an "X" in only one box below to indicate the type of form being filed.

W-2G 32	1097-BTC 50	1098 81	1098-C 78	1098-E 84	1098-Q 74	1098-T 83	1099-A 80	1099-B 79	1099-C 85	1099-CAP 73	1099-DIV 91	1099-G 86	1099-INT 92
<input type="checkbox"/>													
1099-K 10	1099-LTC 93	1099-MISC 95	1099-OID 96	1099-PATR 97	1099-Q 31	1099-R 98	1099-S 75	1099-SA 94	3921 25	3922 26	5498 28	5498-ESA 72	5498-SA 27
<input type="checkbox"/>													

7 If this is your **final return**, enter an "X" here

Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

**Signature**

**Title**       **Date**

**Instructions**

**Future developments.** For the latest information about developments related to Form 1096, such as legislation enacted after it was published, go to [www.irs.gov/form1096](http://www.irs.gov/form1096).

**Reminder.** The only acceptable method of filing information returns with Internal Revenue Service/Information Returns Branch is electronically through the FIRE system. See Pub. 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G.

**Purpose of form.** Use this form to transmit paper Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G to the Internal Revenue Service. Do not use Form 1096 to transmit electronically. For electronic submissions, see Pub. 1220.

**Caution.** If you are required to file 250 or more information returns of any one type, you must file electronically. If you are required to file electronically but fail to do so, and you do not have an approved waiver, you may be subject to a penalty. For more information, see part F in the 2015 General Instructions for Certain Information Returns.

**Who must file.** The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Forms 1097, 1098, 1099, 3921, 3922, 5498, or W-2G. A filer is any person or entity who files any of the forms shown in line 6 above.

Enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form.

**When to file.** File Form 1096 as follows.

- With Forms 1097, 1098, 1099, 3921, 3922, or W-2G, file by February 29, 2016.
- With Forms 5498, file by May 31, 2016.

**Where To File**

Send all information returns filed on paper with Form 1096 to the following.

**If your principal business, office or agency, or legal residence in the case of an individual, is located in**

Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia

**Use the following three-line address**

Department of the Treasury  
Internal Revenue Service Center  
Austin, TX 73301

For more information and the Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.

Cat. No. 144000

Form **1096** (2015)

# Exhibit B

5050 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		6.25in	
FORM 1097-BTC ISSUER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. 4.50 in		1 Total \$ 2a Code 2b Unique Identifier	OMB No. 1545-2197 <h2 style="text-align: center;">2015</h2> Form 1097-BTC
FORM 1097-BTC ISSUER'S federal identification number RECIPIENT'S federal identification number		2.80 in	
RECIPIENT'S name 3.40 in Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code		3 Bond type 4 5a January \$ 5c March \$ 5e May \$ 5g July \$ 5i September \$ 5k November \$ 6 Comments	5b February \$ 5d April \$ 5f June \$ 5h August \$ 5j October \$ 5l December \$
Form 1097-BTC issuer is (check one): <input type="checkbox"/> Issuer of bond or its agent filing 2015 Form 1097-BTC for credit being reported <input type="checkbox"/> An entity or a person that received or should have received a 2015 Form 1097-BTC and is distributing part or all of that credit to others 1 in		7.30 in	
Form <b>1097-BTC</b> Cat. No. 54293T      www.irs.gov/form1097btc      Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page	

  

5050 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		6.25in	
FORM 1097-BTC ISSUER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Total \$ 2a Code 2b Unique Identifier	OMB No. 1545-2197 <h2 style="text-align: center;">2015</h2> Form 1097-BTC
FORM 1097-BTC ISSUER'S federal identification number RECIPIENT'S federal identification number		2.80 in	
RECIPIENT'S name Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code		3 Bond type 4 5a January \$ 5c March \$ 5e May \$ 5g July \$ 5i September \$ 5k November \$ 6 Comments	5b February \$ 5d April \$ 5f June \$ 5h August \$ 5j October \$ 5l December \$
Form 1097-BTC issuer is (check one): <input type="checkbox"/> Issuer of bond or its agent filing 2015 Form 1097-BTC for credit being reported <input type="checkbox"/> An entity or a person that received or should have received a 2015 Form 1097-BTC and is distributing part or all of that credit to others		7.30 in	
Form <b>1097-BTC</b> Cat. No. 54293T      www.irs.gov/form1097btc      Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page	

# Exhibit C

**Form 1098** (Top)

8181  VOID  CORRECTED

RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number (3.33 in)

OMB No. 1545-0901

**2015**

Form 1098

RECIPIENT'S federal identification no. (1.70 in) PAYER'S social security number (1 in)

1 Mortgage interest received from payer(s)/borrower(s) (2.80 in)

2 Points paid on purchase of principal residence (2.83 in)

3 Refund of overpaid interest (7.30 in)

4

5

Form 1098 Cat. No. 14402K www.irs.gov/form1098 Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

**Form 1098** (Middle)

8181  VOID  CORRECTED

RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number (8.00 in)

OMB No. 1545-0901

**2015**

Form 1098

RECIPIENT'S federal identification no. PAYER'S social security number

1 Mortgage interest received from payer(s)/borrower(s)

2 Points paid on purchase of principal residence (11.00 in)

3 Refund of overpaid interest

4

5

Form 1098 Cat. No. 14402K www.irs.gov/form1098 Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

**Form 1098** (Bottom)

8181  VOID  CORRECTED

RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number

OMB No. 1545-0901

**2015**

Form 1098

RECIPIENT'S federal identification no. PAYER'S social security number

1 Mortgage interest received from payer(s)/borrower(s)

2 Points paid on purchase of principal residence

3 Refund of overpaid interest

4

5

Form 1098 Cat. No. 14402K www.irs.gov/form1098 Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

# Exhibit D

7878 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1959	
DONEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code and telephone no.		2015	
		Form <b>1098-C</b>	
		2b Year      2c Make      2d Model	
DONEE'S federal identification number		3 Vehicle or other identification number	
3.40 in		2.80 in	
DONOR'S name		4a <input type="checkbox"/> Donee certifies that vehicle was sold in arm's length transaction to unrelated party	
Street address (including apt. no.)		4b Date of sale	
City or town, state or province, country, and ZIP or foreign postal code		4c Gross proceeds from sale (see instructions)	
		\$	
5a <input type="checkbox"/> Donee certifies that vehicle will not be transferred for money, other property, or services before completion of material improvements or significant intervening use			
5b <input type="checkbox"/> Donee certifies that vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of donee's charitable purpose			
5c Donee certifies the following detailed description of material improvements or significant intervening use and duration of use			
7.30 in			
6a Did you provide goods or services in exchange for the vehicle?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
6b Value of goods and services provided in exchange for the vehicle			
\$			
6c Describe the goods and services, if any, that were provided. If this box is checked, donee certifies that the goods and services consisted solely of intangible religious benefits			
<input type="checkbox"/>			
7 Under the law, the donor may not claim a deduction of more than \$500 for this vehicle if this box is checked			
<input type="checkbox"/>			

**Contributions of Motor Vehicles, Boats, and Airplanes**

**Copy A**

For Internal Revenue Service Center

File with Form 1096.

For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.

Form **1098-C**
Cat. No. 39732R
www.irs.gov/form1098c
Department of the Treasury - Internal Revenue Service

# Exhibit E

8484 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1576  <div style="font-size: 24pt; font-weight: bold; text-align: center;">2015</div> Form 1098-E	<b>Student Loan Interest Statement</b>
RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			
RECIPIENT'S federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender	
		\$	
BORROWER'S name		<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
Street address (including apt. no.)			
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)			
		2 Check if box 1 does <b>not</b> include loan origination fees and/or capitalized interest, and the loan was made before September 1, 2004 <input type="checkbox"/>	
Form <b>1098-E</b> Cat. No. 25088U <a href="http://www.irs.gov/form1098e">www.irs.gov/form1098e</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page	

  

8484 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1576  <div style="font-size: 24pt; font-weight: bold; text-align: center;">2015</div> Form 1098-E	<b>Student Loan Interest Statement</b>
RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			
RECIPIENT'S federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender	
		\$	
BORROWER'S name		<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
Street address (including apt. no.)			
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)			
		2 Check if box 1 does <b>not</b> include loan origination fees and/or capitalized interest, and the loan was made before September 1, 2004 <input type="checkbox"/>	
Form <b>1098-E</b> Cat. No. 25088U <a href="http://www.irs.gov/form1098e">www.irs.gov/form1098e</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page	

  

8484 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1576  <div style="font-size: 24pt; font-weight: bold; text-align: center;">2015</div> Form 1098-E	<b>Student Loan Interest Statement</b>
RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			
RECIPIENT'S federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender	
		\$	
BORROWER'S name		<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
Street address (including apt. no.)			
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)			
		2 Check if box 1 does <b>not</b> include loan origination fees and/or capitalized interest, and the loan was made before September 1, 2004 <input type="checkbox"/>	
Form <b>1098-E</b> Cat. No. 25088U <a href="http://www.irs.gov/form1098e">www.irs.gov/form1098e</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page	

# Exhibit F

<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		4.95 in <span style="font-size: 2em;">→</span>
FILER'S name, street address, city, state, ZIP code, and telephone no.		OMB No. 1545-2221 <b>2015</b> Form <b>1098-MA</b>
FILER'S federal identification no.    HOMEOWNER'S federal identification no.		1. Total State HFA/HUD and homeowner mortgage payments \$
HOMEOWNER'S name		2. State HFA/HUD mortgage assistance payments \$
Street address (including apt. no.) (optional)		3. Homeowner mortgage payments \$
City, state, and ZIP code (optional)		
Account number (optional)		
Form <b>1098-MA</b> Cat. No. 58017D    www.irs.gov/form1098ma    Department of the Treasury - Internal Revenue Service		<b>Mortgage Assistance Payments</b>  <b>Copy A</b>  <b>For Internal Revenue Service Center</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
<b>Do Not Cut or Separate Forms on This Page</b> — <b>Do Not Cut or Separate Forms on This Page</b>		
<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		
FILER'S name, street address, city, state, ZIP code, and telephone no.		OMB No. 1545-2221 <b>2015</b> Form <b>1098-MA</b>
FILER'S federal identification no.    HOMEOWNER'S federal identification no.		1. Total State HFA/HUD and homeowner mortgage payments \$
HOMEOWNER'S name		2. State HFA/HUD mortgage assistance payments \$
Street address (including apt. no.) (optional)		3. Homeowner mortgage payments \$
City, state, and ZIP code (optional)		
Account number (optional)		
Form <b>1098-MA</b> Cat. No. 58017D    www.irs.gov/form1098ma    Department of the Treasury - Internal Revenue Service		<b>Mortgage Assistance Payments</b>  <b>Copy A</b>  <b>For Internal Revenue Service Center</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
<b>Do Not Cut or Separate Forms on This Page</b> — <b>Do Not Cut or Separate Forms on This Page</b>		
<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		
FILER'S name, street address, city, state, ZIP code, and telephone no.		OMB No. 1545-2221 <b>2015</b> Form <b>1098-MA</b>
FILER'S federal identification no.    HOMEOWNER'S federal identification no.		1. Total State HFA/HUD and homeowner mortgage payments \$
HOMEOWNER'S name		2. State HFA/HUD mortgage assistance payments \$
Street address (including apt. no.) (optional)		3. Homeowner mortgage payments \$
City, state, and ZIP code (optional)		
Account number (optional)		
Form <b>1098-MA</b> Cat. No. 58017D    www.irs.gov/form1098ma    Department of the Treasury - Internal Revenue Service		<b>Mortgage Assistance Payments</b>  <b>Copy A</b>  <b>For Internal Revenue Service Center</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>

# Exhibit G

7474       VOID       CORRECTED

ISSUER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.	ISSUER'S federal identification no.	OMB No. 1545-2234	<b>2015</b> Form 1098-Q	<b>Qualifying Longevity Annuity Contract Information</b>	
	PARTICIPANT'S taxpayer identification no.	1.5 in			
1a Annuity amount on start date \$	1b Annuity start date		2 Check if start date may be accelerated <input type="checkbox"/>		
3 Total premiums \$		4 FMV of QLAC \$			
PARTICIPANT'S name		5a January \$	dd	5b February \$	dd
Street address (including apt. no.)		5c March \$	dd	5d April \$	dd
City or town, state or province, country, and ZIP or foreign postal code		5e May \$	dd	5f June \$	dd
Account number (see instructions)	Plan no.	5g July \$	dd	5h August \$	dd
Name of plan		5i September \$	dd	5j October \$	dd
Plan sponsor's employer identification no.		5k November \$	dd	5l December \$	dd

Form **1098-Q**      Cat. No. 67073Z      www.irs.gov/form1098q      Department of the Treasury - Internal Revenue Service  
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7474       VOID       CORRECTED

ISSUER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.	ISSUER'S federal identification no.	OMB No. 1545-2234	<b>2015</b> Form 1098-Q	<b>Qualifying Longevity Annuity Contract Information</b>	
	PARTICIPANT'S taxpayer identification no.	1.5 in			
1a Annuity amount on start date \$	1b Annuity start date		2 Check if start date may be accelerated <input type="checkbox"/>		
3 Total premiums \$		4 FMV of QLAC \$			
PARTICIPANT'S name		5a January \$	dd	5b February \$	dd
Street address (including apt. no.)		5c March \$	dd	5d April \$	dd
City or town, state or province, country, and ZIP or foreign postal code		5e May \$	dd	5f June \$	dd
Account number (see instructions)	Plan no.	5g July \$	dd	5h August \$	dd
Name of plan		5i September \$	dd	5j October \$	dd
Plan sponsor's employer identification no.		5k November \$	dd	5l December \$	dd

Form **1098-Q**      Cat. No. 67073Z      www.irs.gov/form1098q      Department of the Treasury - Internal Revenue Service



# Exhibit I

8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<div style="display: flex; justify-content: space-between;"> <span>LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.</span> <span>OMB No. 1545-0877</span> </div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">2015</div> <div style="text-align: center; font-weight: bold;">Form 1099-A</div>		<b>Acquisition or Abandonment of Secured Property</b>
LENDER'S federal identification number	BORROWER'S identification number	1 Date of lender's acquisition or knowledge of abandonment	2 Balance of principal outstanding \$	<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
BORROWER'S name		3	4 Fair market value of property \$	
Street address (including apt. no.)		5 If checked, the borrower was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		6 Description of property		
Account number (see instructions)				
Form <b>1099-A</b> Cat. No. 14412G      www.irs.gov/form1099a      Department of the Treasury - Internal Revenue Service Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page				1.30 in

  

8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<div style="display: flex; justify-content: space-between;"> <span>LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.</span> <span>OMB No. 1545-0877</span> </div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">2015</div> <div style="text-align: center; font-weight: bold;">Form 1099-A</div>		<b>Acquisition or Abandonment of Secured Property</b>
LENDER'S federal identification number	BORROWER'S identification number	1 Date of lender's acquisition or knowledge of abandonment	2 Balance of principal outstanding \$	<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
BORROWER'S name		3	4 Fair market value of property \$	
Street address (including apt. no.)		5 If checked, the borrower was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		6 Description of property		
Account number (see instructions)				
Form <b>1099-A</b> Cat. No. 14412G      www.irs.gov/form1099a      Department of the Treasury - Internal Revenue Service Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page				

  

8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<div style="display: flex; justify-content: space-between;"> <span>LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.</span> <span>OMB No. 1545-0877</span> </div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">2015</div> <div style="text-align: center; font-weight: bold;">Form 1099-A</div>		<b>Acquisition or Abandonment of Secured Property</b>
LENDER'S federal identification number	BORROWER'S identification number	1 Date of lender's acquisition or knowledge of abandonment	2 Balance of principal outstanding \$	<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b>  <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
BORROWER'S name		3	4 Fair market value of property \$	
Street address (including apt. no.)		5 If checked, the borrower was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		6 Description of property		
Account number (see instructions)				
Form <b>1099-A</b> Cat. No. 14412G      www.irs.gov/form1099a      Department of the Treasury - Internal Revenue Service				

# Exhibit J

7979 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			Applicable check box on Form 8949		OMB No. 1545-0715		<b>Proceeds From Broker and Barter Exchange Transactions</b>	
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.			<b>2015</b> Form <b>1099-B</b>					
PAYER'S federal identification number    RECIPIENT'S identification number			1a Description of property (Example 100 sh. XYZ Co.)					<b>Copy A</b>  <b>For Internal Revenue Service Center File with Form 1096.</b>  <b>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</b>
RECIPIENT'S name			1b Date acquired		1c Date sold or disposed			
Street address (including apt. no.)			1d Proceeds \$		1e Cost or other basis \$			
City or town, state or province, country, and ZIP or foreign postal code			1f Code, if any		1g Adjustments \$			
Account number (see instructions)    2nd TIN not. <input type="checkbox"/>			2 Type of gain or loss: Short-term <input type="checkbox"/> Long-term <input type="checkbox"/>		3 Check if basis reported to IRS <input type="checkbox"/>			
CUSIP number    0.60 in			4 Federal income tax withheld \$		5 Check if noncovered security <input type="checkbox"/>			
14 State name    15 State identification no.    16 State tax withheld \$    \$    \$			6 Reported to IRS: Gross proceeds <input type="checkbox"/> Net proceeds <input type="checkbox"/>		7 Check if loss is not allowed based on amount in 1d <input type="checkbox"/>			
12			8 Profit or (loss) realized in 2015 on closed contracts \$		9 Unrealized profit or (loss) on open contracts—12/31/2014 \$			
13 Bartering			10 Unrealized profit or (loss) on open contracts—12/31/2015 \$		11 Aggregate profit or (loss) on contracts \$			
13 Bartering			12		13 Bartering			

Form **1099-B**    Cat. No. 14411V    www.irs.gov/form1099b    Department of the Treasury - Internal Revenue Service

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7979 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			Applicable check box on Form 8949		OMB No. 1545-0715		<b>Proceeds From Broker and Barter Exchange Transactions</b>	
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.			<b>2015</b> Form <b>1099-B</b>					
PAYER'S federal identification number    RECIPIENT'S identification number			1a Description of property (Example 100 sh. XYZ Co.)					<b>Copy A</b>  <b>For Internal Revenue Service Center File with Form 1096.</b>  <b>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</b>
RECIPIENT'S name			1b Date acquired		1c Date sold or disposed			
Street address (including apt. no.)			1d Proceeds \$		1e Cost or other basis \$			
City or town, state or province, country, and ZIP or foreign postal code			1f Code, if any		1g Adjustments \$			
Account number (see instructions)    2nd TIN not. <input type="checkbox"/>			2 Type of gain or loss: Short-term <input type="checkbox"/> Long-term <input type="checkbox"/>		3 Check if basis reported to IRS <input type="checkbox"/>			
CUSIP number			4 Federal income tax withheld \$		5 Check if noncovered security <input type="checkbox"/>			
14 State name    15 State identification no.    16 State tax withheld \$    \$    \$			6 Reported to IRS: Gross proceeds <input type="checkbox"/> Net proceeds <input type="checkbox"/>		7 Check if loss is not allowed based on amount in 1d <input type="checkbox"/>			
12			8 Profit or (loss) realized in 2015 on closed contracts \$		9 Unrealized profit or (loss) on open contracts—12/31/2014 \$			
13 Bartering			10 Unrealized profit or (loss) on open contracts—12/31/2015 \$		11 Aggregate profit or (loss) on contracts \$			
13 Bartering			12		13 Bartering			

Form **1099-B**    Cat. No. 14411V    www.irs.gov/form1099b    Department of the Treasury - Internal Revenue Service

# Exhibit K

8585       VOID       CORRECTED

CREDITOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of identifiable event	<b>2015</b> <small>Form 1099-C</small>	<b>Cancellation of Debt</b>
		2 Amount of debt discharged \$		
		3 Interest if included in box 2 \$		
CREDITOR'S federal identification number	DEBTOR'S identification number	4 Debt description		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
DEBTOR'S name				
Street address (including apt. no.)		5 Check here if the debtor was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)		6 Identifiable event code	7 Fair market value of property \$	

Form **1099-C**      Cat. No. 26280W      [www.irs.gov/form1099c](http://www.irs.gov/form1099c)      Department of the Treasury - Internal Revenue Service  
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8585       VOID       CORRECTED

CREDITOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of identifiable event	<b>2015</b> <small>Form 1099-C</small>	<b>Cancellation of Debt</b>
		2 Amount of debt discharged \$		
		3 Interest if included in box 2 \$		
CREDITOR'S federal identification number	DEBTOR'S identification number	4 Debt description		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
DEBTOR'S name				
Street address (including apt. no.)		5 Check here if the debtor was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)		6 Identifiable event code	7 Fair market value of property \$	

Form **1099-C**      Cat. No. 26280W      [www.irs.gov/form1099c](http://www.irs.gov/form1099c)      Department of the Treasury - Internal Revenue Service  
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8585       VOID       CORRECTED

CREDITOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of identifiable event	<b>2015</b> <small>Form 1099-C</small>	<b>Cancellation of Debt</b>
		2 Amount of debt discharged \$		
		3 Interest if included in box 2 \$		
CREDITOR'S federal identification number	DEBTOR'S identification number	4 Debt description		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.</small>
DEBTOR'S name				
Street address (including apt. no.)		5 Check here if the debtor was personally liable for repayment of the debt <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)		6 Identifiable event code	7 Fair market value of property \$	

Form **1099-C**      Cat. No. 26280W      [www.irs.gov/form1099c](http://www.irs.gov/form1099c)      Department of the Treasury - Internal Revenue Service  
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# Exhibit L

7373 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1814		<b>2015</b> Form <b>1099-CAP</b>	<b>Changes in Corporate Control and Capital Structure</b>		
CORPORATION'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of sale or exchange	2 Aggregate amount rec'd* \$			3 No. of shares exchanged	4 Classes of stock exchanged
CORPORATION'S federal identification no.	SHAREHOLDER'S identification no.						
SHAREHOLDER'S name							
Street address (including apt. no.)							
City or town, state or province, country, and ZIP or foreign postal code							
Account number (see instructions)		* The shareholder cannot claim a loss based on the amount in box 2.		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>			
Form <b>1099-CAP</b> Cat. No. 35115M      www.irs.gov/form1099cap      Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page					

  

7373 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1814		<b>2015</b> Form <b>1099-CAP</b>	<b>Changes in Corporate Control and Capital Structure</b>		
CORPORATION'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of sale or exchange	2 Aggregate amount rec'd* \$			3 No. of shares exchanged	4 Classes of stock exchanged
CORPORATION'S federal identification no.	SHAREHOLDER'S identification no.						
SHAREHOLDER'S name							
Street address (including apt. no.)							
City or town, state or province, country, and ZIP or foreign postal code							
Account number (see instructions)		* The shareholder cannot claim a loss based on the amount in box 2.		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>			
Form <b>1099-CAP</b> Cat. No. 35115M      www.irs.gov/form1099cap      Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page					

  

7373 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1814		<b>2015</b> Form <b>1099-CAP</b>	<b>Changes in Corporate Control and Capital Structure</b>		
CORPORATION'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of sale or exchange	2 Aggregate amount rec'd* \$			3 No. of shares exchanged	4 Classes of stock exchanged
CORPORATION'S federal identification no.	SHAREHOLDER'S identification no.						
SHAREHOLDER'S name							
Street address (including apt. no.)							
City or town, state or province, country, and ZIP or foreign postal code							
Account number (see instructions)		* The shareholder cannot claim a loss based on the amount in box 2.		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>			
Form <b>1099-CAP</b> Cat. No. 35115M      www.irs.gov/form1099cap      Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page					

# Exhibit M

9191 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0110		<b>2015</b>	<b>Dividends and Distributions</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1a Total ordinary dividends		Form <b>1099-DIV</b>			
		\$					
PAYER'S federal identification number    RECIPIENT'S identification number		1b Qualified dividends		2b Unrecap. Sec. 1250 gain		Copy A For Internal Revenue Service Center	
		\$		\$			
RECIPIENT'S name ↑↓ .50 in		2c Section 1202 gain		2d Collectibles (28%) gain		File with Form 1096.	
		\$		\$			
Street address (including apt. no.)		3 Nondividend distributions		4 Federal income tax withheld		For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
		\$		\$			
City or town, state or province, country, and ZIP or foreign postal code		6 Foreign tax paid		7 Foreign country or U.S. possession		↑↓ .50 in	
		\$		\$			
Account number (see instructions)		8 Cash liquidation distributions		9 Noncash liquidation distributions		←→ .60 in	
		\$		\$			
FATCA filing requirement <input type="checkbox"/>		10 Exempt-interest dividends		11 Specified private activity bond interest dividends		←→ .60 in	
		\$		\$			
2nd TIN not. <input type="checkbox"/>		12 State		13 State identification no		14 State tax withheld	
		\$		\$		\$	
Form <b>1099-DIV</b>		Cat. No. 14415N		<a href="http://www.irs.gov/form1099div">www.irs.gov/form1099div</a>		Department of the Treasury - Internal Revenue Service	
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9191 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0110		<b>2015</b>	<b>Dividends and Distributions</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1a Total ordinary dividends		Form <b>1099-DIV</b>			
		\$					
PAYER'S federal identification number    RECIPIENT'S identification number		1b Qualified dividends		2b Unrecap. Sec. 1250 gain		Copy A For Internal Revenue Service Center	
		\$		\$			
RECIPIENT'S name		2c Section 1202 gain		2d Collectibles (28%) gain		File with Form 1096.	
		\$		\$			
Street address (including apt. no.)		3 Nondividend distributions		4 Federal income tax withheld		For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
		\$		\$			
City or town, state or province, country, and ZIP or foreign postal code		6 Foreign tax paid		7 Foreign country or U.S. possession		←→ .60 in	
		\$		\$			
Account number (see instructions)		8 Cash liquidation distributions		9 Noncash liquidation distributions		←→ .60 in	
		\$		\$			
FATCA filing requirement <input type="checkbox"/>		10 Exempt-interest dividends		11 Specified private activity bond interest dividends		←→ .60 in	
		\$		\$			
2nd TIN not. <input type="checkbox"/>		12 State		13 State identification no		14 State tax withheld	
		\$		\$		\$	
Form <b>1099-DIV</b>		Cat. No. 14415N		<a href="http://www.irs.gov/form1099div">www.irs.gov/form1099div</a>		Department of the Treasury - Internal Revenue Service	

# Exhibit N

8686 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				<b>2015</b>	<b>Certain Government Payments</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Unemployment compensation		OMB No. 1545-0120	
		\$			
		2 State or local income tax refunds, credits, or offsets			
		\$			
PAYER'S federal identification number	RECIPIENT'S identification number	3 Box 2 amount is for tax year		4 Federal income tax withheld	
				\$	
RECIPIENT'S name		5 RTAA payments		6 Taxable grants	
		\$		\$	
Street address (including apt. no.)		7 Agriculture payments		8 Check if box 2 is trade or business income <input type="checkbox"/>	
		\$			
City or town, state or province, country, and ZIP or foreign postal code		9 Market gain			
		\$			
Account number (see instructions)		10a State		11 State income tax withheld	
				\$	
		10b State identification no.		\$	
				\$	

Form **1099-G**    Cat. No. 14438M    [www.irs.gov/form1099g](http://www.irs.gov/form1099g)    Department of the Treasury - Internal Revenue Service  
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8686 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				<b>2015</b>	<b>Certain Government Payments</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Unemployment compensation		OMB No. 1545-0120	
		\$			
		2 State or local income tax refunds, credits, or offsets			
		\$			
PAYER'S federal identification number	RECIPIENT'S identification number	3 Box 2 amount is for tax year		4 Federal income tax withheld	
				\$	
RECIPIENT'S name		5 RTAA payments		6 Taxable grants	
		\$		\$	
Street address (including apt. no.)		7 Agriculture payments		8 Check if box 2 is trade or business income <input type="checkbox"/>	
		\$			
City or town, state or province, country, and ZIP or foreign postal code		9 Market gain			
		\$			
Account number (see instructions)		10a State		11 State income tax withheld	
				\$	
		10b State identification no.		\$	
				\$	

Form **1099-G**    Cat. No. 14438M    [www.irs.gov/form1099g](http://www.irs.gov/form1099g)    Department of the Treasury - Internal Revenue Service  
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8686 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				<b>2015</b>	<b>Certain Government Payments</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Unemployment compensation		OMB No. 1545-0120	
		\$			
		2 State or local income tax refunds, credits, or offsets			
		\$			
PAYER'S federal identification number	RECIPIENT'S identification number	3 Box 2 amount is for tax year		4 Federal income tax withheld	
				\$	
RECIPIENT'S name		5 RTAA payments		6 Taxable grants	
		\$		\$	
Street address (including apt. no.)		7 Agriculture payments		8 Check if box 2 is trade or business income <input type="checkbox"/>	
		\$			
City or town, state or province, country, and ZIP or foreign postal code		9 Market gain			
		\$			
Account number (see instructions)		10a State		11 State income tax withheld	
				\$	
		10b State identification no.		\$	
				\$	

Form **1099-G**    Cat. No. 14438M    [www.irs.gov/form1099g](http://www.irs.gov/form1099g)    Department of the Treasury - Internal Revenue Service



# Exhibit P

1010 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		↓	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		FILER'S federal identification no.	OMB No. 1545-2205
		PAYEE'S taxpayer identification no.	<b>2015</b>
Check to indicate if FILER is a (an): Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party <input type="checkbox"/>		1a Gross amount of payment card/third party network transactions	Form 1099-K ↓
		1b Card Not Present transactions	2 Merchant category code
Check to indicate transactions reported are: Payment card <input type="checkbox"/> Third party network <input type="checkbox"/>		3 Number of payment transactions	4 Federal income tax withheld
PAYEE'S name		5a January	5b February
Street address (including apt. no.)		5c March	5d April
City or town, state or province, country, and ZIP or foreign postal code		5e May	5f June
PSE'S name and telephone number		5g July	5h August
Account number (see instructions)		5i September	5j October
2nd TIN not. <input type="checkbox"/>		5k November	5l December
		6 State	7 State identification no.
			8 State income tax withheld

Form 1099-K Cat. No. 54118B www.irs.gov/form1099k Department of the Treasury - Internal Revenue Service  
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1010 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		↓	
FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		FILER'S federal identification no.	OMB No. 1545-2205
		PAYEE'S taxpayer identification no.	<b>2015</b>
Check to indicate if FILER is a (an): Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party <input type="checkbox"/>		1a Gross amount of payment card/third party network transactions	Form 1099-K ↓
		1b Card Not Present transactions	2 Merchant category code
Check to indicate transactions reported are: Payment card <input type="checkbox"/> Third party network <input type="checkbox"/>		3 Number of payment transactions	4 Federal income tax withheld
PAYEE'S name		5a January	5b February
Street address (including apt. no.)		5c March	5d April
City or town, state or province, country, and ZIP or foreign postal code		5e May	5f June
PSE'S name and telephone number		5g July	5h August
Account number (see instructions)		5i September	5j October
2nd TIN not. <input type="checkbox"/>		5k November	5l December
		6 State	7 State identification no.
			8 State income tax withheld

Form 1099-K Cat. No. 54118B www.irs.gov/form1099k Department of the Treasury - Internal Revenue Service

# Exhibit Q

9393 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1519		<b>2015</b>	<b>Long-Term Care and Accelerated Death Benefits</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross long-term care benefits paid \$ .67 in			
PAYER'S federal identification number    POLICYHOLDER'S identification number		2 Accelerated death benefits paid \$ .50 in		Form <b>1099-LTC</b>	
POLICYHOLDER'S name		3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount		INSURED'S taxpayer identification no. INSURED'S name INSURED'S name    .33 in	
Street address (including apt. no.)		Street address (including apt. no.)		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
City or town, state or province, country, and ZIP or foreign postal code		City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)		4 Qualified contract (optional) <input type="checkbox"/>			
		5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill		Date certified	
Form <b>1099-LTC</b> Cat. No. 23021Z <a href="http://www.irs.gov/form1099ltc">www.irs.gov/form1099ltc</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

  

9393 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1519		<b>2015</b>	<b>Long-Term Care and Accelerated Death Benefits</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross long-term care benefits paid \$			
PAYER'S federal identification number    POLICYHOLDER'S identification number		2 Accelerated death benefits paid \$		Form <b>1099-LTC</b>	
POLICYHOLDER'S name		3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount		INSURED'S taxpayer identification no. INSURED'S name	
Street address (including apt. no.)		Street address (including apt. no.)		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
City or town, state or province, country, and ZIP or foreign postal code		City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)		4 Qualified contract (optional) <input type="checkbox"/>			
		5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill		Date certified	
Form <b>1099-LTC</b> Cat. No. 23021Z <a href="http://www.irs.gov/form1099ltc">www.irs.gov/form1099ltc</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

  

9393 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1519		<b>2015</b>	<b>Long-Term Care and Accelerated Death Benefits</b>
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross long-term care benefits paid \$			
PAYER'S federal identification number    POLICYHOLDER'S identification number		2 Accelerated death benefits paid \$		Form <b>1099-LTC</b>	
POLICYHOLDER'S name		3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount		INSURED'S taxpayer identification no. INSURED'S name	
Street address (including apt. no.)		Street address (including apt. no.)		<b>Copy A</b> <b>For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>	
City or town, state or province, country, and ZIP or foreign postal code		City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)		4 Qualified contract (optional) <input type="checkbox"/>			
		5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill		Date certified	
Form <b>1099-LTC</b> Cat. No. 23021Z <a href="http://www.irs.gov/form1099ltc">www.irs.gov/form1099ltc</a> Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

# Exhibit R

9595     VOID     CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents \$	OMB No. 1545-0115  <b>2015</b>  Form 1099-MISC		<b>Miscellaneous Income</b>
		2 Royalties \$			
PAYER'S federal identification number    RECIPIENT'S identification number		3 Other income \$	4 Federal income tax withheld \$		<b>Copy A</b> <b>For Internal Revenue Service Center</b>
		5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		<b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City or town, state or province, country, and ZIP or foreign postal code		11	12		
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	2nd TIN not <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no. \$	18 State income \$	

Form 1099-MISC    Cat. No. 14425J    www.irs.gov/form1099misc    Department of the Treasury - Internal Revenue Service  
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9595     VOID     CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents \$	OMB No. 1545-0115  <b>2015</b>  Form 1099-MISC		<b>Miscellaneous Income</b>
		2 Royalties \$			
PAYER'S federal identification number    RECIPIENT'S identification number		3 Other income \$	4 Federal income tax withheld \$		<b>Copy A</b> <b>For Internal Revenue Service Center</b>
		5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		<b>File with Form 1096.</b>  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City or town, state or province, country, and ZIP or foreign postal code		11	12		
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	2nd TIN not <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no. \$	18 State income \$	

Form 1099-MISC    Cat. No. 14425J    www.irs.gov/form1099misc    Department of the Treasury - Internal Revenue Service



# Exhibit T

9797       VOID       CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Patronage dividends	<b>2015</b>	OMB No. 1545-0118
		2 Nonpatronage distributions		
		3 Per-unit retain allocations		
		\$	Form <b>1099-PATR</b>	
PAYER'S federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld		
		\$		
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	6 Domestic production activities deduction	<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
		\$	\$	
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code		8 Work opportunity credit	9 Patron's AMT adjustment	
		\$	\$	
Account number (see instructions)	2nd TIN not. <input type="checkbox"/>	10 Other credits and deductions		
		\$		

Form **1099-PATR**      Cat. No. 14435F      [www.irs.gov/form1099patr](http://www.irs.gov/form1099patr)      Department of the Treasury - Internal Revenue Service  
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9797       VOID       CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Patronage dividends	<b>2015</b>	OMB No. 1545-0118
		2 Nonpatronage distributions		
		3 Per-unit retain allocations		
		\$	Form <b>1099-PATR</b>	
PAYER'S federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld		
		\$		
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	6 Domestic production activities deduction	<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
		\$	\$	
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code		8 Work opportunity credit	9 Patron's AMT adjustment	
		\$	\$	
Account number (see instructions)	2nd TIN not. <input type="checkbox"/>	10 Other credits and deductions		
		\$		

Form **1099-PATR**      Cat. No. 14435F      [www.irs.gov/form1099patr](http://www.irs.gov/form1099patr)      Department of the Treasury - Internal Revenue Service  
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9797       VOID       CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Patronage dividends	<b>2015</b>	OMB No. 1545-0118
		2 Nonpatronage distributions		
		3 Per-unit retain allocations		
		\$	Form <b>1099-PATR</b>	
PAYER'S federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld		
		\$		
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	6 Domestic production activities deduction	<b>Copy A For Internal Revenue Service Center</b>  <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
		\$	\$	
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code		8 Work opportunity credit	9 Patron's AMT adjustment	
		\$	\$	
Account number (see instructions)	2nd TIN not. <input type="checkbox"/>	10 Other credits and deductions		
		\$		

Form **1099-PATR**      Cat. No. 14435F      [www.irs.gov/form1099patr](http://www.irs.gov/form1099patr)      Department of the Treasury - Internal Revenue Service

# Exhibit U

3131 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1760		<b>2015</b> Form <b>1099-Q</b>	<b>Payments From Qualified Education Programs (Under Sections 529 and 530)</b>
PAYER'S/TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross distribution	\$		
		2 Earnings	\$		
PAYER'S/TRUSTEE'S federal identification no.	RECIPIENT'S social security number	3 Basis	\$	4 Trustee-to-trustee transfer	<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.
RECIPIENT'S name		5 Check one: - Qualified tuition program—	6 Check if the recipient is not the designated beneficiary		
Street address (including apt. no.)		Private <input type="checkbox"/> or State <input type="checkbox"/>	3.30 in <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		- Coverdell ESA <input type="checkbox"/>	2.55 in <input type="checkbox"/>		
Account number (see instructions)					
Form <b>1099-Q</b> Cat. No. 32223J    www.irs.gov/form1099q    Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

  

3131 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1760		<b>2015</b> Form <b>1099-Q</b>	<b>Payments From Qualified Education Programs (Under Sections 529 and 530)</b>
PAYER'S/TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross distribution	\$		
		2 Earnings	\$		
PAYER'S/TRUSTEE'S federal identification no.	RECIPIENT'S social security number	3 Basis	\$	4 Trustee-to-trustee transfer	<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.
RECIPIENT'S name		5 Check one: - Qualified tuition program—	6 Check if the recipient is not the designated beneficiary		
Street address (including apt. no.)		Private <input type="checkbox"/> or State <input type="checkbox"/>			
City or town, state or province, country, and ZIP or foreign postal code		- Coverdell ESA <input type="checkbox"/>			
Account number (see instructions)					
Form <b>1099-Q</b> Cat. No. 32223J    www.irs.gov/form1099q    Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

  

3131 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1760		<b>2015</b> Form <b>1099-Q</b>	<b>Payments From Qualified Education Programs (Under Sections 529 and 530)</b>
PAYER'S/TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross distribution	\$		
		2 Earnings	\$		
PAYER'S/TRUSTEE'S federal identification no.	RECIPIENT'S social security number	3 Basis	\$	4 Trustee-to-trustee transfer	<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.
RECIPIENT'S name		5 Check one: - Qualified tuition program—	6 Check if the recipient is not the designated beneficiary		
Street address (including apt. no.)		Private <input type="checkbox"/> or State <input type="checkbox"/>			
City or town, state or province, country, and ZIP or foreign postal code		- Coverdell ESA <input type="checkbox"/>			
Account number (see instructions)					
Form <b>1099-Q</b> Cat. No. 32223J    www.irs.gov/form1099q    Department of the Treasury - Internal Revenue Service		Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			

# Exhibit V

9898 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				<b>2015</b>	<b>Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.</b>
PAYER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Gross distribution		OMB No. 1545-0119	
		\$			
		2a Taxable amount			
		\$			
		2b Taxable amount not determined <input type="checkbox"/>		Total distribution <input type="checkbox"/>	
PAYER'S federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a)		4 Federal income tax withheld	
		\$		\$	
RECIPIENT'S name		5 Employee contributions /Designated Roth contributions or insurance premiums		6 Net unrealized appreciation in employer's securities	
		\$		\$	
Street address (including apt. no.)		7 Distribution code(s)		8 Other	
		IRA/SEP/SIMPLE <input type="checkbox"/>		%	
City or town, state or province, country, and ZIP or foreign postal code		9a Your percentage of total distribution %		9b Total employee contributions	
		\$		\$	
10 Amount allocable to IRR within 5 years	11 1st year of desig. Roth contrib.	12 State tax withheld		13 State/Payer's state no.	
		\$		\$	
		\$		\$	
Account number (see instructions)		15 Local tax withheld		16 Name of locality	
		\$		\$	
		\$		\$	
		\$		\$	

Form **1099-R** Cat. No. 14436Q    www.irs.gov/form1099r    Department of the Treasury - Internal Revenue Service

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9898 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				<b>2015</b>	<b>Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.</b>
PAYER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Gross distribution		OMB No. 1545-0119	
		\$			
		2a Taxable amount			
		\$			
		2b Taxable amount not determined <input type="checkbox"/>		Total distribution <input type="checkbox"/>	
PAYER'S federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a)		4 Federal income tax withheld	
		\$		\$	
RECIPIENT'S name		5 Employee contributions /Designated Roth contributions or insurance premiums		6 Net unrealized appreciation in employer's securities	
		\$		\$	
Street address (including apt. no.)		7 Distribution code(s)		8 Other	
		IRA/SEP/SIMPLE <input type="checkbox"/>		%	
City or town, state or province, country, and ZIP or foreign postal code		9a Your percentage of total distribution %		9b Total employee contributions	
		\$		\$	
10 Amount allocable to IRR within 5 years	11 1st year of desig. Roth contrib.	12 State tax withheld		13 State/Payer's state no.	
		\$		\$	
		\$		\$	
Account number (see instructions)		15 Local tax withheld		16 Name of locality	
		\$		\$	
		\$		\$	
		\$		\$	

Form **1099-R** Cat. No. 14436Q    www.irs.gov/form1099r    Department of the Treasury - Internal Revenue Service

# Exhibit W

7575       VOID       CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	<b>2015</b> <small>Form 1099-S</small>	<b>Proceeds From Real Estate Transactions</b>
		2 Gross proceeds		
		\$		
FILER'S federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		
TRANSFEROR'S name				
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>		
Account or escrow number (see instructions)				
		5 Buyer's part of real estate tax		
		\$		

**Form 1099-S**      Cat. No. 64292E      [www.irs.gov/form1099s](http://www.irs.gov/form1099s)      Department of the Treasury - Internal Revenue Service  
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7575       VOID       CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	<b>2015</b> <small>Form 1099-S</small>	<b>Proceeds From Real Estate Transactions</b>
		2 Gross proceeds		
		\$		
FILER'S federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		
TRANSFEROR'S name				
Street address (including apt. no.)				
City or town, state or province, country, and ZIP or foreign postal code		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>		
Account or escrow number (see instructions)				
		5 Buyer's part of real estate tax		
		\$		

**Form 1099-S**      Cat. No. 64292E      [www.irs.gov/form1099s](http://www.irs.gov/form1099s)      Department of the Treasury - Internal Revenue Service  
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7575       VOID       CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	<b>2015</b> <small>Form 1099-S</small>	<b>Proceeds From Real Estate Transactions</b>
		2 Gross proceeds		
		\$		
<del>FILER'S federal identification number</del>	<del>TRANSFEROR'S identification number</del>	3 Address or legal description (including city, state, and ZIP code)		
<del>TRANSFEROR'S name</del>				
<del>Street address (including apt. no.)</del>				
<del>City or town, state or province, country, and ZIP or foreign postal code</del>		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>		
<del>Account or escrow number (see instructions)</del>				
		5 Buyer's part of real estate tax		
		\$		

**Form 1099-S**      Cat. No. 64292E      [www.irs.gov/form1099s](http://www.irs.gov/form1099s)      Department of the Treasury - Internal Revenue Service

# Exhibit X

9494       VOID       CORRECTED

TRUSTEE'S/PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			<b>2015</b>	OMB No. 1545-1517	<b>Distributions From an HSA, Archer MSA, or Medicare Advantage MSA</b>
		Form <b>1099-SA</b>			
PAYER'S federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess cont. \$	<b>Copy A For Internal Revenue Service Center File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b></small>	
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$		
Street address (including apt. no.)		5 HSA <input type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>			
City or town, state or province, country, and ZIP or foreign postal code					
Account number (see instructions)					

Form **1099-SA**      Cat. No. 38471D      www.irs.gov/form1099sa      Department of the Treasury - Internal Revenue Service  
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9494       VOID       CORRECTED

TRUSTEE'S/PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			<b>2015</b>	OMB No. 1545-1517	<b>Distributions From an HSA, Archer MSA, or Medicare Advantage MSA</b>
		Form <b>1099-SA</b>			
PAYER'S federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess cont. \$	<b>Copy A For Internal Revenue Service Center File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b></small>	
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$		
Street address (including apt. no.)		5 HSA <input type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>			
City or town, state or province, country, and ZIP or foreign postal code					
Account number (see instructions)					

Form **1099-SA**      Cat. No. 38471D      www.irs.gov/form1099sa      Department of the Treasury - Internal Revenue Service  
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9494       VOID       CORRECTED

TRUSTEE'S/PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number			<b>2015</b>	OMB No. 1545-1517	<b>Distributions From an HSA, Archer MSA, or Medicare Advantage MSA</b>
		Form <b>1099-SA</b>			
PAYER'S federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess cont. \$	<b>Copy A For Internal Revenue Service Center File with Form 1096.</b> <small>For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b></small>	
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$		
Street address (including apt. no.)		5 HSA <input type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>			
City or town, state or province, country, and ZIP or foreign postal code					
Account number (see instructions)					

Form **1099-SA**      Cat. No. 38471D      www.irs.gov/form1099sa      Department of the Treasury - Internal Revenue Service

# Exhibit Y

2525       VOID       CORRECTED

TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129  <b>Form 3921</b>  (Rev. August 2013)	<b>Exercise of an Incentive Stock Option Under Section 422(b)</b>  <b>Copy A</b> For Internal Revenue Service Center  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
		2 Date option exercised		
TRANSFEROR'S federal identification number	EMPLOYEE'S identification number	3 Exercise price per share	4 Fair market value per share on exercise date	
EMPLOYEE'S name		\$	\$	
		5 No. of shares transferred		
Street address (including apt. no.)		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)				

Form 3921 (Rev. August 2013)      Cat. No. 411790      www.irs.gov/form3921      Department of the Treasury - Internal Revenue Service

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2525       VOID       CORRECTED

TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129  <b>Form 3921</b>  (Rev. August 2013)	<b>Exercise of an Incentive Stock Option Under Section 422(b)</b>  <b>Copy A</b> For Internal Revenue Service Center  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
		2 Date option exercised		
TRANSFEROR'S federal identification number	EMPLOYEE'S identification number	3 Exercise price per share	4 Fair market value per share on exercise date	
EMPLOYEE'S name		\$	\$	
		5 No. of shares transferred		
Street address (including apt. no.)		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)				

Form 3921 (Rev. August 2013)      Cat. No. 411790      www.irs.gov/form3921      Department of the Treasury - Internal Revenue Service

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2525       VOID       CORRECTED

TRANSFEROR'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129  <b>Form 3921</b>  (Rev. August 2013)	<b>Exercise of an Incentive Stock Option Under Section 422(b)</b>  <b>Copy A</b> For Internal Revenue Service Center  File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
		2 Date option exercised		
TRANSFEROR'S federal identification number	EMPLOYEE'S identification number	3 Exercise price per share	4 Fair market value per share on exercise date	
EMPLOYEE'S name		\$	\$	
		5 No. of shares transferred		
Street address (including apt. no.)		6 If other than TRANSFEROR, name, address, and EIN of corporation whose stock is being transferred		
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)				

Form 3921 (Rev. August 2013)      Cat. No. 411790      www.irs.gov/form3921      Department of the Treasury - Internal Revenue Service

# Exhibit Z

2626 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<b>Form 3922</b> (Rev. August 2013)		<b>Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)</b>
CORPORATION'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129	
		2 Date option exercised		
CORPORATION'S federal identification number	EMPLOYEE'S identification number	3 Fair market value per share on grant date	4 Fair market value per share on exercise date	<b>Copy A For Internal Revenue Service Center</b> File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
EMPLOYEE'S name		\$	\$	
Street address (including apt. no.)		5 Exercise price paid per share	6 No. of shares transferred	
City or town, state or province, country, and ZIP or foreign postal code		\$		
Account number (see instructions)		7 Date legal title transferred		
		8 Exercise price per share determined as if the option was exercised on the date shown in box 1.		
		\$		
Form 3922 (Rev. 8-2013)      Cat. No. 41180P      www.irs.gov/form3922      Department of the Treasury - Internal Revenue Service				
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2626 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<b>Form 3922</b> (Rev. August 2013)		<b>Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)</b>
CORPORATION'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129	
		2 Date option exercised		
CORPORATION'S federal identification number	EMPLOYEE'S identification number	3 Fair market value per share on grant date	4 Fair market value per share on exercise date	<b>Copy A For Internal Revenue Service Center</b> File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
EMPLOYEE'S name		\$	\$	
Street address (including apt. no.)		5 Exercise price paid per share	6 No. of shares transferred	
City or town, state or province, country, and ZIP or foreign postal code		\$		
Account number (see instructions)		7 Date legal title transferred		
		8 Exercise price per share determined as if the option was exercised on the date shown in box 1.		
		\$		
Form 3922 (Rev. 8-2013)      Cat. No. 41180P      www.irs.gov/form3922      Department of the Treasury - Internal Revenue Service				
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2626 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<b>Form 3922</b> (Rev. August 2013)		<b>Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)</b>
CORPORATION'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Date option granted	OMB No. 1545-2129	
		2 Date option exercised		
CORPORATION'S federal identification number	EMPLOYEE'S identification number	3 Fair market value per share on grant date	4 Fair market value per share on exercise date	<b>Copy A For Internal Revenue Service Center</b> File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the current version of the General Instructions for Certain Information Returns.
EMPLOYEE'S name		\$	\$	
Street address (including apt. no.)		5 Exercise price paid per share	6 No. of shares transferred	
City or town, state or province, country, and ZIP or foreign postal code		\$		
Account number (see instructions)		7 Date legal title transferred		
		8 Exercise price per share determined as if the option was exercised on the date shown in box 1.		
		\$		
Form 3922 (Rev. 8-2013)      Cat. No. 41180P      www.irs.gov/form3922      Department of the Treasury - Internal Revenue Service				

# Exhibit AA

2828     VOID     CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 IRA contributions (other than amounts in boxes 2-4, 8-10, 13a, and 14a)	OMB No. 1545-0747  <b>2015</b>  Form 5498		<b>IRA Contribution Information</b>
		2 Rollover contributions			
TRUSTEE'S or ISSUER'S federal identification no. <span style="border: 1px solid black; padding: 2px;">                    </span> <small>.66 in</small>		3 Roth IRA conversion amount	4 Recharacterized contributions <small>.50 in</small> \$		<b>Copy A</b>  <b>For Internal Revenue Service Center</b>  File with Form 1096.
		5 Fair market value of account			
PARTICIPANT'S social security number <span style="border: 1px solid black; padding: 2px;">                    </span> <small>1.70 in</small>		6 Life insurance cost included in box 1	7 IRA <input type="checkbox"/> SEP <input type="checkbox"/> SIMPLE <input type="checkbox"/> Roth IRA <input type="checkbox"/>		For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
PARTICIPANT'S name		8 SEP contributions			
Street address (including apt. no.) <small>.50 in</small>		9 SIMPLE contributions <small>.33 in</small>	10 Roth IRA contributions \$		11 Check if RMD for 2016 <input type="checkbox"/>
City or town, state or province, country, and ZIP or foreign postal code		12a RMD date			
City or town, state or province, country, and ZIP or foreign postal code		12b RMD amount	13a Postponed contribution \$		13b Year    13c Code
		13a Postponed contribution			
Account number (see instructions)		14a Repayments	14b Code		
		15a FMV of certain specified assets			
		15b Code(s)			

Form **5498**    Cat. No. 50010C    [www.irs.gov/form5498](http://www.irs.gov/form5498)    Department of the Treasury - Internal Revenue Service

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2828     VOID     CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 IRA contributions (other than amounts in boxes 2-4, 8-10, 13a, and 14a)	OMB No. 1545-0747  <b>2015</b>  Form 5498		<b>IRA Contribution Information</b>
		2 Rollover contributions			
TRUSTEE'S or ISSUER'S federal identification no. <span style="border: 1px solid black; padding: 2px;">                    </span> PARTICIPANT'S social security number <span style="border: 1px solid black; padding: 2px;">                    </span>		3 Roth IRA conversion amount	4 Recharacterized contributions \$		<b>Copy A</b>  <b>For Internal Revenue Service Center</b>  File with Form 1096.
		5 Fair market value of account			
PARTICIPANT'S name		6 Life insurance cost included in box 1	7 IRA <input type="checkbox"/> SEP <input type="checkbox"/> SIMPLE <input type="checkbox"/> Roth IRA <input type="checkbox"/>		For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
Street address (including apt. no.)		8 SEP contributions			
City or town, state or province, country, and ZIP or foreign postal code		9 SIMPLE contributions	10 Roth IRA contributions \$		11 Check if RMD for 2016 <input type="checkbox"/>
City or town, state or province, country, and ZIP or foreign postal code		12a RMD date			
City or town, state or province, country, and ZIP or foreign postal code		12b RMD amount	13a Postponed contribution \$		13b Year    13c Code
		13a Postponed contribution			
Account number (see instructions)		14a Repayments	14b Code		
		15a FMV of certain specified assets			
		15b Code(s)			

Form **5498**    Cat. No. 50010C    [www.irs.gov/form5498](http://www.irs.gov/form5498)    Department of the Treasury - Internal Revenue Service

# Exhibit BB

7272 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		1 Coverdell ESA contributions		OMB No. 1545-1815		<b>Coverdell ESA Contribution Information</b>
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		\$		<b>2015</b>		
		2 Rollover contributions				
TRUSTEE'S/ISSUER'S federal identification no.		BENEFICIARY'S social security number		Form <b>5498-ESA</b>		<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
BENEFICIARY'S name						
Street address (including apt. no.)						
City or town, state or province, country, and ZIP or foreign postal code						
Account number (see instructions)						
Form <b>5498-ESA</b> Cat. No. 34011J      www.irs.gov/form5498esa      Department of the Treasury - Internal Revenue Service						
<b>Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page</b>						
7272 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		1 Coverdell ESA contributions		OMB No. 1545-1815		<b>Coverdell ESA Contribution Information</b>
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		\$		<b>2015</b>		
		2 Rollover contributions				
TRUSTEE'S/ISSUER'S federal identification no.		BENEFICIARY'S social security number		Form <b>5498-ESA</b>		<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
BENEFICIARY'S name						
Street address (including apt. no.)						
City or town, state or province, country, and ZIP or foreign postal code						
Account number (see instructions)						
Form <b>5498-ESA</b> Cat. No. 34011J      www.irs.gov/form5498esa      Department of the Treasury - Internal Revenue Service						
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7272 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		1 Coverdell ESA contributions		OMB No. 1545-1815		<b>Coverdell ESA Contribution Information</b>
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		\$		<b>2015</b>		
		2 Rollover contributions				
TRUSTEE'S/ISSUER'S federal identification no.		BENEFICIARY'S social security number		Form <b>5498-ESA</b>		<b>Copy A For Internal Revenue Service Center</b>  File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
BENEFICIARY'S name						
Street address (including apt. no.)						
City or town, state or province, country, and ZIP or foreign postal code						
Account number (see instructions)						
Form <b>5498-ESA</b> Cat. No. 34011J      www.irs.gov/form5498esa      Department of the Treasury - Internal Revenue Service						

# Exhibit CC

2727  VOID  CORRECTED

TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Employee or self-employed person's Archer MSA contributions made in 2015 and 2016 for 2015 \$	OMB No. 1545-1518 <b>2015</b> Form <b>5498-SA</b>	<b>HSA, Archer MSA, or Medicare Advantage MSA Information</b>
		2 Total contributions made in 2015 \$		
TRUSTEE'S federal identification number	PARTICIPANT'S social security number	3 Total HSA or Archer MSA contributions made in 2016 for 2015 \$		<b>Copy A For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
PARTICIPANT'S name		4 Rollover contributions \$	5 Fair market value of HSA, Archer MSA, or MA MSA \$	
Street address (including apt. no.)		6 HSA <input type="checkbox"/>	3.00"	
City or town, state or province, country, and ZIP or foreign postal code		Archer MSA <input type="checkbox"/>		
Account number (see instructions)		MA MSA <input type="checkbox"/>		

Form **5498-SA** Cat. No. 38467V [www.irs.gov/form5498sa](http://www.irs.gov/form5498sa) Department of the Treasury - Internal Revenue Service  
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2727  VOID  CORRECTED

TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Employee or self-employed person's Archer MSA contributions made in 2015 and 2016 for 2015 \$	OMB No. 1545-1518 <b>2015</b> Form <b>5498-SA</b>	<b>HSA, Archer MSA, or Medicare Advantage MSA Information</b>
		2 Total contributions made in 2015 \$		
TRUSTEE'S federal identification number	PARTICIPANT'S social security number	3 Total HSA or Archer MSA contributions made in 2016 for 2015 \$		<b>Copy A For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
PARTICIPANT'S name		4 Rollover contributions \$	5 Fair market value of HSA, Archer MSA, or MA MSA \$	
Street address (including apt. no.)		6 HSA <input type="checkbox"/>	3.00"	
City or town, state or province, country, and ZIP or foreign postal code		Archer MSA <input type="checkbox"/>		
Account number (see instructions)		MA MSA <input type="checkbox"/>		

Form **5498-SA** Cat. No. 38467V [www.irs.gov/form5498sa](http://www.irs.gov/form5498sa) Department of the Treasury - Internal Revenue Service  
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2727  VOID  CORRECTED

TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Employee or self-employed person's Archer MSA contributions made in 2015 and 2016 for 2015 \$	OMB No. 1545-1518 <b>2015</b> Form <b>5498-SA</b>	<b>HSA, Archer MSA, or Medicare Advantage MSA Information</b>
		2 Total contributions made in 2015 \$		
TRUSTEE'S federal identification number	PARTICIPANT'S social security number	3 Total HSA or Archer MSA contributions made in 2016 for 2015 \$		<b>Copy A For Internal Revenue Service Center</b> <b>File with Form 1096.</b> For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
PARTICIPANT'S name		4 Rollover contributions \$	5 Fair market value of HSA, Archer MSA, or MA MSA \$	
Street address (including apt. no.)		6 HSA <input type="checkbox"/>	3.00"	
City or town, state or province, country, and ZIP or foreign postal code		Archer MSA <input type="checkbox"/>		
Account number (see instructions)		MA MSA <input type="checkbox"/>		

Form **5498-SA** Cat. No. 38467V [www.irs.gov/form5498sa](http://www.irs.gov/form5498sa) Department of the Treasury - Internal Revenue Service

# Exhibit DD

3232 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0238
PAYER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code		1 Gross winnings	2 Date won	<b>2015</b> <b>Form W-2G</b> <b>Certain Gambling Winnings</b>
		\$		
		3 Type of wager	4 Federal income tax withheld	
PAYER'S federal identification number    PAYER'S telephone number		5 Transaction	6 Race	For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
		\$		
WINNER'S name		7 Winnings from identical wagers	8 Cashier	<b>File with Form 1096</b>
		9 Winner's taxpayer identification no.	10 Window	
Street address (including apt. no.)		11 First I.D.	12 Second I.D.	Copy A For Internal Revenue Service Center
		\$		
City or town, province or state, country, and ZIP or foreign postal code		13 State/Payer's state identification no.	14 State winnings	<b>File with Form 1096</b>
		\$		
		15 State income tax withheld	16 Local winnings	Copy A For Internal Revenue Service Center
		\$		
		17 Local income tax withheld	18 Name of locality	Copy A For Internal Revenue Service Center
		\$		
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.				
Signature ...		Date ...		

Form **W-2G**    Cat. No. 10138V    www.irs.gov/w2g    Department of the Treasury - Internal Revenue Service  
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3232 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0238
PAYER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code		1 Gross winnings	2 Date won	<b>2015</b> <b>Form W-2G</b> <b>Certain Gambling Winnings</b>
		\$		
		3 Type of wager	4 Federal income tax withheld	
PAYER'S federal identification number    PAYER'S telephone number		5 Transaction	6 Race	For Privacy Act and Paperwork Reduction Act Notice, see the <b>2015 General Instructions for Certain Information Returns.</b>
		\$		
WINNER'S name		7 Winnings from identical wagers	8 Cashier	<b>File with Form 1096</b>
		9 Winner's taxpayer identification no.	10 Window	
Street address (including apt. no.)		11 First I.D.	12 Second I.D.	Copy A For Internal Revenue Service Center
		\$		
City or town, province or state, country, and ZIP or foreign postal code		13 State/Payer's state identification no.	14 State winnings	<b>File with Form 1096</b>
		\$		
		15 State income tax withheld	16 Local winnings	Copy A For Internal Revenue Service Center
		\$		
		17 Local income tax withheld	18 Name of locality	Copy A For Internal Revenue Service Center
		\$		
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.				
Signature ...		Date ...		

Form **W-2G**    Cat. No. 10138V    www.irs.gov/w2g    Department of the Treasury - Internal Revenue Service

# Exhibit EE

Form <b>1042-S</b>		Foreign Person's U.S. Source Income Subject to Withholding <b>2015</b>			OMB No. 1545-0096	
Department of the Treasury Internal Revenue Service		Information about Form 1042-S and its separate instructions is at <a href="http://www.irs.gov/form1042s">www.irs.gov/form1042s</a> .			<b>Copy A</b> for Internal Revenue Service	
		<input type="checkbox"/> AMENDED <input type="checkbox"/> PRO-RATA BASIS REPORTING				
1 Income code	2 Gross income	3 Chap. 3: <input type="checkbox"/>	4 Chap. 4: <input type="checkbox"/>	5 Withholding allowance		
		3a Exemption code	4a Exemption code	6 Net income		Check if tax not deposited with IRS pursuant to escrow procedure <input type="checkbox"/>
		3b Tax rate	4b Tax rate	7 Federal tax withheld		
8 Tax withheld by other agents				9 Tax paid by withholding agent		
10 Total withholding credit				11 Amount repaid to recipient		
12a Withholding agent's EIN		12b Ch. 3 status code	12c Ch. 4 status code	14a Primary Withholding Agent's Name (if applicable)		
12d Withholding agent's name				14b Primary Withholding Agent's EIN		
12e Withholding agent's Global Intermediary Identification Number (GIIN)				15a Intermediary or fow-through entity's EIN, if any		15b Ch. 3 status code
				15c Ch. 4 status code		
12f Country code				12g Foreign taxpayer identification number, if any		
				15d Intermediary or fow-through entity's name		
				15e Intermediary or fow-through entity's GIIN		
12h Address (number and street)				15f Country code		15g Foreign tax identification number, if any
12i City or town, state or province, country, ZIP or foreign postal code				15h Address (number and street)		
13a Recipient's U.S. TIN, if any				15i City or town, state or province, country, ZIP or foreign postal code		
13b Ch. 3 status code		13c Ch. 4 status code		13h Recipient's GIIN		13i Recipient's foreign tax identification number, if any
13d Recipient's name		13e Recipient's country code		16 Recipient's account number		17 Recipient's date of birth
13f Address (number and street)				18 Payer's name		19 Payer's TIN
						20 Payer's GIIN
13g City or town, state or province, country, ZIP or foreign postal code				21 State income tax withheld		22 Payer's state tax no.
						23 Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2015)

Form <b>1042-S</b>		Foreign Person's U.S. Source Income Subject to Withholding <b>2015</b>			OMB No. 1545-0096	
Department of the Treasury Internal Revenue Service		Information about Form 1042-S and its separate instructions is at <a href="http://www.irs.gov/form1042s">www.irs.gov/form1042s</a> .			<b>Copy A</b> for Internal Revenue Service	
		<input type="checkbox"/> AMENDED <input type="checkbox"/> PRO-RATA BASIS REPORTING				
1 Income code	2 Gross income	3 Chap. 3: <input type="checkbox"/>	4 Chap. 4: <input type="checkbox"/>	5 Withholding allowance		
		3a Exemption code	4a Exemption code	6 Net income		Check if tax not deposited with IRS pursuant to escrow procedure <input type="checkbox"/>
		3b Tax rate	4b Tax rate	7 Federal tax withheld		
8 Tax withheld by other agents				9 Tax paid by withholding agent		
10 Total withholding credit				11 Amount repaid to recipient		
12a Withholding agent's EIN		12b Ch. 3 status code	12c Ch. 4 status code	14a Primary Withholding Agent's Name (if applicable)		
12d Withholding agent's name				14b Primary Withholding Agent's EIN		
12e Withholding agent's Global Intermediary Identification Number (GIIN)				15a Intermediary or fow-through entity's EIN, if any		15b Ch. 3 status code
				15c Ch. 4 status code		
12f Country code				12g Foreign taxpayer identification number, if any		
				15d Intermediary or fow-through entity's name		
				15e Intermediary or fow-through entity's GIIN		
12h Address (number and street)				15f Country code		15g Foreign tax identification number, if any
12i City or town, state or province, country, ZIP or foreign postal code				15h Address (number and street)		
13a Recipient's U.S. TIN, if any				15i City or town, state or province, country, ZIP or foreign postal code		
13b Ch. 3 status code		13c Ch. 4 status code		13h Recipient's GIIN		13i Recipient's foreign tax identification number, if any
13d Recipient's name		13e Recipient's country code		16 Recipient's account number		17 Recipient's date of birth
13f Address (number and street)				18 Payer's name		19 Payer's TIN
						20 Payer's GIIN
13g City or town, state or province, country, ZIP or foreign postal code				21 State income tax withheld		22 Payer's state tax no.
						23 Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2015)

## **Rev. Proc. 2015-37**

### **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 5 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 Account-

ing), 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 until the Service resolves the issue through publication of a revenue ruling, a revenue procedure, regulations, or otherwise.

### **SECTION 3. PROCEDURE**

Rev. Proc. 2015-3 is amplified by adding the following to section 5.01: Section 1014. Basis of Property Acquired from a Decedent. Whether the assets in a grantor trust receive a section 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross

estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

### **SECTION 4. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 2015-3 is amplified.

### **SECTION 5. EFFECTIVE DATE**

This revenue procedure is effective for all requests received after June 15, 2015.

### **SECTION 6. DRAFTING INFORMATION**

The principal author of this revenue procedure is Meghan Howard of the Office of Associate Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue procedure, please contact Ms. Howard at 202-317-5055 (not a toll-free number).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking Elimination of Circular Adjustments to Basis; Absorption of Losses

### REG-101652-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the consolidated return regulations. These amendments would revise the rules concerning the use of a consolidated group's losses in a consolidated return year in which stock of a subsidiary is disposed of. The regulations would affect corporations filing consolidated returns.

DATES: Written or electronic comments, and a request for a public hearing, must be received by September 9, 2015.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-101652-10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-101652-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-101652-10).

#### FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Robert M. Rhyne, (202) 317-6848; concerning submissions of comments or to request a public hearing, Oluwafunmilayo (Funmi) Taylor, (202) 317-6901 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

##### 1. Introduction

This document contains proposed amendments to 26 CFR part 1 under section 1502 of the Internal Revenue Code (Code). Section 1502 authorizes the Secretary to prescribe regulations for corporations that join in filing consolidated returns to reflect clearly the income tax liability of the group and to prevent avoidance of such tax liability, and provides that these rules may be different from the provisions of chapter 1 of subtitle A of the Code that would apply if the corporations filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502-1.

These proposed regulations would provide guidance regarding the absorption of members' losses in a consolidated return year, and provide guidance to eliminate the "circular basis problem" in a broader class of transactions than under current law.

This document also contains proposed conforming amendments to 26 CFR part 301 under section 6402. Section 6402 authorizes the Secretary to make credits and refunds. The proposed regulations would amend § 301.6402-7(g) (relating to claims for refunds and application for tentative carryback adjustments involving consolidated groups that include financial institutions) by revising the definition of separate net operating loss of a member in light of the proposed amendments to § 1.1502-21 (relating to the determination and treatment of consolidated and separate net operating losses, carrybacks, and carryovers).

##### 2. Allocation and Absorption of Members' Losses

In general, the consolidated taxable income (CTI) or consolidated net operating loss (CNOL) of a consolidated group is the sum of each member's separately computed taxable income or loss (computed pursuant to § 1.1502-12) and certain items of income and deduction that

are computed on a consolidated basis pursuant to § 1.1502-11.

Section 1.1502-21(b)(2)(i) (relating to carryovers and carrybacks of CNOLs to separate return years) provides generally that if a group has a CNOL and a portion of the CNOL would be carried to a member's separate return year, the CNOL must be apportioned between the group and the member (or members) with the separate return year(s) in accordance with the amount of the CNOL attributable to those member(s). For this purpose, § 1.1502-21(b)(2)(iv) employs a fraction to determine the percentage amount of the CNOL attributable to a member. The numerator of the fraction is the separate net operating loss of the member for the consolidated return year, and the denominator is the sum of the separate net operating losses of all members for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL, taking into account only the member's items of income, gain, deduction, and loss. Although the current consolidated return regulations provide rules for apportioning a CNOL among members when a member's loss may be carried to a separate return year, the regulations do not expressly adopt the fraction-based methodology of § 1.1502-21(b)(2)(iv) for computing the amount of each member's absorbed loss that is used to offset the income of members with positive separate taxable income or net capital gain for the consolidated return year in which the loss is recognized.

Furthermore, although the method provided for apportioning a CNOL under current law generally yields appropriate results, the apportionment may produce anomalies if capital gains are present. For example, assume a stand-alone corporation, P, acquires the stock of corporation S, and P and S file a consolidated return for the first taxable year of P ending after the acquisition. For the consolidated return year, P generates \$100 of capital gain and incurs \$100 of deductible expenses. S incurs a \$100 capital loss. Thus, the group has a \$100 CNOL. Under current law, the percentage of the CNOL attributable to each member is determined by its relative separate net operating loss, taking into

account only its items. The CNOL that the group would have if only P's items were taken into account is zero (\$100 of capital gain offset by \$100 of deductible expenses). If only S's items were taken into account the group would have a consolidated net capital loss, but the CNOL would also be zero. Accordingly, because neither P nor S has a separate net operating loss, the allocation of the group's \$100 CNOL is not clear.

Both to provide an absorption rule for apportioning ordinary and capital losses incurred in the same consolidated return year, and to address the CNOL apportionment issue, the proposed regulations would amend the current regulations in the following two ways. First, the proposed regulations add a new paragraph (e) to § 1.1502-11 to clarify that the absorption of members' losses to offset income of other members in the consolidated return year is made on a pro rata basis, consistent with the pro rata absorption of losses from taxable years ending on the same date that are carried back or forward under the rules of §§ 1.1502-21(b) and 1.1502-22(b) (relating to net capital loss carrybacks and carryovers). Second, to address apportionment anomalies that may arise if capital gains are present, the proposed regulations would provide that the separate net operating loss of a member, solely for apportionment purposes, is its loss determined without regard to capital gains (or losses) or amounts treated as capital gains. Thus, in the example in the preceding paragraph, P would be allocated the entire \$100 CNOL. Excluding capital gains and losses from the computation is consistent with excluding capital gains and losses in determining a member's separate taxable income under § 1.1502-12, and taking capital gains and losses into account on a group, rather than a separate member, basis. A conforming amendment is made to § 301.6402-7(g)(2)(ii) (relating to refunds to certain statutory or court-appointed fiduciaries of an insolvent financial institution), which contains a similar allocation rule.

### 3. Circular Adjustments to Basis

#### A. The circular basis problem and current regulations

To prevent the income, gain, deduction, or loss of a subsidiary from being reflected more than once in a consolidated group's income, the consolidated return regulations adjust an owning member's basis in a subsidiary's stock to reflect those items. As a group takes into account a subsidiary's items of income or gain, an owning member's basis in the subsidiary's stock increases. Likewise, as a group absorbs a subsidiary's deductions or losses, an owning member's basis in the subsidiary's stock decreases. These adjustments take place under what is generally referred to as the investment adjustment system. See § 1.1502-32.

If a group absorbs a portion of a subsidiary's loss in the same consolidated return year in which an owning member disposes of that subsidiary's stock, the owning member's basis in the subsidiary's stock is reduced immediately before the disposition. Consequently, the amount of the owning member's gain or loss on the disposition may be affected. Any change in the amount of gain or loss resulting from the disposition may in turn affect the amount of the subsidiary's loss that the group absorbs. Any further absorption of the subsidiary's loss triggers further adjustments to the basis in the subsidiary's stock. These iterative computations, which may completely eliminate the benefit of the disposed of member's losses, are referred to as the circular basis problem.

For example, assume P owns all the stock of S, and the group has a \$100 consolidated net capital loss carryover, all of which is attributable to S. On December 31, P sells all of S's stock to a non-member at a \$10 gain. Absent the current rules in § 1.1502-11(b), P's \$10 capital gain on the sale of S's stock would be offset by \$10 of the consolidated net capital loss carryover (all of which is attributable to S). The use of the loss would cause P's basis in S's stock to be reduced by \$10 (immediately before the sale), causing P to recognize \$20 of gain on the sale of S's stock. Similarly, that \$20 gain would be offset by \$20 of S's consoli-

dated net capital loss carryover, and so on, until the entire consolidated net capital loss carryover was depleted. At the end of these iterative calculations, the group would still report \$10 of consolidated net capital gain. The current regulations prevent this result.

The Treasury Department and the IRS have considered a variety of approaches to the circular basis problem since the introduction of the investment adjustment system in 1966. The options considered, and either rejected or adopted in regulations to date, appear to have been motivated by differing views concerning the scope and severity of the circular basis problem. The circumstances in which the consolidated return regulations have provided relief to date have been limited to preventing the disposed of subsidiary's loss absorption from affecting the gain or loss recognized on the sale of that subsidiary. This is the case notwithstanding that many commentators have criticized the scope of relief as being too narrow, and have maintained that relief should be extended to, for example, the sales of brother-sister subsidiaries within the same consolidated return year.

Regulations promulgated in 1966 provided no relief from the circular basis problem, even though some relief was initially proposed. Section 1.1502-11(b), published in 1972, provided some relief from the circular basis problem, and those regulations were revised in 1994 into their current form (the circular basis rules).

To resolve the circular basis problem, the circular basis rules require that a tentative computation of CTI be made without taking into account any gain or loss on the disposition of a subsidiary's stock. The amount of the subsidiary's losses that would be absorbed under the tentative computation becomes a limitation on that subsidiary's losses that may be absorbed in the consolidated return year of disposition or as a carryback to a prior year. The limitation is intended to eliminate the circular basis adjustments to the subsidiary's stock and thus prevent iterative computations.

For example, assume a consolidated group consists of P, the common parent, and S, its wholly owned subsidiary, and neither P nor S had income or gain in a prior year. At the beginning of the consoli-

idated return year, P has a \$500 basis in S's stock. P sells S's stock for \$520 at the end of the year. For the year, P has \$30 of ordinary income (determined without taking into account P's gain or loss on the disposition of S's stock) and S has \$80 of ordinary loss. To determine the limitation on the amount of S's loss that the group may use during the consolidated return year or as a carryback to a prior year, CTI is tentatively determined without taking into account P's gain or loss on the disposition of S's stock. Accordingly, the use of S's loss in the consolidated return year of disposition is limited to \$30. The group is tentatively treated as having a CNOL of \$50 (P's \$30 of income minus S's \$80 loss). The absorption of \$30 of S's loss reduces P's basis in S's stock to \$470, and results in \$50 [ $\$520 - (\$500 - \$30)$ ] of gain to P on the disposition. Thus, iterative computations are avoided.

Nevertheless, the circular basis rules do not prevent iterative computations in all cases — not even all cases in which the stock of a single subsidiary with a loss is disposed of. For example, if a member other than the disposed of subsidiary also has a loss, and the sum of the losses of the disposed subsidiary and the other member exceeds the income of the group (without regard to gain on the disposed subsidiary's stock) a tentative computation applying a pro rata rule for absorption establishes a limitation on the use of the disposed of subsidiary's loss. That amount will be used to reduce the owning member's basis in the subsidiary's stock and determine the gain or loss on the stock disposition. If the stock disposition results in gain, that gain will be taken into account in an actual computation of CTI. If the sum of the other member's loss and the disposed of subsidiary's limited loss still exceeds the income and gain of other members, the pro rata absorption rule will be applied again. That computation will result in a lower amount for the absorption of the disposed of subsidiary's loss, which will be different than the amount by which the owning member's stock basis was reduced. Accordingly, iterative computations would be required.

To illustrate, assume a consolidated group consists of P, the common parent, and its wholly owned subsidiaries, S1 and S2. At the beginning of the consolidated

return year, P has a \$500 basis in S1's stock. P sells all of its S1 stock for \$500 at the end of the year. For the year, P has a \$60 capital gain (determined without taking into account P's gain or loss on the disposition of S1's stock), S1 has a \$40 net capital loss and S2 has an \$80 net capital loss. To determine the limitation on the amount of S1's capital loss that the group may use during the consolidated return year, CTI is tentatively determined without taking into account gain or loss on the disposition of S1's stock, but with regard to S2's net capital loss. Because S2 has an \$80 net capital loss in addition to S1's \$40 net capital loss, \$40 of S2's loss [ $\$60 \times (\$80/\$120)$ ] and \$20 of S1's loss [ $\$60 \times (\$40/\$120)$ ] will be used (assuming pro rata absorption of losses as described in section 2 of the Explanation of Provisions of this preamble). Accordingly, the group's use of S1's loss is limited to \$20. Thus, P's basis in S1's stock is reduced by \$20 before P disposes of the stock. Therefore, P is assumed to recognize \$20 [ $\$500 - (\$500 - \$20)$ ] of gain on the disposition of its S1 stock, which leaves P with a total capital gain for the year of \$80. Again, because S2 has an \$80 loss in addition to S1's \$20 usable loss, a pro rata portion of each subsidiary's losses will be absorbed in computing the P group's CTI. Assuming pro rata absorption of losses, P's \$80 capital gain is offset with \$16 of S1's capital loss [ $\$80 \times (\$20/\$100)$ ]. This amount, however, is less than the \$20 amount determined in the tentative computation by which P's basis in S1's stock was reduced. Thus, iterative computations would be required.

In considering the circular basis problem, the Treasury Department and the IRS have become aware that taxpayers have taken a broad range of approaches in cases in which the circular basis problem persists. Some taxpayers may undertake many iterative computations while, under similar facts, others will undertake few. Some commentators have suggested using simultaneous equations. That method can produce appropriate results in the simplest fact patterns, but becomes highly complex if both ordinary income and capital gains are present, or if the stock of more than one subsidiary is sold.

One approach that the Treasury Department and IRS considered but did not

adopt in these proposed regulations was to disallow the absorption of any losses of a subsidiary in the year of disposition. Such a rule would have an adverse impact on any consolidated group with ordinary income that otherwise would be offset by the subsidiary's losses. Furthermore, a blanket prohibition on the use of a subsidiary's losses would be inappropriately harsh if a subsidiary's stock was sold at a loss and the unified loss rules required a stock basis reduction that was greater than the amount of S's loss. In such a case, the use of S's loss to offset income of other members allowed under current law reduces CTI, but the basis reduction that results from the absorption of the loss has no net effect on the owning member's basis in the subsidiary's stock. Prohibiting the use of the disposed of subsidiary's losses would simply increase the group's CTI.

The Treasury Department and IRS also considered but did not adopt an approach similar to the current rules that would compute a tentative amount of S's losses, and then require a reduction to P's basis in S's stock, regardless of whether S's losses were actually absorbed. This approach could lead to non-economic consequences when another subsidiary's losses are actually absorbed instead of S's according to the general rules of the Code and regulations, but S's losses are nonetheless treated as absorbed for purposes of reducing P's basis in S's stock.

A third approach that the Treasury Department and IRS considered but did not adopt was to turn-off the investment adjustment rules for losses of a subsidiary used in the year of disposition. Such an approach would allow a double deduction and undermine a bedrock principle of consolidated returns as articulated by the Supreme Court in *Charles Iffeld Co. v. Hernandez*, 292 U.S. 62 (1934).

## B. Proposed circular basis rules

### i. In general.

The proposed regulations would provide relief and certainty to cases in which the circular basis problem persists, yet adhere to underlying consolidated return concepts without undue complexity. To prevent iterative computations for a con-

solidated return year in which the stock of one or more subsidiaries is disposed of, these proposed regulations require a group to first determine the amount of each disposed subsidiary's loss that will be absorbed by computing CTI without regard to gain or loss on the disposition of the stock of any subsidiary (the absorbed amount). Once the amount of a subsidiary's absorbed loss is determined under that computation, the absorbed amount for each disposed of subsidiary is not redetermined. Determining each disposed of subsidiary's absorbed amount establishes an immutable number that will also be the amount of reduction to the basis of S's stock taken into account in computing the owning member's gain or loss on the disposition of S's stock. After the absorbed amount is determined, the owning member's basis of the S stock is adjusted under § 1.1502-32 (and § 1.1502-36 as relevant). The actual computation of CTI can then be made, taking into account losses of each disposed of subsidiary equal to that amount. In some cases, however, applying the generally applicable rules of the Code and regulations would result in less than all of a disposed of subsidiary's absorbed amount being used.

For example, assume S has an ordinary loss of \$100 and P has capital gain net income of \$100 (unrelated to its disposition of S stock), then S's absorbed amount would be determined to be \$100. If after taking into account S's \$100 absorbed amount P would have a \$100 capital loss on a sale of S's stock, P's capital loss on its S stock would offset P's \$100 capital gain, and S's ordinary loss would not be used in that year and would become a CNOL carryover (assuming no ability to carry back the loss). If an amount of S's losses equal to its absorbed amount were not used, P's basis in its S stock would not be reduced by the absorbed amount, and the amount of P's loss on S's stock would be changed.

The proposed regulations prevent such a result by providing for an alternative four-step computation of CTI if, applying the general ordering rules of the Code and regulations, less than all of a disposed of subsidiary's absorbed amount would be used. See *Examples 5, 6, 7, 8 and 9* of § 1.1502-11(b)(2)(vi) as proposed herein.

Under the first step, any income, gain, or loss on any share of subsidiary stock is excluded from the computation of CTI and the group uses losses of each disposed of subsidiary equal in both amount and character and from the same taxable years as those used in the computation of its absorbed amount. Thus, by excluding any income, gain, or loss on a stock disposition, and by giving priority to the losses of all disposed of subsidiaries, the proposed regulations would solve the circularity problem.

Under the second step, a disposing member offsets its gain on subsidiary stock with its losses on subsidiary stock (determined after applying § 1.1502-36(b) and (c), and so much of § 1.1502-36(d) as is necessary to give effect to an election actually made under § 1.1502-36(d)(6)). If the disposing member has net income or gain on the subsidiary stock, and if the disposing member also has a loss of the same character (determined without regard to the stock net income or gain), the disposing member's loss is used to offset the net income or gain on the subsidiary stock to the extent of such income or gain. Any remaining net income or gain is added to the group's remaining income or gain as determined under the first step. Giving priority to S's losses ahead of other members' losses and excluding gain or loss on subsidiary stock are departures from the general rules that require a member to net its income and gain with its own losses before those amounts are combined in a consolidated computation. These departures may distort the amount of absorbed losses of a disposing member relative to the absorbed losses of other members. Thus, in order to put losses of a disposing member (unrelated to its loss on a stock disposition) on a par with losses of other members, the proposed regulations allow P's losses to offset the group's income before other members, but only to the extent of the gain (or income) on the disposed of subsidiary's stock.

Under the third step if, after the application of the second step of the alternative computation, the group has remaining income or gain and a disposing member has a net loss on subsidiary stock (determined after applying § 1.1502-36(b) and (c), and so much of § 1.1502-36(d) as is necessary

to give effect to an election actually made under § 1.1502-36(d)(6)), that income or gain is then offset by the loss on the disposition of subsidiary stock, subject to generally applicable rules of the Code and regulations. The amount of the offset, however, is limited to the lesser of the total remaining ordinary income or capital gain of the group (determined after the application of the second step) or the amount of the disposing member's ordinary income or capital gain (determined without regard to the stock loss).

Finally, under the fourth step, if the group has remaining income or gain, the unused losses of all members are applied on a pro rata basis.

The Treasury Department and the IRS recognize that the special rules in these proposed regulations may in certain cases alter the general rule under section 1211(a) that allows the deduction of losses from the sale or exchange of capital assets to the extent of capital gains. However, giving priority to the absorption of a disposed subsidiary's losses will prevent the need for iterative computations.

The Treasury Department and the IRS also recognize that the proposed regulations may increase the number of cases in which the general ordering rules for the absorption of members' losses will be altered and may in certain cases result in more gain (or less loss) on the sale of a subsidiary's stock than under current law. However, the Treasury Department and the IRS believe that the benefits derived from the certainty that the proposed rules achieve generally outweigh the potential detriments of these deviations from the general rules. Comments are requested on whether there are alternative approaches that would both eliminate the circular basis problem and preserve the general rule for the absorption of capital and ordinary losses.

#### *ii. Higher-tier subsidiaries.*

Under § 1.1502-11(b)(4)(ii) of the current regulations, if S is a higher-tier subsidiary of another subsidiary (T), the use of T's losses is subject to the circular basis rules upon a disposition of S's stock, but only if 100 percent of T's items of income, gain, deduction, and loss would be reflected in the basis of S's stock in the

hands of the owning member (100-percent requirement). If another member of S's consolidated group or a nonmember owns any stock of either S or T, the circular basis rules do not apply.

These proposed regulations would remove the 100-percent requirement. Thus, if any stock of a higher-tier subsidiary is disposed of, the absorption of losses of a lower-tier subsidiary is subject to the proposed circular basis rules by treating the lower-tier subsidiary as if its stock had been disposed of. The Treasury Department and the IRS request comments regarding whether, and under what circumstances, the 100-percent requirement should be retained.

### C. Other Provisions

Ordinary income and deductions are generally taken into account on a separate company basis before the computation of CTI occurs. A member's separate taxable income under § 1.1502-12 is computed in accordance with the provisions of the Code subject to certain modifications. These modifications generally relate to items that are determined on a consolidated basis (for example, the use of capital losses and the limitation on charitable contribution deductions). Although gain or loss on the disposition of a subsidiary's stock is usually capital, a worthless stock deduction could be ordinary if the conditions of section 165(g)(3) are satisfied. In addition, a gain on the disposition of such stock can be ordinary if the recapture rules of section 1017(d) apply. Under these proposed regulations, gain and loss on the disposition of subsidiary stock are disregarded in determining the subsidiary's absorbed amount, and in an alternative computation of CTI. Consequently, if stock of a subsidiary is disposed of, these proposed regulations may require a departure from the general rules for the computation of an owning member's separate taxable income. The Treasury Department and the IRS believe that this departure from the general rules is necessary to avoid iterative computations and request comments as to whether an alternative methodology would be preferable.

These proposed regulations clarify the interaction of the Unified Loss Rule of § 1.1502-36 with the circular basis rules.

Adjustments under § 1.1502-36(b), (c), and (d)(6) (if an election is made to reattribute losses or reduce stock basis) will affect the computation of CTI. Therefore, these proposed regulations contain guidance as to the point in the computation that those adjustments are made.

The proposed regulations also contain a rule to prevent iterative computations in determining the amount of deductions that are determined by reference to or are limited by the group's CTI, for example, the consolidated charitable contributions deduction under § 1.1502-24 and a member's percentage depletion deduction with respect to oil or gas property for independent producers and royalty owners under § 1.1502-44. The amount of those deductions is taken into account in determining the group's CTI and may affect the computation of a disposed of subsidiary's absorbed amount. The absorbed amount will reduce the stock basis and affect the amount of gain or loss on the disposition of the subsidiary's stock, which will change the amount of CTI, and thus the amount of the group's deduction. To prevent these iterative computations, the proposed regulations provide that the amount of those deductions is determined without regard to gain or loss on the disposition of a subsidiary's stock.

As a result of the later addition of § 1.1502-11(c), current § 1.1502-11(b) does not apply if a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a). The rules applicable in that case, contained in paragraph (c) of § 1.1502-11, are generally not addressed by these proposed regulations, but to the extent that paragraph (c) uses the absorbed amount described in § 1.1502-11(b)(2) as a starting point, the computation will be affected. Comments are requested regarding appropriate additional changes to § 1.1502-11(c).

Finally, the proposed regulations include modifications to §§ 1.1502-11(a), 1.1502-12, 1.1502-22(a), and 1.1502-24 of the current regulations and removal of §§ 1.1502-21A, 1.1502-22A and 1.1502-23A. These modifications are not changes to current substantive law; they are intended solely to update the regulations to reflect certain statutory changes and re-

move cross-references to outdated regulatory provisions.

### Proposed Effective Date

These regulations are proposed to be effective for consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. These proposed regulations would not impose a collection of information on small entities. Further, under the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect members of consolidated groups that tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original with eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations.

All comments will be available for public inspection and copying at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing may be scheduled if requested by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

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

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## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.1502–24 to read in part as follows:

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

\* \* \* \* \*

Section 1.1502–24 also issued under 26 U.S.C. 1502.

\* \* \* \* \*

Par. 2. Section 1.1502–11 is amended by:

1. Revising paragraphs (a) introductory text, (a)(2), (a)(3), and (a)(4).

2. Removing and reserving paragraph (a)(6).

3. Revising paragraphs (b), (c)(2)(i), and (c)(2)(ii).

4. Removing in paragraph (c)(2)(vi) the phrase “unlimited deductions and losses that are absorbed” and adding “S’s absorbed amount of losses” in its place.

5. Revising paragraph (c)(4).

6. Revising the heading of paragraph (c)(7) and adding a sentence at the end of the paragraph.

7. Adding paragraph (e).

The revisions and additions read as follows:

#### § 1.1502–11 Consolidated taxable income.

(a) *In general.* The consolidated taxable income (CTI) for a consolidated return year shall be determined by taking into account—

\* \* \* \* \*

(2) Any consolidated net operating loss (CNOL) deduction (see § 1.1502–21 for the computation of the CNOL deduction);

(3) Any consolidated capital gain net income (see § 1.1502–22 for the computation of the consolidated capital gain net income);

(4) Any consolidated section 1231 net loss (see § 1.1502–23 for the computation of the consolidated section 1231 net loss);

\* \* \* \* \*

(6) [Reserved]

\* \* \* \* \*

(b) *Elimination of circular basis adjustments if there is no excluded COD income—*(1) *In general.* If a member (P) disposes of a share of stock of one or more subsidiaries (S), this paragraph (b) applies to determine the amount of S’s losses that will be used in the consolidated return year of disposition and in a carryback year. The purpose of these rules is to prevent P’s income, gain, deduction, or loss from the disposition of a share of S’s stock from affecting the amount of S’s deductions and losses that are absorbed. A change to the amount of S’s absorbed losses would affect P’s basis in S’s stock under § 1.1502–32, which in turn affects P’s gain or loss on the disposition of S’s stock. For purposes of this section, P is treated as disposing of a share of a subsidiary’s stock if any event described in § 1.1502–19(c) occurs or, if for any reason, a member recognizes gain or loss (including an excess loss account included in income) with respect to the share. However, to the extent income, gain, deduction, or loss from a disposition of a share of S’s stock is deferred under any rule of law (for example, § 1.1502–13 and section 267(f)), the taxable year in which the deferred amount is taken into account is treated as the taxable year of disposition. This paragraph (b) does not apply if any member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) during the consolidated return year of the disposition. If a member realizes such income, see paragraph (c) of this section. For purposes of this section, S’s ordinary loss means its separate net operating loss (as defined in § 1.1502–21(b)(2)(iv)(B)). Solely for purposes of this section, any reference to a member’s capital gain includes amounts

treated as capital gain. Furthermore, for those purposes, a member’s capital loss means a consolidated net capital loss determined by reference to only that member’s capital gain and capital loss items.

(2) *Deductions and losses of disposed subsidiaries—*(i) *Determination of absorbed amounts.* If P disposes of a share of S’s stock in a transaction to which this paragraph (b) applies, the extent to which S’s ordinary loss and capital loss (including losses carried over from a prior year) that are absorbed in the consolidated return year of the disposition or in a prior year as a carryback (the absorbed amount) is determined under this paragraph (b)(2). S’s absorbed amount is the amount that would be absorbed in a computation of the group’s consolidated taxable income (CTI) for the consolidated return year of the disposition (and any taxable year to which losses may be carried back) without taking into account any member’s income, gain, deduction, or loss from the disposition of any share of any subsidiary’s stock in that year. S’s absorbed amount is determined after first applying other applicable limitations and ordering rules (for example, limitations imposed by section 382(a) and § 1.1502–21 and the ordering rules of section 382(l)(2)) to S’s deductions and losses. Any election that the group makes on its actual return for the consolidated return year (for example, an election to relinquish a carryback under § 1.1502–21(b)(3)) must be used in this computation. Once S’s absorbed amount is determined, that amount is not redetermined. Except as provided in paragraph (b)(2)(iii)(B)(I) of this section, the amount determined under this paragraph (b)(2)(i) fixes only the amount of S’s losses that will be absorbed. Thus, under paragraph (b)(2)(iii)(A) of this section, the character of the losses that are absorbed in the actual computation of the group’s CTI for the year (or as a carryback to a prior year) may not be the same as the character of the losses that are absorbed in determining the absorbed amount. However, if the alternative computation of paragraph (b)(2)(iii)(B)(I) of this section is required, the character of the absorbed amount as determined under this paragraph (b)(2)(i) is retained.

(ii) *Stock basis reduction and gain or loss on disposition.* After the determina-

tion of S's absorbed amount, P reduces its basis in S's stock under the investment adjustment rules of § 1.1502-32(b)(2) by the absorbed amount. If any share is a loss share, P then adjusts its basis in S's stock by applying paragraphs (b) and (c) of § 1.1502-36, and, if an election is actually made under § 1.1502-36(d)(6), by applying § 1.1502-36(d) to the extent necessary to give effect to the election. P then computes its gain or loss on the disposed of shares after taking into account those adjustments.

(iii) *Actual computation of CTI—(A) In general.* The group's CTI and any carryback of a portion of a CNOL are determined under applicable provisions of the Internal Revenue Code (Code) and regulations, taking into account gain or loss on any subsidiary's stock, and taking into account losses of disposed of subsidiaries equal to each such subsidiary's absorbed amount.

(B) *Alternative computation.* If the computation of the group's CTI under paragraph (b)(2)(iii)(A) of this section would result in an absorption of less than all of any disposed of subsidiary's absorbed amount, then the group's CTI is computed by applying the following steps, rather than the computation under that paragraph:

(1) First, losses of each disposed of subsidiary equal in both amount and character and from the same taxable years as losses used in the computation of its absorbed amount under paragraph (b)(2)(i) of this section offset income and gain of other members without taking into account any gain or loss on any share of subsidiary stock and without regard to net losses of other members.

(2) Second, a disposing member offsets its gain on subsidiary stock with its losses on subsidiary stock of the same character. For this purpose, a loss on subsidiary stock is determined after applying § 1.1502-36(b) and (c), and so much of § 1.1502-36(d) as is necessary to give effect to an election actually made under § 1.1502-36(d)(6). If the disposing member has net income or gain on subsidiary stock, and if the member also has a loss of the same character (determined without regard to the net income, gain, deduction or loss on subsidiary stock), the loss offsets that net income or gain and any re-

maining income or gain is added to the amount determined after the application of paragraph (b)(2)(ii)(B)(1) of this section. For example, if P has a net capital loss on portfolio stock, that net loss is not taken into account in applying paragraph (b)(2)(iii)(B)(1). However, under this paragraph (b)(2)(iii)(B)(2), that net capital loss is absorbed to the extent of that member's net capital gain on subsidiary stock.

(3) Third, if, after the application of paragraph (b)(2)(iii)(B)(2) of this section, the group has remaining income or gain and a disposing member has a net loss on subsidiary stock (determined after applying § 1.1502-36(b) and (c), and so much of § 1.1502-36(d) as is necessary to give effect to an election actually made under § 1.1502-36(d)(6)), that remaining income or gain is then offset by a loss on the disposition of subsidiary stock, subject to the applicable rules of the Code and regulations. The amount of the offset, however, is limited to the lesser of the total remaining ordinary income or capital gain of the group (determined after the application of paragraph (b)(2)(iii)(B)(2) of this section), or the amount of the disposing member's ordinary income or capital gain of the same character (determined without regard to the stock loss). If the preceding sentence applies to more than one disposing member, and the sum of the amounts determined under that sentence exceeds the group's remaining ordinary or capital gain, the amounts offset capital gain or ordinary income on a pro rata basis under the principles of paragraph (e) of this section.

(4) Fourth, if, after application of paragraph (b)(2)(iii)(B)(3) of this section, the group has remaining ordinary income or capital gain, those amounts are offset by the unused losses of all members on a pro rata basis under paragraph (e) of this section.

(C) *Priority of rules.* The computation of CTI under this paragraph (b)(2)(iii) applies notwithstanding other rules for the absorption of a portion of a member's current year loss, such as paragraphs (a) and (e) of this section, §§ 1.1502-12 and 1.1502-22(a), and the absorption of a member's portion of a CNOL or consolidated net capital loss carryover from a prior year under §§ 1.1502-21(b) and 1.1502-22(b), respectively. For example,

in some circumstances, an ordinary loss of a disposed of subsidiary may offset capital gain of another member notwithstanding that under general rules a capital loss of another member would be allowed to the extent of capital gains before an ordinary loss is taken into account. Similarly, an ordinary loss with respect to a subsidiary's stock, which would generally offset ordinary income of the owning member and be included in determining that member's separate taxable income, may become a loss carryover if use of that loss would cause less than all of a disposed of subsidiary's absorbed amount to be used.

(D) *Deductions determined by reference to CTI.* In the case of any deduction of any member that is determined by reference to or limited by the amount of CTI (for example, a charitable contribution deduction under § 1.1502-24(c) and a percentage depletion deduction under § 1.1502-44(b)), the amount of the deduction is determined without regard to any gain or loss on subsidiary stock.

(iv) *Losses not absorbed.* To the extent S's losses in the consolidated return year of the disposition of its stock do not offset income or gain by reason of the rules of this paragraph (b), S ceases to be a member, and S's losses are not reattributed under § 1.1502-36(d)(6), the losses are carried over to its separate return years (if any) under the applicable principles of the Code and regulations thereunder. Those losses are not taken into account in determining the percentage of CNOL or consolidated net capital loss attributable to members under § 1.1502-21(b)(2)(iv) or § 1.1502-22(b)(3), respectively. If S remains a member, its unused losses are included in the CNOL or consolidated net capital loss carryovers and are subject to the allocation rules of those sections.

(v) *Disposition of stock of a higher-tier subsidiary.* If a subsidiary (T) is a lower-tier subsidiary (as described in § 1.1502-36(f)(4)) of a higher-tier subsidiary (S), and S's stock is disposed of during a consolidated return year, T's losses are subject to this paragraph (b) as if T's stock had been disposed of. Thus, T's absorbed amount is determined by disregarding any gain or loss (for example, an excess loss account taken into account under § 1.1502-19(b)) on a deemed disposition of T's stock as provided under this para-

graph (b), as well as any gain or loss on the disposition of a share of any other subsidiary's stock.

(vi) *Examples.* For purposes of the examples in this paragraph (b)(2)(vi), unless otherwise stated, P is the common parent of a calendar-year consolidated group and owns all of the only class of stock of subsidiaries S, S1, S2, M, M1, and M2 for the entire year; S, S1, S2, M, M1, M2, and T own no stock of lower-tier subsidiaries; all persons use the accrual method of accounting; the facts set forth the only corporate activity; all transactions are between unrelated persons; tax liabilities are disregarded; and § 1.1502-36 will not cause P to adjust its basis in S's stock immediately before a disposition. The rules of this paragraph (b)(2) are illustrated by the following examples:

*Example 1. Absorption of disposed of subsidiary's losses.* (i) *Facts.* P has a \$500 basis in S's stock. P sells S's stock for \$520 at the close of Year 1. For Year 1, P has ordinary income of \$30 (determined without taking into account P's gain or loss from the disposition of S's stock) and S an \$80 ordinary loss.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's taxable income is computed without taking into account P's gain or loss from the disposition of S's stock. The P group is treated as having a CNOL of \$50 (P's \$30 of income minus S's \$80 separate net operating loss). Accordingly, S's absorbed amount determined under paragraph (b)(2)(i) of this section is \$30.

(iii) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced by S's \$30 absorbed amount from \$500 to \$470 immediately before the disposition. Consequently, P recognizes a \$50 gain from the sale of S's stock, and the P group has CTI of \$50 for Year 1 (P's \$30 of ordinary income plus its \$50 of gain from the sale of S's stock, minus \$30 of S's ordinary loss equal to its absorbed amount). In addition, S's \$50 of unabsorbed loss is carried to S's first separate return year.

*Example 2. Carrybacks and carryovers.* (i) *Facts.* For Year 1, the P group has CTI of \$30 (all of which is attributable to P) and a consolidated net capital loss of \$100 (\$50 attributable to P and \$50 to S), which cannot be carried back. At the beginning of Year 2, P has a \$300 basis in S's stock. P sells S's stock for \$280 at the close of Year 2. For Year 2, P has ordinary income of \$30, and a \$20 capital gain (determined without taking into account the consolidated net capital loss carryover from Year 1 or P's gain or loss from the disposition of S's stock), and S has a \$100 ordinary loss.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's taxable income for

Year 2 is computed without taking into account P's gain or loss from the disposition of S's stock. Under section 1212(a)(1)(B), P's \$20 capital gain for Year 2 would be offset by \$20 of the group's consolidated capital loss carryover from Year 1 (\$10 attributable to P and \$10 attributable to S). P's \$30 of ordinary income in Year 2 would be offset by \$30 of S's \$100 ordinary loss in that year. P's \$30 of ordinary income in Year 1 would be offset by a \$30 CNOL carryback from Year 2, all of which is attributable to S. Accordingly, S's absorbed amount under paragraph (b)(2)(i) of this section is \$70 (\$10 of S's portion of the consolidated capital loss carryover from Year 1 plus \$60 of S's loss from Year 2).

(iii) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced by S's \$70 absorbed amount from \$300 to \$230, immediately before the disposition, resulting in \$50 of capital gain to P from the sale of S's stock for \$280 in Year 2. Thus, for Year 2 P will have \$70 of capital gain (\$50 from the stock sale plus \$20 from its other capital gain for that year), which will be offset by \$70 of the consolidated capital loss carryover from Year 1, \$35 of which is attributable to P and \$35 of which is attributable to S. Another \$30 of S's ordinary loss offsets P's \$30 of ordinary income in Year 2. An amount of S's ordinary loss equal to its remaining \$5 absorbed amount may be carried back to Year 1 to offset \$5 of the group's CTI in that year. P will have a \$15 (\$50 - \$35) capital loss carryover from Year 1, and S will carry over a \$15 (\$50 - \$35) capital loss from Year 1 and a \$65 (\$100 - \$35) NOL to its first separate return year.

*Example 3. Chain of subsidiaries.* (i) *Facts.* P has a \$500 basis in the stock of S and S has a \$500 basis in the stock of T, its wholly owned subsidiary. P sells all of its S stock for \$520 at the close of Year 1. For Year 1, P has ordinary income of \$30, S has no income or loss, and T has an \$80 ordinary loss.

(ii) *Determination of absorbed amount, basis reduction, and loss absorption.* Under § 1.1502-19(c)(1)(ii), T's stock is treated as disposed of when it becomes a nonmember, and its losses are subject to paragraph (b) of this section. Thus, T's absorbed amount is determined by taking into account P's \$30 of ordinary income but without taking into account any gain or loss on P's disposition of S's stock. Accordingly, T's absorbed amount determined under paragraph (b)(2)(i) of this section is \$30. Under paragraph (b)(2)(ii) of this section, S's basis in T's stock is reduced by \$30, from \$500 to \$470. Furthermore, under § 1.1502-32(a)(3)(iii), P's basis in S's stock is reduced by \$30, from \$500 to \$470, immediately before the sale. Consequently, P recognizes a \$50 gain from the sale of S's stock (\$520 - \$470), and T will have a \$50 (\$80 - \$30) NOL carryover to its first separate return year.

(iii) *Excess loss account in lower-tier stock.* The facts are the same as in paragraph (i) of this *Example 3*, except that S has a \$10 excess loss account (ELA) in T's stock (rather than a \$500 basis). Under paragraph (b)(1) of this section, T's stock is treated as disposed of and its absorbed amount is determined under paragraph (b)(2)(i) of this section. Thus, T's absorbed amount is determined by taking into account P's \$30 of ordinary income but without taking into account P's gain or loss on the disposition of S's

stock and S's inclusion of its ELA with respect to T's stock under § 1.1502-19(b)(1). Accordingly, T's absorbed amount determined under paragraph (b)(2)(i) of this section is \$30. Under paragraph (b)(2)(ii) of this section, S's ELA in its T stock is increased by \$30, from \$10 to \$40, immediately before the disposition of T's stock. Under § 1.1502-19(b), the ELA is included in S's income. Moreover, under § 1.1502-32(b)(2), P's basis in S's stock is increased immediately before the sale by a net \$10 (S's \$40 inclusion of T's ELA under § 1.1502-19(b) minus T's \$30 absorbed loss that tiers up under § 1.1502-32(a)(3)(iii)) from \$500 to \$510. Thus, P recognizes \$10 of gain on the sale of S's stock (\$520 - \$510), and S takes into account \$40 of gain from the inclusion of its ELA in T's stock. T will have a \$50 (\$80 - \$30) NOL carryover to its first separate return year.

*Example 4. Sale of S's stock and S remains in the group.* (i) *Facts.* For Year 1, the P group has CTI of \$100 (all of which is attributable to P). At the beginning of Year 2, P has a \$40 basis in each of the 10 shares of S's stock. P sells 2 shares of S's stock for \$85 each at the close of Year 2. For Year 2, P has an \$80 ordinary loss (determined without taking into account P's gain or loss from the sale of S's stock), and S has an \$80 ordinary loss.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's CTI for Year 2 is computed without taking into account P's gain or loss from the sale of S's stock. Thus, the group would have a \$160 CNOL for Year 2, \$100 of which is carried back to Year 1 (\$50 attributable to S and \$50 attributable to P) and offsets \$100 of CTI in that year. Accordingly, S's absorbed amount determined under paragraph (b)(2)(i) of this section is \$50.

(iii) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, P's basis in all of S's stock is reduced by \$50. Each of P's 10 shares of S stock is reduced by \$5 from \$40 to \$35. Consequently, on the sale of each of the 2 shares of S's stock, P recognizes a \$50 gain (\$85 - \$35). The losses available to offset the \$100 gain on the sale of S's 2 shares consist of P's \$80 ordinary loss and \$50 of S's ordinary loss equal its absorbed amount. Under paragraph (e) of this section, P's and S's losses are absorbed on a pro rata basis. Therefore, the group absorbs approximately \$62 ( $\$100 \times 80/80 + 50$ ) of P's ordinary loss from Year 2, and approximately \$38 ( $\$100 \times 50/80 + 50$ ) of S's ordinary loss in that year. P's remaining \$18 ( $\$80 - \$62$ ) of ordinary loss in Year 2 and S's remaining \$12 ( $\$50 - \$38$ ) of ordinary loss equal to its remaining absorbed amount may be carried back to Year 1 to offset \$30 of the \$100 of CTI in that year. For Year 2, the P group has \$30 remaining of its CNOL (all of which is attributable to S) which is carried to the P group's Year 3 consolidated return year.

(iv) *Lower-tier subsidiary.* The facts are the same as in paragraph (i) of this *Example 4*, except that S has no income or loss for Year 2, but S's wholly owned subsidiary, T, has an \$80 ordinary loss. Under paragraph (b)(2)(v) of this section, T's loss is subject to paragraph (b) of this section as if T's stock had been disposed of. To determine T's absorbed amount, and the effect of the absorption of its losses

under § 1.1502–32 on S’s basis in its T stock and P’s basis in its S stock, the group’s taxable income is computed without taking into account P’s gain or loss from the sale of S’s stock. Of the group’s \$160 CNOL for Year 2, \$100 is carried back to Year 1 (\$50 attributable to P and \$50 attributable to T) and offsets \$100 of CTI in that year. Accordingly, T’s absorbed amount determined under paragraph (b)(2)(i) of this section is \$50. Under paragraph (b)(2)(ii) of this section, S’s basis in T’s stock is reduced by \$50. Under § 1.1502–32(a)(3)(iii), the \$50 reduction to S’s basis in T’s stock tiers up and reduces P’s basis in its 10 shares of S stock by \$50. Consequently, P’s basis in each of the 10 shares of S stock will be decreased by \$5 from \$40 to \$35. On the sale of each of the 2 shares of S’s stock, P recognizes a \$50 gain (\$85 - \$35). Under the actual computation, the group has P’s \$80 ordinary loss and \$50 of T’s \$80 ordinary loss (limited by its absorbed amount) available to offset P’s \$100 gain on the sale of S’s stock. Under paragraph (e) of this section, P’s gain is offset on a pro rata basis by approximately \$62 ( $\$100 \times 80/(\$80 + \$50)$ ) of P’s ordinary loss in Year 2, and approximately \$38 ( $\$100 \times (\$50/(\$80 + \$50))$ ) of T’s ordinary loss in that year. P’s remaining \$18 of ordinary loss in Year 2 and \$12 of T’s ordinary loss equal to its remaining absorbed amount may be carried back to Year 1 to offset \$30 of the \$100 of CTI in that year. For Year 2, the P group has \$30 remaining of its CNOL (all of which is attributable to T) which is carried to the P group’s Year 3 consolidated return year.

*Example 5. Alternative Computation.* (i) *Facts.* At the beginning of Year 1, P has a \$200 basis in S’s stock. P sells all of its S stock for \$100 at the close of Year 1. For Year 1, P has \$10 capital gain on portfolio stock. In addition to S, P has two other subsidiaries, M1 and M2. M1 has capital gain of \$50; M2 has a capital loss of \$30, and S has a capital loss of \$60.

(ii) *Determination of absorbed amount.* To determine S’s absorbed amounts and the effect of the absorption of its loss under § 1.1502–32(b)(2) on P’s basis in S’s stock, the group’s taxable income is computed without taking into account P’s gain or loss from the disposition of S’s stock. Under that computation, S’s capital loss would offset \$40 ( $\$60 \times \$60/\$90$ ) of the group’s \$60 of capital gain. Accordingly, S’s absorbed amount is \$40.

(iii) *Basis reduction.* Under paragraph (b)(2)(ii) of this section, S’s \$40 absorbed amount reduces P’s basis in S’s stock by \$40 from \$200 to \$160. On the sale of S’s stock, P recognizes a capital loss of \$60 ( $\$100 - \$160$ ).

(iv) *Computation of CTI under generally applicable rules.* In the actual computation under paragraph (b)(2)(iii)(A) of this section, P is treated as having a \$50 capital loss (\$60 capital loss on the sale of S’s stock plus \$10 capital gain). Therefore, the only capital gain in the actual computation is M1’s \$50. There is a total of \$120 of capital loss in the computation: S’s \$40 of capital loss (equal to its absorbed amount), as well as P’s \$50 and M2’s \$30 capital losses. M1’s \$50 of capital gain would be offset on a pro rata basis by approximately \$16.50 of S’s loss ( $\$50 \times \$40/\$120$ ), approximately \$21.00 ( $\$50 \times \$50/\$120$ ) of P’s \$50 capital loss, and \$12.50 ( $\$50 \times \$30/\$120$ ) of M2’s capital loss. Because less

than all of S’s absorbed amount of \$40 would be used, the group’s CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section.

(v) *Alternative computation of CTI.* Under paragraph (b)(2)(iii)(B)(1) of this section, S’s \$40 capital loss (the amount and character of S’s absorbed amount) first offsets \$40 of the \$60 of capital gain (determined without taking into account any gain or loss on P’s sale of S stock and without regard to M2’s capital loss of \$30) generated by other members. Accordingly, \$20 of capital gain (P’s \$10 capital gain determined without regard to its loss on S’s stock plus M1’s \$50 capital gain minus S’s \$40 absorbed amount) remains. Because P has no net stock gain, paragraph (b)(2)(iii)(B)(2) of this section is inapplicable. Under paragraph (b)(2)(iii)(B)(3) of this section, \$10 (the amount of P’s capital loss on S’s stock limited by the amount of its income included in the computation under paragraph (b)(2)(i) of this section) of P’s capital loss offsets the group’s \$20 remaining capital gain. Under paragraph (b)(2)(iii)(B)(4) of this section, capital losses of members other than S offset the group’s remaining \$10 of capital gain on a pro rata basis. Therefore, the group will use \$3.75 of M2’s \$30 capital loss ( $\$10 \times \$30/\$80$ ) and \$6.25 of P’s \$50 remaining capital loss ( $\$10 \times \$50/\$80$ ). The group will have a \$70 consolidated net capital loss carryover to Year 2 (\$43.75 attributable to P and \$26.25 attributable to M2). Paragraphs (b), (c), and (d)(6) of § 1.1502–36 will not cause P to adjust its basis in S’s stock immediately before P’s sale of the S stock. However, S’s \$20 unabsorbed capital loss that may be carried to its first separate return year may be reduced under the attribute reduction rule of § 1.1502–36(d)(2).

*Example 6. Loss disposition.* (i) *Facts.* For Year 1, the P group has a consolidated net capital loss of \$100, all of which is attributable to S, and P and M have no income or loss. At the beginning of Year 2, P has a \$300 basis in S’s stock. P sells all of S’s stock for \$100 at the close of Year 2. For Year 2, P and S have no income or loss (determined without taking into account P’s gain or loss from the disposition of S’s stock) and the group has consolidated capital gain net income of \$100 attributable solely to M.

(ii) *Determination of absorbed amount.* To determine S’s absorbed amount and the effect of the absorption of its losses under § 1.1502–32(b)(2) on P’s basis in S’s stock, the group’s taxable income for Year 2 is computed without taking into account P’s gain or loss from the disposition of S’s stock. The \$100 consolidated net capital loss carryover from Year 1 attributable to S offsets the group’s \$100 of consolidated capital gain net income in Year 2. Accordingly, S’s absorbed amount determined under paragraph (b)(2)(i) of this section is \$100.

(iii) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, P’s basis in S’s stock is reduced from \$300 to \$200 immediately before the disposition. Consequently, P recognizes a \$100 capital loss on the sale of S’s stock. In an actual computation of CTI, P’s \$100 capital loss on S’s stock in Year 2 would offset M’s \$100 capital gain in Year 2 before the consolidated capital loss carryover from Year 1 and, as a result, S’s \$100 absorbed amount would not be used. Because less than all of

S’s absorbed amount of \$100 would be used, the group’s CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section.

(iv) *Alternative Computation of CTI.* Under paragraph (b)(2)(iii)(B)(1) of section, S’s \$100 consolidated net capital loss carryover from Year 1 first offsets M’s \$100 of capital gain in Year 2. Because P has no net stock gain to be added to the computation, the amount under paragraph (b)(2)(iii)(B)(2) of this section is zero. Because there is no remaining income to offset, paragraphs (b)(2)(iii)(B)(3) and (b)(2)(iii)(B)(4) of this section are inapplicable. Therefore, P’s \$100 loss on S’s stock becomes a consolidated net capital loss carryover to the group’s Year 3 consolidated return year.

*Example 7. Netting of Disposing Member’s Gains and Losses.* (i) *Facts.* At the beginning of Year 1, P has a \$120 basis in S’s stock. P sells all of S’s stock for \$80 at the close of Year 1. In addition, P has \$60 capital loss on the sale of portfolio stock. S has a capital loss of \$180. M1 has a capital gain of \$100 and M2 has a capital loss of \$120.

(ii) *Determination of absorbed amount.* To determine S’s absorbed amount and the effect of the absorption of its loss under § 1.1502–32(b)(2) on P’s basis in S’s stock, the group’s taxable income is computed without taking into account P’s gain or loss from the disposition of S’s stock. Under that computation, S’s capital loss would offset \$50 ( $\$100 \times \$180/(\$180 + \$120 + \$60)$ ) of M1’s \$100 capital gain. Accordingly, S’s absorbed amount is \$50.

(iii) *Basis reduction and computation of CTI under generally applicable rules.* Under paragraph (b)(2)(ii) of this section, P’s basis in S’s stock is reduced by \$50 from \$120 to \$70 immediately before the sale. Consequently, P recognizes a \$10 capital gain on the sale of S’s stock. In an actual computation of CTI, P’s \$10 capital gain on the sale of S’s stock would be offset by \$10 of P’s \$60 capital loss. M1’s \$100 capital gain would be offset by \$22.73 ( $\$100 \times \$50/(\$50 + \$120 + \$50)$ ) of P’s \$50 of net capital loss, \$ 54.54 ( $\$100 \times \$120/\$220$ ) of M2’s \$120 capital loss and \$22.73 ( $\$100 \times \$50/\$220$ ) of S’s \$50 capital loss. Because less than all of S’s absorbed amount of \$50 would be used, the group’s CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section.

(iv) *Alternative computation of CTI.* Under paragraph (b)(2)(iii)(B)(1) of this section, \$50 of S’s capital loss (the amount and character of S’s absorbed amount) first offsets \$50 of the \$100 capital gain (determined without taking into account any gain or loss on P’s sale of S stock and without regard to P’s and M2’s capital losses). Therefore, after the absorption of S’s loss equal to its absorbed amount, there is \$50 of remaining capital gain. P will have a \$10 capital gain on the sale of S’s stock, a \$60 capital loss on portfolio stock, and M2 will have a \$120 capital loss. Under paragraph (b)(2)(iii)(B)(2) of this section, \$10 of P’s \$60 loss on portfolio stock offsets its \$10 gain on S’s stock before M2’s \$120 capital loss is taken into account. No member has a net loss on subsidiary stock, and therefore paragraph (b)(2)(iii)(B)(3) of this section does not apply. Under paragraph (b)(2)(iii)(B)(4) of this section, the remaining capital gain of \$50 after the application of

paragraph (b)(2)(iii)(B)(3) is offset pro rata by \$14.70 ( $\$50 \times \$50 / (\$50 + \$120)$ ) of P's capital loss and \$35.30 ( $\$50 \times \$120 / \$170$ ) of M2's capital loss. P's unused capital loss of \$35.30 and M2's unused capital loss of \$84.70 become a \$120 consolidated net capital loss carryover to the group's Year 2 consolidated return year.

**Example 8. Character of Absorbed Amount.** (i) *Facts.* At the beginning of Year 1, P has a \$550 basis in S's stock. P sells all of S's stock for \$50 at the close of Year 1. In addition, P has a capital gain of \$200 (without regard to gain or loss on the sale of S's stock). S has an ordinary loss of \$50 and M has an ordinary loss of \$25.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's taxable income is computed without taking into account P's gain or loss from the disposition of S's stock. Under that computation, S's \$50 ordinary loss and M's \$25 ordinary loss offset \$75 of P's \$200 capital gain. Accordingly, S's absorbed amount determined under paragraph (b)(2)(i) of this section is \$50.

(iii) *Basis reduction and computation of CTI under generally applicable rules.* Under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced by \$50 from \$550 to \$500 immediately before the sale. Consequently, P recognizes a \$450 capital loss on the sale of S's stock. In an actual computation of CTI, \$200 of P's \$450 capital loss on its sale of S's stock would offset its \$200 capital gain and none of S's absorbed amount would be used. Because less than all of S's absorbed amount of \$50 would be used, the group's CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section.

(iv) *Alternative computation of CTI.* Under paragraph (b)(2)(iii)(B)(1) of this section, S's \$50 ordinary loss first offsets \$50 of P's \$200 capital gain. Therefore, after the absorption of S's loss equal to its absorbed amount, the group will have \$150 ( $\$200 - \$50$ ) of remaining capital gain. Because P has no net stock gain to be added to the computation, paragraph (b)(2)(iii)(B)(2) of this section is inapplicable. Under paragraph (b)(2)(iii)(B)(3) of this section, \$150 of P's \$450 loss on S's stock (the lesser of P's \$200 capital gain or the group's \$150 remaining capital gain) offsets the group's remaining \$150 of capital gain. Because there is no more income in the group for M's loss to offset, the amount under paragraph (b)(2)(iii)(B)(4) of this section is zero. Therefore, P's remaining unused capital loss on S's stock of \$300 and M's \$25 ordinary loss become carryovers to the group's Year 2 consolidated return year.

**Example 9. Worthless Stock Loss.** (i) *Facts.* At the beginning of Year 1, P has a \$120 basis in S's stock. For Year 1, P has \$100 of ordinary income (determined without taking into account P's gain or loss on the disposition of S's stock) and S generates an \$80 ordinary loss. At the close of Year 1, S issues stock to its creditors in a bankruptcy proceeding, and P's stock in S is canceled. The aggregate of S's historic gross receipts meets the requirements of section 165(g)(3)(B), which allows P to claim an ordinary loss with respect to S's stock.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the

absorption under § 1.1502-32(b)(2) on P's basis in S's stock, the group's CTI is computed without taking into account P's gain or loss from the disposition of S's stock. Under that computation, S's \$80 ordinary loss would offset \$80 of P's \$100 of ordinary income. Accordingly, S's absorbed amount under paragraph (b)(2)(i) of this section is \$80.

(iii) *Basis reduction and computation of CTI under generally applicable rules.* Under paragraph (b)(2)(ii) of this section, S's \$80 absorbed amount reduces P's basis in S's stock from \$120 to \$40. Therefore, P's worthless stock deduction with respect to S's stock is \$40. In an actual computation of CTI, P's separate taxable income under § 1.1502-12 would be determined by offsetting P's \$100 of ordinary income with its \$40 worthless stock deduction with respect to S's stock, leaving \$60 of ordinary income that would be offset by S's ordinary loss. However, that computation would result in the absorption of only \$60 of S's losses. Because less than all of S's absorbed amount of \$80 would be used, the group's CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section.

(iv) *Alternative computation of CTI.* Under paragraph (b)(2)(iii)(B)(1) of this section, S's \$80 ordinary loss first offsets \$80 of P's \$100 of ordinary income. Therefore, after the absorption of S's loss equal to its absorbed amount, the group will have \$20 of remaining ordinary income. Because P has no net stock gain to be added to the computation, the amount under paragraph (b)(2)(iii)(B)(2) of this section is zero. Under paragraph (b)(2)(iii)(B)(3) of this section, the group uses \$20 of P's \$40 ordinary loss on S's stock to offset the remaining \$20 income of the group. Because there remains no more income in the group, the amount under paragraph (b)(2)(iii)(B)(4) of this section is zero. P's remaining \$20 ordinary loss becomes a CNOL carryover to the group's Year 2 consolidated return year.

**Example 10. Charitable Contributions.** (i) *Facts.* At the beginning of Year 1, P has a \$1,000 basis in S's stock. P sells all of its S stock for \$900 at the close of Year 1. For Year 1, P has \$1,000 of ordinary income (determined without taking into account P's gain or loss on the disposition of S's stock). For Year 1, S makes a \$100 charitable contribution and incurs \$200 of ordinary and necessary business expenses that are deductible under section 162(a). In addition, P has a subsidiary M, which also makes a \$100 charitable contribution.

(ii) *Determination of S's portion of consolidated charitable contributions deduction.* Under § 1.1502-24(a), a group's consolidated charitable contributions deduction is limited to ten percent of its adjusted consolidated taxable income as defined in § 1.1502-24(c). Under paragraph (b)(2)(iii)(D) of this section, S's portion of the group's consolidated charitable contributions deduction is determined by computing the group's taxable income without regard to P's gain or loss on S's stock. Thus, for purposes of determining the consolidated charitable contributions deduction for Year 1, the group's CTI would be \$800 (P's \$1,000 of income minus S's \$200 of section 162 expenses). Accordingly, the consolidated charitable contributions deduction for Year 1 is limited to \$80 ( $\$800 \times 10\%$ ), \$40 attrib-

utable to S and \$40 attributable to M. Accordingly, S's ordinary loss for Year 1 is \$240 ( $\$200 + \$40$ ).

(iii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's CTI is computed without taking into account P's gain or loss from the disposition of S's stock. S's \$240 ordinary loss offsets \$240 of P's \$1,000 of ordinary income. Accordingly, S's absorbed amount is \$240.

(iv) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, S's \$240 absorbed amount reduces P's basis in S's stock from \$1,000 to \$760. On the sale of S's stock, P recognizes capital gain of \$140 ( $\$900 - \$760$ ). P's ordinary income is offset by \$240 of S's ordinary loss and \$40 of M's portion of the group's consolidated charitable contributions deduction, resulting in CTI of \$860 ( $\$1,000 + \$140 - \$280$ ). Of the group's excess charitable contributions of \$120, \$60 will be apportioned to S and carried to its first separate return year. The remaining \$60 of excess consolidated charitable contributions is the group's consolidated charitable contribution carryover under § 1.1502-24(b).

**Example 11. Application of Unified Loss Rule.** (i) *Facts.* In Year 1, P purchases the sole share of S's stock for \$500. At the time of the purchase, S owns Land with a basis of \$420. During Year 1, P incurs a \$100 ordinary loss and S earns \$100 in rental income, which increases P's basis in S's stock to \$600. For Year 2, P has ordinary income of \$30 (determined without taking into account P's gain or loss from the disposition of S's stock) and S incurs an ordinary loss of \$80. At the close of Year 2, S has \$20 of cash in addition to Land. In addition to S, P has another subsidiary M, which has an ordinary loss of \$40 for Year 2. At the close of Year 2, when the value of Land has declined, P sells the sole share of S's stock for \$480. No election is made under § 1.1502-36(d)(6) to reduce P's basis in S's stock or reattribute S's attributes to P.

(ii) *Determination of absorbed amount.* To determine S's absorbed amount and the effect of the absorption of its losses under § 1.1502-32(b)(2) on P's basis in S's stock, the group's CTI is computed without taking into account P's gain or loss from the disposition of S's stock. Under paragraph (e)(1) of this section, P's \$30 of ordinary income would be offset by \$10 ( $\$30 \times \$40 / \$120$ ) of M's ordinary loss for Year 2 and \$20 ( $\$30 \times \$80 / \$120$ ) of S's ordinary loss for Year 2. Accordingly, S's absorbed amount determined under paragraph (b)(2)(i) of this section is \$20.

(iii) *Loss absorption and basis reduction.* Under paragraph (b)(2)(ii) of this section, S's \$20 absorbed amount reduces P's basis in S's stock from \$600 (P's \$500 purchase price plus the \$100 positive adjustment in Year 1) to \$580. After taking into account the effects of all applicable rules of law, including paragraph (b)(2)(ii) of this section, P would recognize a \$100 ( $\$480 - \$580$ ) loss on the sale of S's stock. Thus, P's sale of the S share is a transfer of a loss share and therefore subject to § 1.1502-36. Under § 1.1502-36(b)(1)(ii), P's basis in its sole share of S's stock is not subject to redetermination. Under § 1.1502-36(c), P's basis in the S share (\$580) is reduced, but not below value, by the lesser

of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is the greater of zero and the sum of all investment adjustments (as defined in § 1.1502-36(b)(1)(iii)) applied to the basis of the share. The net positive adjustment applied to the basis of the share is \$80, S's \$100 income for Year 1 and its \$20 absorbed amount for Year 2. The share's disconformity amount is the excess, if any, of its basis (\$580) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount of \$500 is the sum of S's \$20 cash, S's basis in Land of \$420, and S's \$60 loss carryover (\$80 - \$20). Thus, the share's disconformity amount is \$80 (\$580 - \$500). The lesser of the net positive adjustment (\$80) and the share's disconformity amount (\$80) is \$80. Accordingly, under § 1.1502-36(c), P's basis in S's share is reduced by \$80 from \$580 to \$500, and after taking into account the adjustments under paragraphs (b) and (c) of § 1.1502-36, the transferred S share is still a loss share (\$480 sale price minus \$500 basis).

(iv) *Computation of CTI.* In an actual computation of CTI, P's \$30 of ordinary income would be offset on a pro rata basis by \$20 (\$30 x \$40/\$60) of M's ordinary loss and \$10 (\$30 x \$20/\$60) of S's ordinary loss. Because less than all of S's absorbed amount of \$20 would be used, the group's CTI is determined under the alternative computation of paragraph (b)(2)(iii)(B) of this section. Under paragraph (b)(2)(iii)(B)(1) of this section, the computation of CTI is made by first computing the group's taxable income without taking into account P's loss on the disposition of S's stock and using only S's loss equal to its \$20 absorbed amount. Accordingly, the group's \$30 of ordinary income is reduced by \$20 of S's ordinary loss, leaving \$10 of remaining ordinary income. Because P has no net stock gain to be added to the computation, paragraph (b)(2)(iii)(B)(2) of this section is inapplicable. Under paragraph (b)(2)(iii)(B)(3) of this section, the group's remaining \$10 of ordinary income is offset by a loss on the disposition of subsidiary stock, subject to applicable principles of the Code and regulations. The group's remaining \$10 of income may not be offset by P's capital loss on the sale of S's stock, because P has no income of the same character on its loss on S's stock. Under paragraph (b)(2)(iii)(B)(4) of this section, the group's remaining \$10 of ordinary income is offset by \$10 of M's ordinary loss. M's \$30 unabsorbed loss is carried over as a CNOL and P's remaining \$20 capital loss from the sale of S's stock is carried over as a consolidated net capital loss to the group's Year 3 consolidated return year. S's \$60 unused loss would be carried over to its separate return year subject to § 1.1502-36(d). Under § 1.1502-36(d)(2), S's attributes are reduced by S's attribute reduction amount. Under § 1.1502-36(d)(3), S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is \$20, the excess of the \$500 basis of the transferred share over the \$480 value of the transferred share. S's aggregate inside loss is \$20, the excess of its \$500 net inside attribute amount over the \$480 value of the S share. Therefore, the attribute reduction amount is \$20, the lesser of the \$20 net stock loss and the \$20 aggregate inside loss. Accordingly, S's \$20 attribute reduction

amount is applied to reduce from \$60 to \$40 the amount of S's NOL carryover to its separate return year.

(v) *Election to reduce stock basis.* The facts are the same as in paragraph (i) of this *Example 11* except that P elects under § 1.1502-36(d)(6)(i)(B) to reattribute S's losses to the full extent of the attribute reduction amount (\$20). Accordingly, P is treated as succeeding to \$20 of S's losses as if acquired in a transaction described in section 381(a) (see § 1.1502-36(d)(6)(i)(B) and (iv)(A)) and, as a result, P's basis in the S share is reduced from \$500 to \$480. After giving effect to the election, P will have no loss on S's stock, the group will have a \$50 CNOL carryover to Year 3 (\$30 attributable to M and \$20 attributable to P), and S will have a \$40 NOL carryover to its separate return year.

(3) *Effective/applicability date.* This paragraph (b) applies to dispositions of subsidiary stock occurring in consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

(c) \* \* \*

(2) \* \* \*

(i) *Limitation on deductions and losses to offset income or gain.* First, the determination of the extent to which S's deductions and losses for the consolidated return year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is made pursuant to paragraph (b)(2) of this section.

(ii) *Tentative adjustment of stock basis.* Second, § 1.1502-32 is tentatively applied to adjust the basis of the S stock to reflect the amount of S's income and gain included, and S's absorbed amount of losses, in the computation of consolidated taxable income or loss for the year of disposition (and any prior years) that is made pursuant to paragraph (b)(2) of this section, but not to reflect the realization of excluded COD income and the reduction of attributes in respect thereof.

\* \* \* \* \*

(4) *Definition of lower-tier corporation.* For purposes of this paragraph (c), lower-tier corporation means a lower-tier subsidiary described in § 1.1502-36(f)(4).

\* \* \* \* \*

(7) *Effective/applicability date.* \* \* \* However, paragraphs (c)(2) and (4) of this section apply to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

(e) *Absorption rule—(1) Pro rata absorption of ordinary losses.* If the group has a CNOL for a consolidated return year, the amount of each member's separate net operating loss, as defined in § 1.1502-21(b)(2)(iv)(B)(1), for the year that offsets the income or gain of other members is determined on a pro rata basis under the principles of § 1.1502-21(b)(2)(iv). For example, if, for the consolidated return year, P and S1 have a separate net operating loss of \$60 and \$30, respectively, and S2 (the only other member of the P group) has \$21 of income, \$14 of P's net operating loss and \$7 of S1's net operating loss offset S2's \$21 of income and are absorbed in the year.

(2) *Pro-rata absorption of capital losses.* If the group has a consolidated net capital loss for a consolidated return year and any member has capital gain net income for the year (taking into account only its capital gains and losses), the amount of each member's capital loss (as defined in paragraph (b)(1) of this section) that offsets the sum of the capital gain net income of other members (computed separately for each member) is determined on a pro rata basis under the principles of § 1.1502-21(b)(2)(iv). For purposes of this paragraph (e)(2), the character of each member's gains and losses is first determined on a consolidated basis. See §§ 1.1502-22 and 1.1502-23.

(3) *Effective/applicability date.* This paragraph (e) applies to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 1.1502-12 is amended by:

1. Revising paragraphs (b) and (e).
2. Removing and reserving paragraph (m).

The revisions read as follows:

§ 1.1502-12 *Separate taxable income.*

\* \* \* \* \*

(b) Any deduction that is disallowed under § 1.1502-15 shall be taken into account as provided in that section;

\* \* \* \* \*

(e) If a member disposes of a share of a subsidiary's stock, the member's deduction or loss (if any) on the stock that will be used in the consolidated return year of

the disposition and as a carryback to prior years is computed in accordance with § 1.1502-11(b) or (c), as appropriate.

\* \* \* \* \*  
(m) [Reserved]  
\* \* \* \* \*

Par. 4. Section 1.1502-21 is amended by:

1. Revising paragraph (b)(2)(iv)(B).
2. Adding paragraphs (b)(3)(vi) and (h)(1)(iv).

The revision and additions read as follows:

§ 1.1502-21 *Net operating losses.*

\* \* \* \* \*  
(b) \* \* \*  
(2) \* \* \*  
(iv) \* \* \*

(B) *Percentage of CNOL attributable to a member—(1) In general.* Except as provided in paragraph (b)(2)(iv)(B)(2) of this section, the percentage of the CNOL attributable to a member shall equal the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss (excluding capital gains and amounts treated as capital gains), including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(2) *Recomputed percentage.* If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non pro rata basis (for example, under §§ 1.1502-11(b) or (c), 1.1502-28, 1.1502-36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed under paragraph (b)(2)(iv)(B)(1) of this section. The recomputed percentage of the CNOL attributable to each member shall equal the remaining CNOL attributable to the mem-

ber at the time of the recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation.

\* \* \* \* \*  
(3) \* \* \*

(vi) *Amount of subsidiary's absorbed deductions and losses if subsidiary's stock is disposed of.* For special rules regarding the amount of a subsidiary's deductions and losses that is absorbed if a member disposes of a share of the subsidiary's stock, see § 1.1502-11(b) and (c).

\* \* \* \* \*  
(h) \* \* \*  
(1) \* \* \*

(iv) Paragraphs (b)(2)(iv)(B) and (b)(3)(vi) of this section apply to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

\* \* \* \* \*

§ 1.1502-21A [Removed]

Par. 5. Section 1.1502-21A is removed.

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

1. Revising paragraphs (a)(2) and (3).
2. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 1.1502-22 *Consolidated capital gain and loss.*

\* \* \* \* \*  
(a) \* \* \*

(2) The consolidated net section 1231 gain for the year (determined under § 1.1502-23);

(3) The net capital loss carryovers or carrybacks to the year; and

(4) Applying the ordering rules of § 1.1502-11(b) if stock of a subsidiary is disposed of.

\* \* \* \* \*

§ 1.1502-22A [Removed]

Par. 7. Section 1.1502-22A is removed.

§ 1.1502-23A [Removed]

Par. 8. Section 1.1502-23A is removed.

§ 1.1502-24 [Amended]

Par. 9. Section 1.1502-24 is amended by:

1. Removing the words "Five percent" in paragraph (a)(2) and adding "The percentage limitation on the total charitable contribution deduction provided in section 170(b)(2)(A)" in its place.

2. Removing "section 242," and "§ 1.1502-25," in paragraph (c).

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 10. The authority citation for part 301 is amended by revising the entry for § 301.6402-7 to read in part as follows:

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

Section 301.6402-7 also issued under 26 U.S.C. 6402(k).

\* \* \* \* \*

Par. 11. Section 301.6402-7 is amended by revising the last sentence of paragraph (g)(2)(ii) and paragraph (l) to read as follows:

§ 301.6402-7 *Claims for refund and applications for tentative carryback adjustments involving consolidated groups that include insolvent financial institutions.*

\* \* \* \* \*  
(g) \* \* \*  
(2) \* \* \*

(ii) \* \* \* For this purpose, the separate net operating loss of a member is determined by computing the consolidated net operating loss by reference to only the member's items of income, gain, deduction, and loss (excluding capital gains and amounts treated as capital gains), including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

\* \* \* \* \*

(l) *Effective/applicability dates.* This section applies to refunds and tentative carryback adjustments paid after December 30, 1991. However, the last sentence of paragraph (g)(2)(ii) of this section applies to separate net operating losses of members incurred in consolidated return years beginning on or after the date these

regulations are published as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on June 10, 2015, 8:45 a.m., and published in the issue of the Federal Register for June 11, 2015, 80 F.R. 33211)

## Notice of Proposed Rulemaking

### Aggregation of Basis for Partnership Distributions Involving Equity Interests of a Partner

**REG-138759-14**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would allow consolidated group members that are partners in the same partnership to aggregate their bases in stock distributed by the partnership for the purpose of limiting the application of rules that might otherwise cause basis reduction or gain recognition. The proposed regulations would also require certain corporations that engage in gain elimination transactions to reduce the basis of corporate assets or to recognize gain. The proposed regulations affect partnerships and their partners.

DATES: Comments and requests for a public hearing must be received by September 10, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-138759-14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-138759-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically,

via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-138759-14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kevin I. Babitz, (202) 317-6852; concerning submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### 1. Section 337(d) and the Repeal of the General Utilities Doctrine

In *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935), the Supreme Court held that corporations generally could distribute appreciated property to their shareholders without the recognition of any corporate level gain (the *General Utilities* doctrine). Beginning in 1969 and ending with the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085, (the Act), Congress enacted a series of statutory changes that limited and ultimately repealed the *General Utilities* doctrine. Under current law, sections 311(b) and 336(a) of the Internal Revenue Code (Code) require a corporation that distributes appreciated property to its shareholders to recognize gain determined as if the property were sold to the shareholders for its fair market value. Additionally, section 631 of the Act added section 337(d) to the Code to permit the Secretary to prescribe regulations that are necessary or appropriate to carry out the purposes of the *General Utilities* repeal, "including regulations to ensure that [the repeal of the *General Utilities* doctrine] may not be circumvented through the use of any provision of law or regulations."

##### 2. Section 732(f)

Section 538 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, 113 Stat. 1860, (the Ticket to Work Act), enacted section 732(f) on December 17, 1999. Section 732(f) provides that if: (1) a corporate partner receives a distribution from a partnership of stock in another corporation (distributed corporation), (2) the cor-

porate partner has control of the distributed corporation (ownership of stock meeting the requirements of section 1504(a)(2)) immediately after the distribution or at any time thereafter (the "control requirement"), and (3) the partnership's basis in the stock immediately before the distribution exceeded the corporate partner's basis in the stock immediately after the distribution, then the basis of the distributed corporation's property must be reduced by this excess. The amount of this reduction is limited to the amount by which the sum of the aggregate adjusted basis of property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation. The corporate partner must recognize gain to the extent that the basis of the distributed corporation's property cannot be reduced.

Congress enacted section 732(f) due to concerns that a corporate partner could otherwise negate the effects of a basis step-down to distributed property required under section 732(b) by applying the step-down against the basis of distributed stock of a corporation (distributed corporation). The Senate Finance Committee stated that:

The Committee is concerned that the downward adjustment to the basis of property distributed by a partnership may be nullified if the distributed property is corporate stock. The distributed corporation can be liquidated by the corporate partner, so that the stock basis adjustment has no effect. Similarly, if the corporations file a consolidated return, their taxable income may be computed without reference to the downward adjustment to the basis of the stock. These results can occur either if the partnership has contributed property to the distributed corporation, or if the property was held by the corporation before the distribution. Therefore, the provision requires a basis reduction to the property of the distributed corporation.

S. Rep. No. 106-201, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 50 (1999).

For example, assume a corporate partner has a partnership interest with zero basis and receives a partnership distribution of high-basis stock in a corporation.

The corporate partner's basis in the distributed corporation's stock is reduced to zero under section 732(a) or section 732(b). If the partnership has elected under section 754, then the basis of other partnership property is increased by an equal amount under section 734(b). The effects of the section 732 basis decrease and the section 734(b) basis increase generally offset each other. However, if the corporate partner owned stock in the distributed corporation that satisfied the control requirement, the corporate partner could liquidate the distributed corporation under section 332, and section 334(b) would generally provide for a carryover basis in the distributed corporation's property received by the corporate partner in the liquidation. Taken together, these rules could permit the partnership to increase the basis of its retained property without an equivalent basis reduction following the liquidation of the distributed corporation. Section 732(f) generally precludes this result by requiring that either the distributed corporation must reduce the basis of its property or the corporate partner must recognize gain (to the extent the distributed corporation is unable to reduce the basis of its property). Thus, section 732(f) generally ensures that any basis increase under section 734(b) is ultimately offset.

Section 732(f) applies if the corporate partner either has control of the distributed corporation following the distribution or if the corporate partner subsequently acquires control of the distributed corporation at any time thereafter. Section 732(f) does not apply if the corporate partner does not have control of the distributed corporation immediately following the distribution and the corporate partner establishes to the satisfaction of the Secretary that the distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

In its discussion of the control requirement of section 732(f)(1)(B), the Conference Report to the Ticket to Work Act explains that "this provision also calls for regulations, including regulations to avoid double counting and to prevent the abuse of the purposes of this provision." H. R. Conf. Rep. No. 106-478, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 174 (1999). This grant of regulatory authority is codified at section 732(f)(8),

which provides that "the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes."

Simultaneous with this notice of proposed rulemaking, the Treasury Department and the IRS are issuing final and temporary regulations under section 337(d) (§ 1.337(d)-3T) that prevent a corporate partner from using a partnership to avoid corporate-level gain required to be recognized under section 311(b) or section 336(a) following the repeal of the *General Utilities* doctrine. Those final and temporary regulations address partnership acquisitions, ownership, and distributions of stock and other equity interests in a corporate partner. Sections 732(f) and 337(d) share a common purpose of preserving corporate-level gains. Given this shared purpose, these proposed regulations are issued under the combined authority of sections 337(d) and 732(f).

### Explanation of Provisions

As described in this preamble, Congress provided the Treasury Department and the IRS with a broad grant of statutory authority to carry out the purposes of sections 337(d) and 732(f). The Treasury Department and the IRS believe that as currently applied, section 732(f) may be too broad in some circumstances and too narrow in others. Specifically, section 732(f) may require basis reduction or gain recognition even though that basis reduction or gain recognition does not further the purposes of section 732(f). In other circumstances, corporate partners may inappropriately avoid the purposes of section 732(f) by engaging in transactions that allow corporate partners to receive property held by a distributed corporation without reducing the basis of that property to account for basis reductions under section 732(b) made when the partnership distributed stock of the distributed corporation to the corporate partner. These proposed regulations add rules to conform the application of section 732(f) with Congress's identified purposes for enacting sections 337(d) and 732(f) in these situations.

### 1. Aggregation of Section 732(b) Basis Adjustments

Section 732(f) generally applies on a partner-by-partner basis. However, the Treasury Department and the IRS believe that in certain circumstances, it is appropriate to aggregate the bases of consolidated group members in a partnership for purposes of applying section 732(f). For example, basis aggregation may be appropriate when two or more corporate partners in the same consolidated group (member-partners) receive a deemed distribution of stock in a distributed corporation either because (a) the partnership elects to be treated as an association taxable as a corporation under § 301.7701-3 or (b) one corporate partner acquires all of the interests in the partnership causing the partnership to liquidate. In these instances, section 732(b) may cause one member-partner to increase the basis of distributed stock while another member-partner reduces the basis of distributed stock by an equivalent amount. Under current law, section 732(f) may require the member-partner whose basis is reduced to recognize gain or to reduce the basis of the distributed corporation's property, with no offsetting loss or increase to the basis of the distributed corporation's property with respect to the member-partner whose basis is increased. The Treasury Department and the IRS do not believe that prohibiting member-partners from consolidating their bases in a partnership for purposes of applying section 732(f) in these situations furthers Congress's intent to sustain the effect of the basis reduction to distributed property.

These proposed regulations provide for the aggregation of basis within the same consolidated group (as defined in § 1.1502-1(h)), for purposes of section 732(f), when two conditions are met. First, two or more of the corporate partners receive a distribution of stock in a distributed corporation. Second, the distributed corporation is or becomes a member of the distributee partners' consolidated group following the distribution.

Under this rule, section 732(f) only applies to the extent that the partnership's adjusted basis in the distributed stock immediately before the distribution exceeds the aggregate basis of the distributed stock

in the hands of all members of the distributee corporate partner's consolidated group immediately after the distribution. The requirement that the distributed corporation be a member of the consolidated group is intended to avoid unintended consequences that could result if that corporation was a controlled foreign corporation. However, the Treasury Department and the IRS request comments on whether this proposed rule should apply more broadly.

## 2. Gain Elimination Transactions

As described in the Background section of this Preamble, Congress enacted section 732(f) to address concerns that a corporate partner could otherwise negate the effects of a basis step-down to distributed property required under section 732(b) by applying the step-down against stock of a distributed corporation. Congress indicated that it intended for the control requirement to apply expansively by requiring corporate partners to apply section 732(f) whenever the corporate partner acquires control (as defined in section 732(f)(5)) of the distributed corporation as part of a plan or arrangement. The formalistic definition of control, however, fails to anticipate other scenarios in which a corporate partner's acquisition of the property of a distributed corporation has the same effect. To address these scenarios, Congress granted the Secretary authority to promulgate regulations necessary to carry out the purposes of section 732(f).

The Treasury Department and the IRS are concerned that some corporate partners might eliminate gain in the stock of a distributed corporation while avoiding the effects of a basis step-down in transactions in which the corporate partner's ownership of the distributed corporation does not satisfy the control requirement. For example, a distributed corporation not controlled by a corporate partner might subsequently merge into the corporate partner in a reorganization under section 368(a) in which gain is not recognized as part of a plan or arrangement. In this situation, the gain inherent in the stock of the distributed corporation is eliminated, but the basis of the distributed corporation's property is not reduced. If section 732(f)

does not apply to this transaction, then the basis step-down is negated, contravening the purposes of section 732(f) and *General Utilities* repeal.

Accordingly, these proposed regulations provide that, in the event of a gain elimination transaction, section 732(f) shall apply as though the corporate partner acquired control (as defined in section 732(f)(5)) of the distributed corporation immediately before the gain elimination transaction.

The proposed regulations define several terms for purposes of applying this rule. The term "Corporate Partner" means a person that is classified as a corporation for federal income tax purposes and that holds or acquires an interest in a partnership. The term "Stock" includes other equity interests, including options, warrants and similar interests. The term "Distributed Stock" means Stock distributed by a partnership to a Corporate Partner, or Stock the basis of which is determined by reference to the basis of such Stock. Distributed Stock also includes Stock owned directly or indirectly by a Distributed Corporation if the basis of such Stock has been reduced pursuant to section 732(f)(7). The term "Distributed Corporation" means the issuer of Distributed Stock (or, in the case of an option, the issuer of the Stock into which the option is exercisable). The term "Gain Elimination Transaction" means a transaction in which Distributed Stock is disposed of and less than all of the gain is recognized, unless (1) the transferor of the Distributed Stock receives in exchange Stock or a partnership interest that is exchanged basis property (as defined in section 7701(a)(44)) with respect to the Distributed Stock, or (2) a transferee corporation holds the Distributed Stock as transferred basis property (as defined in section 7701(a)(43)) with respect to a transferor corporation's gain. Examples of Gain Elimination Transactions include (without limitation) a reorganization under section 368(a) in which the Corporate Partner and the Distributed Corporation combine, and a distribution of the Distributed Stock by the Corporate Partner to which section 355(c)(1) or 361(c)(1) applies.

## 3. Tiered Partnerships

The IRS and the Treasury Department are concerned that taxpayers could use tiered partnerships to circumvent these regulations and section 732(f) generally. Congress specified in the Conference Report to the Ticket to Work Act that taxpayers should not be permitted to avoid the purposes of section 732(f) through the use of tiered partnerships. H. R. Conf. Rep. No. 106-478, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 174 (1999). Therefore, these regulations require taxpayers to apply these regulations to tiered partnerships in a manner consistent with the purpose of section 732(f).

### *Effective/Applicability Date*

The rules governing aggregation of basis apply to distributions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing gain elimination transactions apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing tiered partnerships apply to distributions and transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. No inference is expressed or implied with respect to distributions or transactions occurring before the date these regulations are published as final regulations in the **Federal Register**.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. These proposed regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect sophisticated ownership structures with interlocking owner-

ship of corporations, partnerships and corporate stock. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal authors of these regulations are Kevin I. Babitz and Joseph R. Worst, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

\* \* \* \* \*

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

#### PART I—INCOME TAXES

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

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

Section 1.732-3 also issued under 26 U.S.C. 337(d), 732(f), and 1502. \* \* \*

Par. 2. Section 1.732-3 is revised to read as follows:

*§ 1.732-3 Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner.*

(a) *Determination of control.* The determination of whether a corporate partner

that is a member of a consolidated group has control of a distributed corporation for purposes of section 732(f) shall be made by applying the special aggregate stock ownership rules of § 1.1502-34.

(b) *Aggregation of basis within consolidated group.* With respect to distributed stock of a corporation, if the following two conditions are met, then section 732(f) shall apply only to the extent that the partnership's adjusted basis in the distributed stock immediately before the distribution exceeds the aggregate basis of the distributed stock of the corporation in the hands of corporate partners that are members of the same consolidated group (as defined in § 1.1502-1(h)) immediately after the distribution:

(1) Two or more of the corporate partners receive a distribution of stock in another corporation; and

(2) The corporation, the stock of which was distributed by the partnership, is or becomes a member of the distributee partners' consolidated group following the distribution.

(c) *Application of section 732(f) to Gain Elimination Transactions—* (1) *General rule.* In the event of a Gain Elimination Transaction, section 732(f) shall apply as though the Corporate Partner acquired control (as defined in section 732(f)(5)) of the Distributed Corporation immediately before the Gain Elimination Transaction.

(2) *Definitions.* The following definitions apply for purposes of this paragraph (c):

(i) *Corporate Partner.* The term Corporate Partner means a person that is classified a corporation for federal income tax purposes and that holds or acquires an interest in a partnership.

(ii) *Stock.* The term Stock includes other equity interests, including options, warrants and similar interests.

(iii) *Distributed Stock.* The term Distributed Stock means Stock distributed by a partnership to a Corporate Partner, or Stock the basis of which is determined by reference to the basis of such Stock. Distributed Stock also includes Stock owned directly or indirectly by a Distributed Corporation if the basis of such Stock has been reduced pursuant to section 732(f).

(iv) *Distributed Corporation.* The term Distributed Corporation means the issuer

of Distributed Stock (or, in the case of an option, the issuer of the Stock into which the option is exercisable).

(v) *Gain Elimination Transaction.* The term Gain Elimination Transaction means a transaction in which Distributed Stock is disposed of and less than all of the gain is recognized unless—

(A) The transferor of the Distributed Stock receives in exchange Stock or a partnership interest that is exchanged basis property (as defined in section 7701(a)(44)) with respect to the Distributed Stock, or

(B) A transferee corporation holds the Distributed Stock as transferred basis property (as defined in section 7701(a)(43)) with respect to the transferor corporation's gain. A Gain Elimination Transaction includes (without limitation) a reorganization under section 368(a) in which the Corporate Partner and the Distributed Corporation combine, and a distribution of the Distributed Stock by the Corporate Partner to which section 355(c)(1) or 361(c)(1) applies.

(d) *Tiered partnerships.* The rules of this section shall apply to tiered partnerships in a manner that is consistent with the purposes of section 732(f).

(e) *Effective/applicability date.* The rules governing aggregation of basis in paragraph (b) of these regulations apply to distributions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing gain elimination transactions in paragraph (c) of this section apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing tiered partnerships in paragraph (d) of this section apply to distributions and transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

John Dalrymple,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on June 11, 2015, 8:45 a.m., and published in the issue of the Federal Register for June 12, 2015, 80 F.R. 33452)

# Notice of proposed Rulemaking

## Partnership Transactions Involving Equity Interests of a Partner

### REG-149518-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Bulletin**, the IRS and the Treasury Department are issuing temporary regulations that prevent a corporate partner from using a partnership to avoid corporate level gain required to be recognized. These regulations affect partnerships and their partners. The text of the temporary regulations in this issue of the **Bulletin** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by September 10, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-149518-03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-149518-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-149518-03).

#### FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Kevin I. Babitz, (202) 317-6852; concerning submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations set forth rules for applying section 337(d) to partnerships and S corporations. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. These proposed regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect sophisticated ownership structures with interlocking ownership of corporations, partnerships and corporate stock. Additionally, these proposed regulations contain a number of de minimis provisions that render the regulations inapplicable to most small businesses. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and

the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

##### Drafting Information

The principal authors of these regulations are Joseph R. Worst and Kevin I. Babitz, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

##### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (PS-91-90; REG-208989-90) that was published in the **Federal Register** on December 15, 1992 (57 FR 59324), is withdrawn.

\* \* \* \* \*

##### Proposed Amendment to the Regulations

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

#### PART I—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 1.337(d)-3 also issued under 26 U.S.C. 337(d). \* \* \*

Par. 2. Section 1.337(d)-3 is added to read as follows:

*§ 1.337(d)-3 Gain recognition upon certain partnership transactions involving a partner's stock.*

[The text of proposed § 1.337(d)-3 is the same as the text of § 1.337(d)-3T(a) through (i) published elsewhere in this issue of the **Bulletin**].

Par. 3. Section 1.732-1 is amended by revising paragraphs (c)(1) and (c)(5)(ii) to read as follows:

*§ 1.732-1 Basis of distributed property other than money.*

\* \* \* \* \*

(c)(1) [The text of proposed § 1.732-1(c)(1) is the same as the text of §

1.732-1T(c)(1) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

(5) \* \* \*

(ii) [The text of proposed § 1.732-1(c)(5)(ii) is the same as the text of § 1.732-1T(c)(5)(ii) published elsewhere in this issue of the **Bulletin**].

\* \* \* \* \*

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

(Filed by the Office of the Federal Register on June 11, 2015, 8:45 a.m., and published in the issue of the Federal Register for June 12, 2015, 80 F.R. 33451)

# 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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# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

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

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