

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-42
October 19, 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

Rev. Proc. 2015-50, page 583.

Revenue Procedure 2015-50 provides an updated list of countries with which the IRS and Treasury have determined that it is appropriate to have an automatic exchange relationship with respect to the information collected under §§ 1.6049-4(b)(5) and 1.6049-8 of the Income Tax Regulations. Revenue Procedure 2015-50 supplements Revenue Procedure 2014-64, 2014-53 I.R.B. 1022, by adding 16 countries to the list of countries in Section 4 of Rev. Proc. 2014-64.

Rev. Proc. 2015-51, page 583.

This procedure provides specifications for the private printing of red-ink substitutes for the 2015 revisions of Forms W-2 and W-3. This procedure will be reproduced as the next revision of Publication 1141. Rev. Proc. 2014-58 is superseded.

EXEMPT ORGANIZATIONS

T.D. 9740, page 573.

This Treasury Decision contains final regulations regarding the standards for making a good faith determination that a foreign organization is a qualifying public charity (known as an equivalency determination), grants to which may be qualifying distributions under section 4942 and not taxable expenditures under section 4945. The regulations will affect private foundations seeking to make such good faith determinations. The regulations also include minor changes conforming to legislation.

EXCISE TAX

T.D. 9740, page 573.

This Treasury Decision contains final regulations regarding the standards for making a good faith determination that a foreign organization is a qualifying public charity (known as an equivalency determination), grants to which may be qualifying distributions under section 4942 and not taxable expenditures under section 4945. The regulations will affect private foundations seeking to make such good faith determinations. The regulations also include minor changes conforming to legislation.

ADMINISTRATIVE

Rev. Proc. 2015-51, page 583.

This procedure provides specifications for the private printing of red-ink substitutes for the 2015 revisions of Forms W-2 and W-3. This procedure will be reproduced as the next revision of Publication 1141. Rev. Proc. 2014-58 is superseded.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

T.D. 9740

DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Part 53

Reliance Standards for Making Good Faith Determinations

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the standards for making a good faith determination that a foreign organization is a charitable organization that is not a private foundation, so that grants made to that foreign organization may be qualifying distributions and not taxable expenditures. The regulations also make additional changes to conform the final regulations to statutory amendments made by the Deficit Reduction Act of 1984 and the Pension Protection Act of 2006. The regulations will affect private foundations seeking to make good faith determinations.

DATES: *Effective date:* These regulations are effective on September 25, 2015.

Applicability date: For the dates of applicability, see §§ 53.4942(a)-3(f) and 53.4945-5(f)(3).

FOR FURTHER INFORMATION
CONTACT: Ward L. Thomas, (202) 317-6173 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in these final regulations is the good faith determination set forth in §§ 53.4942(a)-3(a)(6)

and 53.4945-5(a)(5). The collection of information contained in these regulations is reflected in the collection of information for Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation," that has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545-0052. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

This document contains amendments to 26 CFR part 53 under chapter 42, subtitle D of the Internal Revenue Code (Code). To avoid certain excise taxes under chapter 42, a private foundation (referred to in this preamble as a "foundation" or "grantor")¹ must make a minimum level of "qualifying distributions" (as defined in section 4942 of the Code) each year and must avoid making taxable expenditures (as defined in section 4945). A foundation generally may treat grants made for charitable purposes to certain foreign organizations as qualifying distributions under section 4942 if the foundation makes a good faith determination that the foreign organization is an organization described in sections 501(c)(3) and 509(a)(1), (a)(2), or (a)(3) (a "public charity") that is not a "disqualified supporting organization" described in section 4942(g)(4)(A)(i) or (ii), or is an organization described in sections 501(c)(3) and 4942(j)(3) (an "operating foundation," also known as a "private op-

erating foundation"). Similarly, foundations may treat grants for charitable purposes to certain foreign organizations as other than taxable expenditures under section 4945 without having to exercise expenditure responsibility if the foundation makes a good faith determination that the foreign organization is a public charity (other than a disqualified supporting organization) or is an operating foundation described in section 4940(d)(2) (an "exempt operating foundation"). In this preamble, a foreign grantee that is a public charity or operating foundation that may receive a qualifying distribution (or a grant for which expenditure responsibility is not required) is referred to as a "qualifying public charity."² This good faith determination is commonly known as an "equivalency determination."

Longstanding regulations under both sections 4942 and 4945 provide that a foundation will ordinarily be considered to have made a "good faith determination" if the determination is based on an affidavit of the grantee or on an opinion of counsel of either the grantor or the grantee. The affidavit or opinion must set forth sufficient facts concerning the operations and support of the grantee for the IRS to determine that the grantee would be likely to qualify as a public charity or an operating foundation. See §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5). In this preamble, we refer to this rule, which gives assurance to foundations meeting the rule that their grants to foreign organizations will ordinarily be considered to be qualifying distributions and not taxable expenditures, as the "special rule."

Revenue Procedure 92-94, 1992-2 CB 507, provides further guidance by providing a "simplified procedure" that foundations may follow, both for making "good faith determinations" under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5), and for making similar "reasonable judgments" under

¹The regulations under section 4942 refer to "distributing foundations" making distributions to "donee organizations," whereas the regulations under section 4945 refer to "grantor foundations" making or paying grants to "grantee organizations." For simplicity, this preamble refers to grantors making grants or distributions to grantee organizations, in reference to both Code sections.

²The class of qualifying public charities for purposes of section 4945 is a slightly smaller subset of those for purposes of section 4942. Thus, grants to foreign organizations determined to be operating foundations that are not exempt operating foundations, and grants by operating foundations to foreign organizations determined to be disqualified supporting organizations, may be qualifying distributions under section 4942 but the grantor must nevertheless exercise expenditure responsibility to avoid excise taxes under section 4945 on such grants.

§ 53.4945–6(c)(2)(ii) that a foreign organization is described in section 501(c)(3) (or in section 4947(a)(1), and thus treated under section 4947(a)(1) as described in section 501(c)(3) for purposes of chapter 42 of the Code). Under the revenue procedure, if the grantor’s determination that a foreign organization is described in section 501(c)(3) or section 4947(a)(1) of the Code and is either a public charity or an operating foundation is based on a “currently qualified” affidavit prepared by the grantee containing the information specified in the revenue procedure, then the foundation will be deemed to have made a good faith determination (for purposes of §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5)) and a reasonable judgment (for purposes of § 53.4945–6(c)(2)(ii)). If a foundation possesses information that suggests the affidavit may not be reliable, it must consider that information in determining whether the affidavit is currently qualified.

Revenue Procedure 92–94 provides that an affidavit will be considered currently qualified if: (1) the facts it contains reflect the grantee organization’s latest complete accounting year (or the affidavit is updated to reflect the grantee organization’s current data) and (2) the relevant substantive requirements of sections 501(c)(3) and 4947(a)(1) and sections 509(a)(1), (2), or (3) or section 4942(j)(3) remain unchanged. If a grantee’s status under the relevant Code sections does not depend on financial support, which can change from year to year, an affidavit need be updated only by asking the grantee to amend the description of any facts in the original affidavit that have changed. If the facts have not changed, an attested statement by the grantee to that effect is enough to update an affidavit. However, if a grantee’s status as a public charity or operating foundation depends on financial support, the affidavit must be updated at least every other year by asking the grantee to provide an attested statement containing enough financial data to establish that it continues to meet the requirements of the applicable Code section.

On September 24, 2012, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–134974–12) in the **Federal Register** (77 FR

58796) that contained proposed regulations regarding the standards for making a good faith determination that a foreign organization is a qualifying public charity, so that grants made to the foreign organization may be qualifying distributions and not taxable expenditures. The proposed regulations would have modified the special rule in §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5) by generally expanding the class of advisors upon whose advice foundations may ordinarily rely in making good faith determinations beyond the attorneys for the grantor and grantee to “qualified tax practitioners” (including attorneys, CPAs, and enrolled agents subject to the requirements of Circular 230). In addition, the proposed regulations would have clarified that a determination based on written advice is ordinarily considered made in good faith if the foundation’s reliance on the written advice meets the requirements of § 1.6664–4(c)(1), which are the standards for reasonable reliance in good faith on professional tax advice for penalty relief purposes. The proposed regulations also would have updated the regulations to reflect legislative changes regarding qualifying public charities.

The proposed revisions to the regulations were intended to facilitate grantmaking by foundations to foreign organizations by making it easier and less costly for foundations to obtain written advice from qualified tax practitioners to assure that a grant will ordinarily be considered a qualifying distribution (and not a taxable expenditure). The preamble to the proposed regulations explained that expanding the class of practitioners on whose written advice a foundation may base a good faith determination was expected to decrease the cost of seeking professional advice regarding these determinations, enabling foundations to engage in international philanthropy in a more cost-effective manner. At the same time, expressly allowing reliance for purposes of the special rule on a broader spectrum of professional tax advisors was expected to encourage more foundations to obtain written tax advice, thus promoting the quality of the determinations being made. To facilitate this, foundations were permitted to rely on the provisions of the

proposed regulations for grants made on or after September 24, 2012.

The preamble to the proposed regulations specifically requested comments on three issues. First, comments were requested on whether a time limit for reliance on an affidavit or written advice would be appropriate, and if so, the proper length of such a time limit. Second, comments were sought on whether Rev. Proc. 92–94 should be modified to take into account changes to the public support test regulations for public charity qualification that were finalized in 2011 (TD 9549; 76 FR 55745). Third, although the proposed regulations did not change the ability of foundations to rely on grantee affidavits for purposes of the special rule, the Treasury Department and the IRS notified the public that they were considering whether it would be appropriate to remove reliance on affidavits for purposes of the special rule, or to restrict it (for example, by permitting use of affidavits only for grants below a certain dollar amount or by requiring supporting information), and requested comments.

No public hearing was requested or held; however, 11 comments from the public were received. All comments are available at www.regulations.gov or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Provisions

Commenters were generally supportive of the proposed regulations, with several expressing their hope or expectation that the proposed regulations would reduce barriers to, and streamline the process of, international grantmaking. Commenters noted that expanding the class of professionals upon whose written advice a foundation may base its good faith determination would reduce the costs of making equivalency determinations by enabling the sector to take advantage of economies of scale to increase the quality and efficiency of good faith determinations regarding foreign grantees. The majority of comments focused primarily on the three issues for which comments specifically were requested: (1) the circumstances under which it would be appropriate for

foundations to rely on grantee affidavits in making equivalency determinations, (2) the permitted reliance period for an affidavit or advisor's written advice, and (3) modification of Rev. Proc. 92-94.

The final regulations balance two important considerations: (1) removing barriers to international grantmaking by foundations (as well as by entities treated like foundations for these purposes) and (2) ensuring that foundations' good faith determinations are informed by a sufficient understanding of the applicable law, are based on all relevant factual information, and are likely to be correct. The Treasury Department and IRS take note that, according to publicly available data, foundations (acting in reliance on the proposed regulations, as permitted) now may obtain written advice of a qualified tax practitioner for purposes of making a good faith determination at a substantially lower cost than was previously available, in part due to economies of scale experienced by organizations employing qualified tax practitioners specializing in providing written advice to several grantors.

The major areas of comment and the revisions are discussed in this preamble.

Expanded Class of Advisors

In accordance with the proposed regulations and public comments, the final regulations modify the special rule to expand the class of advisors providing written advice on which foundations may ordinarily rely to qualified tax practitioners, including CPAs and enrolled agents (as well as attorneys) who are subject to the standards of practice before the IRS set out in Circular 230. A qualified tax practitioner may include an attorney serving as a foundation's in-house counsel, as well as a foundation's outside counsel. Because Circular 230 requires that, to practice before the IRS, an attorney or CPA must be licensed in a state, territory, or possession of the U.S., and an enrolled agent must be enrolled by the IRS, the final regulations effectively require that the advisor be authorized to practice in a state, territory, or possession of the U.S. or as an enrolled agent. In addition, like the proposed regulations, the final regulations provide that a determination based on the written advice of a qualified tax practitioner ordinarily

will be considered as made in good faith if the foundation's reliance meets the requirements of § 1.6664-4(c)(1). As noted in the preamble to the proposed regulations, § 1.6664-4(c)(1) provides that all pertinent facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on written advice, but a foundation's reliance on written advice is not reasonable and in good faith if the foundation knows, or reasonably should have known, that a qualified tax practitioner lacks knowledge of the relevant aspects of U.S. tax law (which, in this context, would include the U.S. tax law of charities). Moreover, a foundation may not rely on written advice if it knows, or has reason to know, that relevant facts were not disclosed to the qualified tax practitioner or that the written advice is based on a representation or assumption that the foundation knows, or has reason to know, is unlikely to be true.

Reliance on opinion of foreign counsel

One commenter suggested that the final regulations clarify that foundations and qualified tax practitioners may obtain advice from foreign counsel on questions of foreign law when making good faith determinations. The final regulations, consistent with the proposed regulations, provide that, for purposes of the special rule, if a foundation's determination is based on the written advice of a qualified tax practitioner, the foundation will ordinarily be considered to have made a good faith determination. The Treasury Department and the IRS are concerned that, standing alone, an opinion of foreign counsel, who may or may not have expertise in U.S. tax law, may not ordinarily be a sufficient basis for a determination of a foreign organization's status. Thus, under the final regulations, foundations basing their determination on an opinion of counsel of the grantor or grantee will no longer come within the special rule unless the counsel is a qualified tax practitioner. However, neither the proposed regulations nor the final regulations proscribe the use of foreign counsel in otherwise seeking to make a good faith determination, including use of foreign counsel in gathering information relevant to the determination. The

standards of practice before the IRS and requirements for written advice address reliance by qualified tax practitioners on foreign counsel for questions of foreign law. Sections 10.22(b), 10.35(a), and 10.37(b) of Circular 230 generally permit a practitioner to consult with and rely on other experts in appropriate circumstances. It follows, therefore, that a foundation may reasonably rely on written advice received from a qualified tax practitioner in accordance with § 1.6664-4(c)(1) that in turn reasonably relies on advice or assistance from foreign counsel as to questions of foreign law or other matters within such counsel's expertise.

Reliance on grantee affidavits

The preamble to the proposed regulations requested comments on whether a foundation's ability to base a good faith determination on an affidavit should be removed, and if not, whether the use of such affidavits should be restricted. In the preamble, the Treasury Department and the IRS expressed their concern that, for purposes of the special rule, grantee affidavits, standing alone, are not always as reliable a basis for making good faith determinations as written advice from qualified tax practitioners and asked for comments. Several comments were received in response to this request.

Most commenters that addressed the issue recommended that foundations continue to be permitted to base a good faith determination on an affidavit of a foreign organization attested to by a principal officer of the foreign organization. These commenters noted that grantee affidavits are often a reliable means of collecting facts about the organization and operations of the foreign grantee, even if, as one commenter noted, on matters of U.S. tax law a grantmaker cannot ordinarily rely on a foreign organization's conclusion that the grantee has a particular tax status. Several commenters noted that the current procedures outlined in Rev. Proc. 92-94 require that affidavits include significant detail and specific accompanying information, which, in their experience, ensures that a foundation has a clear picture of the organization and operation of the foreign organization before making a determination based on the affidavit. How-

ever, these commenters also noted that, in their experience, it was often necessary for someone at the foundation (presumably with knowledge of U.S. tax law) to work closely with a foreign organization to ensure that the principal officer attesting to the affidavit understands exactly what is called for and that the affidavit is appropriately completed.

Many commenters stated that foundations should not be required to obtain professional tax advice and requested assurance that a foundation could continue to make good faith determinations without having to engage counsel or another qualified tax practitioner, especially if the foundation or the grant is small. One commenter noted that engaging a qualified tax practitioner may impose substantial costs on a foundation, particularly if the foundation makes repeated grants to the same organization. Another commenter stated that it would be excessive for the regulations to suggest that a grantmaker must ordinarily use professional advisors in order for a determination to be in good faith, but noted that if a grantmaker goes without professional advice, it is fair for the IRS to review its conclusions and its process for reaching those conclusions to see if the grantmaker has complied with the good faith determination standard in the regulations.

One commenter favored eliminating the grantee affidavit as a free-standing means for making equivalency determinations. In the commenter's experience, the staff and volunteers of most, but not all, foreign grantees have neither the training nor the experience with U.S. tax law needed to make determinations called for by Rev. Proc. 92-94. Therefore, the commenter believed it is important to eliminate reliance on the grantee affidavit.

The Treasury Department and the IRS agree that a grantee affidavit may be a reliable basis for forming a good faith determination in appropriate situations, for example, if the grantee has sufficient knowledge of U.S. tax law to ensure that the affidavit is appropriately completed and contains all relevant information. However, many foreign organizations may lack knowledge of U.S. tax law of charities, as noted by one commenter. In addition, although some foundations have knowledge of U.S. tax law sufficient to

assess the reliability of grantee affidavits, to assist foreign grantees in completing the affidavits properly (if necessary), and to appropriately apply the law to the facts stated in the affidavit, the Treasury Department and IRS do not believe that such knowledge of U.S. tax law is universal. Accordingly, the Treasury Department and IRS do not think it is appropriate to ordinarily consider a good faith determination to have been made solely because it is based on a grantee affidavit. Therefore, under the final regulations, a grantee affidavit is not included in the special rule as a basis upon which a determination ordinarily will be considered a good faith determination.

The final regulations do not, however, foreclose the use of grantee affidavits as a source of information in otherwise making a good faith determination. Nor does elimination of the affidavit for purposes of the special rule mean that the foundation must obtain written advice from a qualified tax practitioner in order to make a good faith determination. For example, a foundation manager with understanding of U.S. charity tax law may under the general rule make a good faith determination that a foreign grantee is a qualifying public charity based on the information in an affidavit supplied by the grantee. Furthermore, foundation managers or their in-house counsel may themselves be qualified tax practitioners, whose written advice may be reasonably relied upon for determinations to come within the special rule.

One commenter suggested that to ensure that affidavits of foreign organizations provide a reliable basis for making a good faith determination, the IRS should further clarify what supporting documentation must be provided by a foreign organization and when private foundations may in good faith rely on the responses of foreign organizations. This commenter recommended that the IRS amplify Rev. Proc. 92-94 to state explicitly when the response of the foreign organization is sufficient and when additional supporting documentation (for example, a copy of the relevant law) should be requested from the organization. The Treasury Department and the IRS have concluded, however, that due to the many possible factual differences in foreign organizations'

structures, governance, operations, financial support, and relevant local laws and practices, it would be difficult to provide specific guidance governing affidavits and supporting documentation in various situations.

Some commenters raised concerns that removing reliance on grantee affidavits for purposes of the special rule would increase costs for foundations and inhibit international grantmaking, particularly for those grantors making many small grants to foreign organizations. However, commenters generally agreed with the Treasury Department and IRS that the changes proposed in the regulations could lower the cost of obtaining professional advice on equivalency determinations by expanding the class of advisors who may provide written advice to foundation managers. Indeed, based on publicly available information, it appears that foundations relying on the proposed rules (as permitted) are now able to obtain professional advice from qualified tax practitioners to come within the special rule at a significantly reduced cost. Furthermore, under the final regulations, grantee affidavits remain a cost-effective way of obtaining information relevant to making good faith determinations and foundations may continue to rely on them when making determinations to the extent reliance is reasonable and appropriate under the facts and circumstances. Accordingly, the Treasury Department and IRS believe that the final regulations achieve the balance of facilitating international grantmaking while still ensuring that equivalency determinations are appropriately made.

To mitigate the effects of elimination of reliance on grantee affidavits for purposes of the special rule, the final regulations provide a 90-day transition period similar to that set forth in § 53.4945-5(f)(2) (dealing with the implementation of the expenditure responsibility rules). During this 90-day period, foundations may distribute grants in accordance with the former regulations regarding the use of grantee affidavits and opinions of counsel of the grantor or grantee. In addition, under the final regulations, if a grant is distributed pursuant to a written commitment made prior to the applicability date of the final regulations and the grantor made a determination in good faith based

on the prior regulations, the distribution is treated as compliant as long as the grant is paid out to the grantee within five years.

Period for reliance on written advice

The preamble to the proposed regulations requested comments on whether a time limit for reliance on written advice is appropriate, and if so, suggestions for the length of time that should be considered reasonable. Most commenters responded affirmatively to this request and favored guidance setting forth a definite period for reliance on written advice, with most suggesting a period of generally two years (starting from the date of the written advice or the time of the factual information on which the written advice is based).

More specifically, commenters recommended that foundations be able to rely on written advice that a foreign organization meets a public support test under § 1.170A-9(f)(4)(vii)(B) or § 1.509(a)-3(c)(1)(i) for periods similar to those in the rules applicable to publicly supported organizations that have been recognized by the IRS as exempt under section 501(c)(3) and described in section 170(b)(1)(A)(vi) or 509(a)(2).³ For example, one commenter noted that for section 170(b)(1)(A)(vi) and section 509(a)(2) organizations, if an organization meets the public support test for a five-year test period, then for most purposes, including for purposes of sections 4942 and 4945, the organization is treated as publicly supported for the two tax years immediately following the end of the five-year support test period. *See* § 1.170A-9(f)(4)(vii)(B) and § 1.509(a)-3(c)(1)(i). Thus, if an organization meets a public support test for a five-year test period ending in 2014, the organization is also considered publicly supported in 2015 and (for most purposes) 2016.

Commenters also noted that Rev. Proc. 92-94, section 4.05, provides a general two-year period for reliance on an affidavit with regard to a foreign grantee's public support status, such that it is ordinarily necessary to obtain a full update of financial information to determine public support under sections 170(b)(1)(A)(vi) and

509(a)(2) only every other year. Citing these provisions, some commenters requested that the final regulations permit reliance for two tax years after the end of the foreign organization's last tax year of financial information used to determine the organization's public support. Thus, for example, commenters suggested that a 2012 equivalency determination based on financial information from 2007-2011 should be sufficient to demonstrate that the organization would be considered a public charity for both 2012 and 2013, resulting in a period of reliance of up to two years, depending on when in 2012 the determination was made. One commenter suggested that reliance should extend only until the 15th day of the fifth month after the end of the first year following the test period - in the example above, until May 15, 2013 - and that a qualified tax practitioner should have to review the foreign grantee's sources of financial support for 2012 before issuing advice that the organization can be treated as publicly supported for the remainder of 2013.

For other qualifying public charities, which do not have a public support requirement, such as schools or hospitals, one commenter requested a reliance period of five years, with a requirement to get a certificate after three years that the relevant law and facts have not changed in any material respect. Another commenter suggested that a foundation be able to rely on advice if the information (other than that for the public support requirement) is current in the present or immediately preceding accounting period of the grantee.

The Treasury Department and the IRS agree with commenters that providing a specific timeframe for reliance on written advice for purposes of the special rule will provide clarity for foundations seeking to meet the requirements of the rule and will promote determinations that are consistently based on current information. Therefore, the final regulations provide that, for purposes of the special rule, written advice of a qualified tax practitioner serving as the basis for a good faith determination must be "current." Written advice will be considered current if, as of the date of the distribution, the relevant law

on which the advice was based has not changed since the date of the written advice and the factual information on which the advice was based is from the organization's current or prior year. However, consistent with rules for determinations of public support over a five-year test period for U.S. public charities, written advice that an organization satisfied the public support requirements under section 170(b)(1)(A)(vi) or section 509(a)(2) based on support over a test period of five years will be treated as current for the two years of the grantee immediately following the end of the five-year test period. For purposes of these rules, an organization's year refers to its taxable year for U.S. tax purposes, or its annual accounting period if it does not have a U.S. taxable year. Additional guidance and examples illustrating the application of these rules may be provided in the update to Rev. Proc. 92-94, discussed further in the next section of this preamble.

It should be noted that the rules regarding when written advice will be considered current apply only for purposes of the special rule. Although this standard reflects a belief that it will usually be reasonable to rely on written advice of a qualified tax practitioner if the advice and underlying facts are no more than two years old (provided the foundation does not know or have reason to know that such information is no longer accurate), it is possible that written advice that is not current for purposes of the special rule may, under some facts and circumstances, reasonably serve as the basis for a good faith determination under the general rule. The age of the facts underlying the written advice would be a consideration in determining whether a good faith determination has been made.

Qualified tax practitioners must, of course, satisfy all requirements for written advice under Circular 230 as of the date of issuance of the written advice (including requirements regarding the factual basis for the advice). The rules regarding when written advice will be considered current for purposes of making distributions to grantees do not alter the Circular 230 standards applicable to qualified tax practitio-

³These rules provide that a publicly supported organization that fails to meet the applicable public support test for two consecutive years will be treated as a private foundation as of the first day of the second consecutive taxable year only for purposes of sections 507, 4940, and 6033.

ners, which provide that the practitioner must base the written advice on reasonable factual assumptions and reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know. To avoid any implication that the reliance period under the special rule would permit written advice to be based on outdated factual information, the final regulation has been revised to clarify that the written advice must contain sufficient facts to permit the IRS to determine that the grantee would be likely to qualify as a public charity at the time the advice is written.

Update of Rev. Proc. 92–94

The preamble to the proposed regulations also requested comments on whether Rev. Proc. 92–94 should be modified to take into account changes in the public support test and whether additional guidelines regarding appropriate timeframes for gathering information should be provided. Most commenters recommended updating Rev. Proc. 92–94 and noted that it is frequently used by qualified tax practitioners for gathering factual information on which to base their written advice. Commenters also recommended that an updated revenue procedure address several key issues relating to foreign organizations, including foreign school compliance with Rev. Proc. 75–50, 1975–2 CB 587, the nature of support from foreign governments, and foreign hospital compliance with section 501(r) (subsequently addressed at § 1.501(r)–1(b)(17)).

The IRS intends to publish an updated revenue procedure, revised to reflect the changes implemented in these regulations as well as changes to the public support tests for section 170(b)(1)(A)(vi) and 509(a)(2) organizations set forth in final regulations implementing the redesign of Form 990, published in the **Federal Register** (TD 9549; 76 FR 55746) on September 8, 2011. The Treasury Department and the IRS will consider the issues raised by

commenters in developing the updated revenue procedure.

Reliance on written advice shared by another foundation

One commenter asked for confirmation that a foundation could share the written advice of its in-house counsel or other qualified tax practitioner with other foundations, and that the other foundations could make their determinations based on the shared advice, without incurring excise taxes.

Written advice relating to the grantee’s status for purposes of an equivalency determination is based on the facts and circumstances of the grantee, and not on the facts and circumstances of the grantor foundation that received the advice. Therefore, it is possible that the conclusions reached in the written advice one foundation received from a qualified tax practitioner could reasonably be used by another foundation to make a good faith determination about the same grantee. This may be the case, for example, if the foundation with whom the written advice is shared knows the qualified tax practitioner well and is familiar with the due diligence practices of the foundation that provided the facts to the qualified tax practitioner and received the written advice. However, when written advice obtained by one foundation is later shared with a second foundation (or shared even further with other foundations), the foundation seeking to base its good faith determination on the written advice may have no knowledge of the qualified tax practitioner that gave the advice or whether all material facts were disclosed to the practitioner. Although reliance on shared advice of a trusted tax practitioner that is based on all the material facts may be economical, and in some cases may be reasonable and appropriate, the Treasury Department and the IRS are concerned that, in other cases, the foundation receiving the ad-

vice may not be in a position to appropriately evaluate the reliability of the written advice that was shared. Thus, the final regulations do not prohibit a foundation from using written advice shared with it by another foundation in making a good faith determination if it is reasonable to do so under all the facts and circumstances (including the age of the facts supporting the written advice). However, the final regulations clarify that for a foundation seeking the benefit of the special rule, the written advice a foundation relies on in making its determination must be received from the qualified tax practitioner (rather than from another foundation).

Equivalency determinations by sponsoring organizations of donor advised funds

Commenters suggested that the Treasury Department and the IRS clarify that sponsoring organizations of donor advised funds can use these final regulations to make equivalency determinations for purposes of distributions from donor advised funds to foreign organizations. Until further guidance is issued, sponsoring organizations of donor advised funds may use these regulations as guidance in making equivalency determinations (applying the definition of “disqualified supporting organization” under section 4966(d)(4) in lieu of section 4942(g)(4)(A)(i) or (ii)).⁴

Reliance by public charities

One commenter proposed that the final regulations also allow public charities to make equivalency determinations to avoid the requirements imposed on them by Rev. Rul. 68–489, 1968–2 CB 210, for grants to organizations not exempt under section 501(c)(3). That ruling permits a section 501(c)(3) organization to distribute funds to organizations not exempt under section 501(c)(3) if the grantor organization ensures use of the funds for section 501(c)(3) purposes by limiting

⁴This is consistent with the Joint Committee on Taxation, Technical Explanation of H.R. 4, the “Pension Protection Act of 2006” (JCX-38-06, Aug. 3, 2006) at p. 349, which provides:

For purposes of the requirement that a distribution be “to” an organization described in section 170(b)(1)(A), in general, it is intended that rules similar to the rules of Treasury regulation § 53.4945–5(a)(5) apply. Under such regulations, for purposes of determining whether a grant by a private foundation is “to” an organization described in section 509(a)(1), (2), or (3) and so not a taxable expenditure under section 4945, a foreign organization that otherwise is not a section 509(a)(1), (2), or (3) organization is considered as such if the private foundation makes a good faith determination that the grantee is such an organization. Similarly, under the provision, if a sponsoring organization makes a good faith determination (under standards similar to those currently applicable for private foundations) that a distributee organization is an organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), then a distribution to such organization is not considered a taxable distribution.

distributions to specific projects in furtherance of its own exempt purposes, retains control and discretion as to the use of the funds, and maintains records establishing that the funds were used for section 501(c)(3) purposes. The commenter's proposal is outside the scope of this regulations project, but it may be considered in future guidance.

Equivalency determinations for domestic grantees and foreign government grantees

One commenter requested that the equivalency determination procedures be made expressly applicable to grantees in the U.S. as well as foreign grantees if the domestic grantee is not required to obtain a determination from the IRS or the determination is pending with the IRS. Another commenter requested clarification that a foundation could use the same procedures to determine the status of grantees that are foreign governments, agencies or instrumentalities of foreign governments, or international organizations (which are treated as section 509(a)(1) organizations under § 53.4945-5(a)(4)(iii), even if they are not described in section 501(c)(3), so long as the grant is made exclusively for charitable purposes). Both of these suggestions are beyond the scope of this regulations project but may be considered in future guidance.

Parallel changes to similar regulations

Commenters suggested that the Treasury Department and the IRS make corresponding changes to other regulations that provide for determinations similar to equivalency determinations. Section 53.4945-6(c)(2) requires generally that a grant made to an organization not described in section 501(c)(3) be maintained in a separate charitable fund, unless made to a foreign organization that in the reasonable judgment of a foundation manager is described in section 501(c)(3) (other than section 509(a)(4)). Section 1.1441-9 sets forth exemptions from withholding of tax on exempt income of foreign tax-exempt organizations, and allows a withholding agent to accept an opinion from a U.S. counsel concluding that a foreign organization is described in

section 501(c)(3) and is not a private foundation, supported by an affidavit of the organization. For more than 20 years, under Rev. Proc. 92-94, a foundation has been able to make the reasonable judgment required by § 53.4945-6(c)(2) by following the same procedure for making a good faith determination under §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5). The Treasury Department and the IRS anticipate that any revised version of that revenue procedure will continue to provide that foundations may meet the requirements of § 53.4945-6(c)(2) by meeting the requirements of §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5). The suggested changes to § 1.1441-9 are beyond the scope of this regulations project, but may be considered in future guidance.

Amendments to regulations conforming to statutory and regulatory changes

The final regulations also include several amendments to conform the regulations to prior statutory changes. Specifically, changes were made to §§ 53.4942(a)-3(a)(2)(i), 53.4942(a)-3(a)(6)(i), 53.4945-5(a)(1), 53.4945-5(a)(5)(i), 53.4945-5(a)(6)(ii), and 53.4945-5(b)(5). Section 4945(d)(4) was amended in 1984 to treat exempt operating foundations under section 4940(d)(2) as organizations that may receive grants for which expenditure responsibility is not required. Sections 4942 and 4945(d)(4) were amended in 2006 to eliminate certain section 509(a)(3) supporting organizations from the class of organizations that may receive distributions treated as qualifying distributions and that may receive grants for which expenditure responsibility is not required. Changes to conform the regulations to these statutory changes were made in §§ 53.4942(a)-3(a)(6)(i) and 53.4945-5(a)(5)(i) of the proposed regulations, and the changes to the other parts of §§ 53.4942(a)-3 and 53.4945-5 are being made in the final regulations for consistency. Similarly, for purposes of consistency with the changes in the proposed regulations being implemented in these final regulations, § 53.4945-5(b)(5) is being updated to allow written advice from a qualified tax practitioner for purposes of this provision, as well as grantee

affidavits and opinions of counsel of the grantee, which continue to be permitted for the purposes of § 53.4945-5(b)(5).

Effective/Applicability Date and Transition Relief

The final regulations apply generally to distributions made after the date of publication of this Treasury decision in the **Federal Register**. However, a good faith determination may continue to be made in accordance with the prior regulations for any distribution to a foreign organization within 90 days after such date. Also, a foundation that has made a written commitment on or before the date of publication of these final regulations in the **Federal Register** may make distributions to the foreign organization, in fulfillment of that commitment and pursuant to a determination made in good faith in accordance with the prior regulations, for up to five years from the date of publication.

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at <http://www.irs.gov> or contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information is in §§ 53.4942(a)-3(a)(6) and 53.4945-5(a)(5) and is part of the collection of information for Form 990-PF. The equivalency determination process set forth in these regulations provides foundations

with an optional procedure for determining that foreign organizations are qualifying public charities. The Treasury Department and the IRS believe that the economic impact of the proposed regulations on grantors making equivalency determinations has already been a reduction in cost of obtaining written tax advice, by expanding the class of practitioners whose written advice may form the basis of good faith determinations. The final regulations finalize this policy. The final regulations continue to permit grantee affidavits to be used in making good faith determinations under the general rule (although without the same level of reliance as under the special rule) and it is expected that affidavits will continue to be used for such purpose with small grants. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

Drafting Information

The principal author of these regulations is Ward L. Thomas of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53 – FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.4942 (a)–3 is amended by:

1. Revising paragraphs (a)(2) introductory text, (a)(2)(i), and (a)(6).
2. Adding paragraph (f).

The revisions and addition read as follows:

§ 53.4942(a)–3 *Qualifying distributions defined.*

(a) * * *

(2) *Definition.* The term “qualifying distribution” means:

(i) Any amount (including program related investments, as defined in section 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to:

(a) A private foundation which is not an operating foundation (as defined in section 4942(j)(3)), except as provided in paragraph (c) of this section;

(b) An organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation, except as provided in paragraph (c) of this section; or

(c) An organization described in section 4942(g)(4)(A)(i) or (ii), if paid by a private foundation that is not an operating foundation;

(6) *Certain foreign organizations—(i) In general.* A distribution for purposes described in section 170(c)(2)(B) to a foreign organization, which has not received a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4942(j)(3), will be treated as a distribution made to an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4942(j)(3) if the distributing foundation has made a good faith determination that the donee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3). A determination ordinarily will be considered a good faith determination if the determination is based on current written advice received from a qualified tax practitioner concluding that the donee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization de-

scribed in section 4942(g)(4)(A)(i) or (ii) or in section 4942(j)(3), and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664–4(c)(1) of this chapter. The written advice must set forth sufficient facts concerning the operations and support of the donee organization for the Internal Revenue Service to determine that the donee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3) as of the date of the written advice. For purposes of this section, except as provided in the next sentence, written advice will be considered current if, as of the date of distribution, the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the donee’s current or prior taxable year (or annual accounting period if the donee does not have a taxable year for United States federal tax purposes). Written advice that a donee met the public support test under section 170(b)(1)(A)(vi) or section 509(a)(2) for a test period of five years will be treated as current for purposes of distributions to the donee during the two taxable years (or, as applicable, annual accounting periods) of the donee immediately following the end of the five-year test period.

(ii) *Definitions.* For purposes of this paragraph (a)(6)—

(a) The term “foreign organization” means any organization that is not described in section 170(c)(2)(A).

(b) The term “qualified tax practitioner” means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

(f) *Effective/applicability date and transition relief.* Paragraphs (a)(2)(i) and (a)(6) of this section are effective on and apply with respect to distributions made after September 25, 2015. However, foundations may continue to rely on the provisions of paragraph (a)(6) of this section as contained in 26 CFR part 53, revised April 1, 2015, with respect to distributions

made on or before December 24, 2015, pursuant to a good faith determination made in accordance with such provisions. Also, foundations may continue to rely on the provisions of paragraph (a)(6) of this section as contained in 26 CFR part 53, revised April 1, 2015, with respect to distributions pursuant to a written commitment made on or before September 25, 2015 and pursuant to a good faith determination made on or before such date in accordance with such provisions if the committed amount is distributed within five years of such date.

Par. 3. Section 53.4945-5 is amended by:

1. Revising paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5).
2. Adding paragraph (f)(3).

The revisions and addition read as follows:

§ 53.4945-5 *Grants to organizations.*

(a) *Grants to nonpublic organizations*—(1) *In general.* Under section 4945(d)(4) the term “taxable expenditure” includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h). However, the granting foundation does not have to exercise expenditure responsibility with respect to amounts granted to organizations described in section 4945(f).

* * * * *

(5) *Certain foreign organizations*—(i) *In general.* If a private foundation makes a grant to a foreign organization, which does not have a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4940(d)(2), the grant will nonetheless be treated as a grant made to an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2) if the grantor private foundation has made a good faith determination

that the grantee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2). A determination ordinarily will be considered a good faith determination if the determination is based on current written advice received from a qualified tax practitioner concluding that the grantee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2), and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664-4(c)(1) of this chapter. The written advice must set forth sufficient facts concerning the operations and support of the grantee organization for the Internal Revenue Service to determine that the grantee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2) as of the date of the written advice. For purposes of these rules, except as provided in the next sentence, written advice will be considered current if, as of the date of the grant payment, the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the grantee’s current or prior taxable year (or annual accounting period if the grantee does not have a taxable year for United States federal tax purposes). Written advice that a grantee met the public support test under section 170(b)(1)(A)(vi) or section 509(a)(2) for a test period of five years will be treated as current for purposes of grant payments to the grantee during the two taxable years (or, as applicable, annual accounting periods) of the grantee immediately following the end of the five-year test period. See paragraphs (b)(5) and (6) of this section for additional rules relating to foreign organizations.

(ii) *Definitions.* For purposes of this paragraph (a)(5)—

(a) The term “foreign organization” means any organization that is not described in section 170(c)(2)(A).

(b) The term “qualified tax practitioner” means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

(6) * * *

(ii) *To governmental agencies.* If a private foundation makes a grant to an organization described in section 170(c)(1) and such grant is earmarked for use by another organization, the granting foundation need not exercise expenditure responsibility with respect to such grant if the section 170(c)(1) organization satisfies the Commissioner in advance that:

(a) Its grantmaking program is in furtherance of a purpose described in section 170(c)(2)(B), and

(b) The section 170(c)(1) organization exercises “expenditure responsibility” in a manner that would satisfy this section if it applied to such section 170(c)(1) organization. However, with respect to such grant, the granting foundation must make the reports required by section 4945(h)(3) and paragraph (d) of this section, unless such grant is earmarked for use by an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)), or in section 4940(d)(2).

(b) * * *

(5) *Certain grants to foreign organizations.* With respect to a grant to a foreign organization (other than an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii) or in section 4940(d)(2) or treated as so described pursuant to paragraph (a)(4) or (5) of this section), paragraph (b)(3)(iv) or (b)(4)(iv) of this section shall be deemed satisfied if the agreement referred to in paragraph (b)(3) or (4) of this section imposes restrictions on the use of the grant substantially equivalent to the limitations imposed on a domestic private foundation under section 4945(d). Such restrictions may be phrased in appropriate terms under foreign law or custom and ordinarily will be considered sufficient if an affidavit or opinion of counsel (of the grantor or grantee) or written advice of a qualified tax practitioner is obtained stating that, under foreign law or custom, the agree-

ment imposes restrictions on the use of the grant substantially equivalent to the restrictions imposed on a domestic private foundation under paragraph (b)(3) or (4) of this section.

* * * * *

(f) * * *

(3) *Effective/applicability date of paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5) and transition relief.* Paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5) of this section are effective on and apply with respect to grants paid after September 25, 2015. However, foundations may continue to rely on paragraph (a)(5) as contained in 26

CFR part 53, revised April 1, 2015, with respect to grants paid on or before December 24, 2015, pursuant to a good faith determination made in accordance with such provisions. Also, foundations may continue to rely on paragraph (a)(5) as contained in 26 CFR part 53, revised April 1, 2015, with respect to grants paid pursuant to a written commitment made on or before September 25, 2015 and pursuant to a good faith determination made on or before such date in accordance with such provisions if the committed amount is paid out within five years of such date.

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

Approved: September 16, 2015.

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

(Filed by the Office of the Federal Register on September 23, 2015, 8:45 a.m., and published in the issue of the Federal Register for September 25, 2015, 80 F.R. 24346)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 1.6049.00–00: Returns Relating to Payments of Interest
(Also: 1.3406.07–00 Exceptions to Backup Withholding)

Rev. Proc. 2015–50

SECTION 1. PURPOSE

This revenue procedure supplements the listing in Revenue Procedure 2014–64, 2014–53 I.R.B. 1022, of the countries with which the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that it is appropriate to have an automatic exchange relationship with respect to the information collected under §§ 1.6049–4(b)(5) and 1.6049–8 of the Income Tax Regulations.

SECTION 2. BACKGROUND

Sections 1.6049–4(b)(5) and 1.6049–8(a), as revised by TD 9584, require the reporting of certain deposit interest paid to nonresident alien individuals on or after January 1, 2013. Rev. Proc. 2012–24, 2012–20 I.R.B. 913, was published contemporaneously with the publication of TD 9584. Section 4 of that revenue procedure identified the countries with which the Treasury Department and the IRS had determined that it was appropriate to have an automatic exchange relationship with respect to the information collected under §§ 1.6049–4(b)(5) and 1.6049–8. Rev. Proc. 2012–14

was updated and superseded by Rev. Proc. 2014–64. This revenue procedure supplements Rev. Proc. 2014–64 by adding 16 countries (Brazil, Czech Republic, Estonia, Gibraltar, Hungary, Iceland, India, Latvia, Liechtenstein, Lithuania, Luxembourg, New Zealand, Poland, Slovenia, South Africa, and Sweden) to the list of countries in Section 4.

SECTION 3. SUPPLEMENT TO REV. PROC. 2014–64

Section 4 of Rev. Proc. 2014–64 is supplemented to read as follows:

The following list identifies the countries with which the automatic exchange of the information collected under §§ 1.6049–4(b)(5) and 1.6049–8 has been determined by the Treasury Department and the IRS to be appropriate:

Australia
Brazil
Canada
Czech Republic
Denmark
Estonia
Finland
France
Germany
Gibraltar
Guernsey
Hungary
Iceland
India

Ireland
Isle of Man
Italy
Jersey
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Mauritius
Mexico
Netherlands
New Zealand
Norway
Poland
Slovenia
South Africa
Spain
Sweden
United Kingdom

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014–64 is supplemented.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Jackie Bennett Manasterli of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Ms. Manasterli at (202) 317-5218 (not a toll-free number).

Note. This revenue procedure will be reproduced as the next revision of IRS Publication 1141, General Rules and Specifications for Substitute Forms W–2 and W–3.

26 CFR 601. 602: Tax forms and instructions.

(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041–1, 1.6041–2, 31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1, 31.6091–1.)

Rev. Proc. 2015–51

TABLE OF CONTENTS

Part 1 – GENERAL

Section 1.1 – Purpose	584
Section 1.2 – What’s New	586
Section 1.3 – General Rules for Paper Forms W–2 and W–3	586
Section 1.4 – General Rules for Filing Forms W–2 (Copy A) Electronically	587

Part 2 – SPECIFICATIONS FOR SUBSTITUTE FORMS W–2 AND W–3

Section 2.1 – Specifications for Red-Ink Substitute Form W–2 (Copy A) and Form W–3 Filed with the SSA	588
Section 2.2 – Specifications for Substitute Black-and-White Copy A and W–3 Forms Filed with the SSA	590

Section 2.3 – Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2).....592
 Section 2.4 – Electronic Delivery of Form W-2 and W-2c Recipient Statements.....595

Part 3 – ADDITIONAL INSTRUCTIONS

Section 3.1 – Additional Instructions for Form Printers.....595
 Section 3.2 – Instructions for Employers596
 Section 3.3 – OMB Requirements for Both Red-Ink and Black-and-White Copy A and W-3 Substitute Forms596
 Section 3.4 – Order Forms and Instructions.....597
 Section 3.5 – Effect on Other Documents.....597
 Section 3.6 – Exhibits.....597

Part 1

General

Section 1.1 – Purpose

.01 The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2015 calendar year.

.02 For purposes of this revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers should also refer to the 2015 General Instructions for Forms W-2 and W-3 for details on how to complete these forms. See Section 3.4, for information on obtaining the official IRS forms and instructions. See Sections 2.3 and 2.4, for requirements for the copies of substitute forms furnished to employees and for electronic delivery of recipient statements.

.03 For purposes of this revenue procedure, the official IRS-printed red dropout ink Forms W-2 (Copy A) and W-3, and their exact substitutes, are referred to as “red-ink.” The SSA-approved black-and-white Forms W-2 (Copy A) and W-3 are referred to as “substitute black-and-white Copy A” and “substitute black-and-white W-3” forms.

Any questions about the red-ink Form W-2 (Copy A) and Form W-3 and the substitute employee statements should be emailed to Substituteforms@irs.gov. Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service
 Attn: Substitute Forms Program
 SE:W:CAR:MP:P:TP
 5000 Ellin Rd., C6-440
 Lanham, MD 20706

Any questions about the black-and-white Copy A and W-3 forms should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
 Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 360
 1150 E. Mountain Drive
 Wilkes-Barre, PA 18702-7997

Note. You should receive a response from either the IRS or the SSA within 30 days.

.04 Some Forms W-2 that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be confused with questionable Forms W-2. An employee may not recognize the importance of the employee 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 Copy A of Forms W-2, Forms W-3, or any employee copies reporting wages paid during the 2010 calendar year, and thereafter, with the following exceptions:

- Forms may include the exact name of the employer or agent, primary trade name, trademark, service mark, or symbol of the employer or agent.
- Forms may include an embossment or watermark on the information return (and copies) that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the employer or agent.
- Presentation may be in any typeface, font, stylized fashion, or print color normally used by the employer or agent, and used in a non-intrusive manner.
- These items must not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the employee copies.
- Corrected information on information returns and employee copies that was shown on Forms W-2 for amounts paid before January 1, 2011, is an exception.

The IRS e-file logo on the IRS official employee copies may be included, but it is not required, on any of the substitute form copies.

The information return and employee copies must clearly identify the employer'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.

Forms W-2 and W-3 are subject to annual review and possible change. This revenue procedure may be revised to state other requirements of the IRS and the SSA regarding the preparation and use of substitute forms for Form W-2 and Form W-3 for wages paid during the 2015 calendar year, at a future date. If you have comments about the restrictions on including logos, slogans, and advertising on information returns and employee 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.

.05 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 304-263-8700 (not a toll-free number). Persons with a hearing or speech disability with access to Telecommunication Device for the Deaf (TDD) can call 304-579-4827 (not a toll-free number). You may also email questions to mccirp@irs.gov. Do not submit employee information via email, because electronic mail is not secure and the information may be compromised.

IRS/IRB does not process information returns which are filed on paper forms. IRS/IRB does not process Forms W-2 (Copy A). Forms W-2 (Copy A) prepared on paper or electronically must be filed with the SSA. IRS/IRB does, however, process waiver requests (Form 8508) and extension of time to file requests (Form 8809) for Forms W-2 (Copy A) and requests for an extension of time to furnish the employee copies of Form W-2. See Publication 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, for information on waivers and extensions of time.

.06 The following form instructions and publications provide more detailed filing procedures for certain information returns:

- General Instructions for Forms W-2 and W-3, (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c).
- Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Section 1.2 – What’s New

.01 Editorial changes. We made editorial changes. Redundancies were eliminated as much as possible.

Section 1.3 – General Rules for Paper Forms W-2 and W-3

.01 Employers not filing electronically must file paper Forms W-2 (Copy A) along with Form W-3 with the SSA by using either the official IRS form or a substitute form that exactly meets the specifications shown in Parts 2 and 3 of this revenue procedure.

Note. www.cnmidof.net <http://www.hacienda.gobierno.pr>. Substitute territorial forms (W-2AS, W-2GU, W-2VI, W-3SS) should also conform to the specifications as outlined in this revenue procedure. These forms require the form designation (“W-2AS,” “W-2GU,” “W-2VI”) on Copy A to be in black ink. If you are an employer in the Commonwealth of the Northern Mariana Islands, you must contact Department of Finance, Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, P.O. Box 5234 CHRB, Saipan, MP 96950 or www.cnmidof.net to get Form W-2CM and instructions for completing and filing the form. For information on Forms 499R-2/W-2PR, use this website: <http://www.hacienda.gobierno.pr>.

Employers who file with the SSA electronically or on paper may design their own statements to furnish to employees. These employee statements designed by employers must comply with the requirements shown in Parts 2 and 3.

.02 Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the substitute black-and-white Copy A and W-3 forms need to be submitted to the SSA for approval, prior to their use (see Section 2.2).

.03 As in the past, SSA-approved black-and-white Copy A and Form W-3 may be generated using a printer by following all guidelines and specifications (also see Section 2.2). In general, regardless of the method of entering data, using black ink on Forms W-2 and W-3 provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and may result in delays or errors in the processing of Forms W-2 (Copy A) and W-3. The printing of the data should be centered within the boxes. The size of the variable data must be printed in a font no smaller than 10-point.

Note. With the exception of the identifying number, the year, the form number for Form W-3, and the corner register marks, the preprinted form layout for the red-ink Forms W-2 (Copy A) and W-3 must be in Flint J-6983 red OCR dropout ink or an exact match.

.04 Substitute forms filed with the SSA and substitute copies furnished to employees that do not conform to these specifications are unacceptable. Forms W-2 (Copy A) and W-3 filed with the SSA that do not conform may be returned. In addition, penalties may be assessed for not complying with the form specifications.

.05 Substitute red-ink forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

1. Submit a letter or email citing the specification to the appropriate address in Section 1.1.
2. State your understanding of the specification.
3. Enclose an example (if appropriate) of how the form would appear if produced using your understanding.
4. Be sure to include your name, complete address, phone number, and if applicable, your email address with your correspondence.

.06 Any questions about the specifications, especially those for the red-ink Form W-2 (Copy A) and Form W-3, should be emailed to: *Substituteforms@irs.gov*. Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP
5000 Ellin Rd., C6-440
Lanham, MD 20706

Any questions about the substitute black-and-white Copy A and W-3 should be emailed to *copy.a.forms@ssa.gov* or sent to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 360
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Note. You should receive a response within 30 days from either the IRS or the SSA.

.07 Forms W-2 and W-3 are subject to annual review and possible change. Therefore, employers are cautioned against overstocking supplies of privately-printed substitutes.

.08 Separate instructions for Forms W-2 and W-3 are provided in the 2015 General Instructions for Forms W-2 and W-3. Form W-3 should be used only to transmit paper Forms W-2 (Copy A). Form W-3 is a single sheet including only essential filing information. Be sure to make a copy of your completed Form W-3 for your records. You can order current year official IRS Forms W-2, W-2AS, W-2GU, W-2VI, W-3, and W-3SS, and the 2015 General Instructions for Forms W-2 and W-3, online at <http://www.IRS.gov/Businesses>. Click on the *Online Ordering for Information Returns and Employer Returns* link. The IRS provides only cutsheet sets of Forms W-2 and cutsheets of Form W-3.

.09 Because substitute Forms W-2 (Copy A) and W-3 are machine-imaged and scanned by the SSA, the forms must meet the same specifications as the official IRS Forms W-2 and W-3 (as shown in the exhibits).

Section 1.4 – General Rules for Filing Forms W-2 (Copy A) Electronically

.01 Employers must file Forms W-2 (Copy A) with the SSA electronically if they are required to file 250 or more for a calendar year unless the IRS grants a waiver. For details, get the 2015 General Instructions for Forms W-2 and W-3. The SSA publication EFW2, Specifications for Filing Forms W-2 Electronically, contains specifications and procedures for electronic filing of Form W-2 information with the SSA. Employers are cautioned to obtain the most recent revision of EFW2 (and supplements) due to any subsequent changes in specifications and procedures.

.02 You may obtain a copy of the EFW2 by:

Accessing the SSA website at: www.socialsecurity.gov/employer/pub.htm. Enter “EFW2” in the search box.

.03 Electronic filers do not file a paper Form W-3. See the SSA publication EFW2 for guidance on transmitting Form W-2 (Copy A) information to SSA electronically.

.04 Employers filing fewer than 250 Forms W-2 are encouraged to electronically file Forms W-2 (Copy A) with the SSA. Doing so will enhance the timeliness and accuracy of forms processing. You may visit the SSA’s employer website at www.socialsecurity.gov/employer. This helpful site has links to Business Services Online (BSO) and tutorials on registering and using BSO to file your Forms W-2.

.05 Employers who do not comply with the electronic filing requirements for Form W-2 (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2 information with the SSA electronically must not send the same data to the SSA on paper Forms W-2 (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

Part 2
Specifications for Substitute Forms W-2 and W-3

Section 2.1 – Specifications for Red-Ink Substitute Form W-2 (Copy A) and Form W-3 Filed with the SSA

.01 The official IRS-printed red dropout ink Form W-2 (Copy A) and W-3 and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2 (Copy A) and W-3 with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

Note. Even the slightest deviation can result in incorrect scanning, and may affect money amounts reported for employees.

.02 Paper used for cutsheets and continuous-pinfed forms for substitute Form W-2 (Copy A) and Form W-3 that are to be filed with the SSA must be white 100% bleached chemical wood, 18–20 pound paper only, optical character recognition (OCR) bond produced in accordance with the following specifications:

● Acidity: Ph value, average, not less than	4.5
● Basis weight: 17 x 22 inch 500 cut sheets, pound.....	18–20
● Metric equivalent—gm./sq. meter (a tolerance of +5 pct. is allowed).....	68–75
● Stiffness: Average, each direction, not less than—milligrams	
Cross direction	50
Machine direction	80
● Tearing strength: Average, each direction, not less than—grams	40
● Opacity: Average, not less than—percent	82
● Reflectivity: Average, not less than—percent	68
● Thickness: Average—inch.....	0.0038
Metric equivalent—mm.....	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.....	
● Dirt: Average, each side, not to exceed—parts per million	8

Note. Reclaimed fiber in any percentage is permitted, provided the requirements of this standard are met.

.03 All printing of red-ink substitute Forms W-2 (Copy A) and W-3 must be in Flint red OCR dropout ink except as specified below. The following must be printed in nonreflective black ink:

- Identifying number “22222” or “33333” at the top of the forms.
- Tax year at the bottom of the forms.
- The four (4) corner register marks on the forms.
- The form identification number (“W-3”) at the bottom of Form W-3.
- All the instructions below Form W-3 beginning with “Send this entire page....” line to the bottom of Form W-3.

.04 The vertical and horizontal spacing for all federal payment and data boxes on Forms W-2 and W-3 must meet specifications. On Form W-3 and Form W-2 (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.

.05 The official red-ink Form W-3 and Form W-2 (Copy A) are 7.5 inches wide. Employers filing Forms W-2 (Copy A) with the SSA on paper must also file a Form W-3. Form W-3 must be the same width (7.5 inches) as the Form W-2. One Form W-3 is printed on a standard-size, 8.5 x 11-inch page. Two official Forms W-2 (Copy A) are contained on a single 8.5 x 11-inch page (exclusive of any snap-stubs).

.06 The top, left, and right margins for the Form W-2 (Copy A) and Form W-3 are .5 inches (½ inch). All margins must be free of printing except for the words “DO NOT STAPLE” on red-ink Form W-3. The space between the two Forms W-2 (Copy A) is 1.33 inches.

.07 The identifying numbers are “22222” for Form W-2 (Copies A (and 1)) and “33333” for Form W-3. No printing should appear anywhere near the identifying numbers.

Note. The identifying number must be printed in nonreflective black ink in OCR-A font of 10 characters per inch.

.08 The depth of the individual scannable image on a page must be the same as that on the official IRS forms. The depth from the top line to the bottom line of an individual Form W-2 (Copy A) must be 4.17 inches and the depth from the top line to the bottom line of Form W-3 must be 4.67 inches.

.09 Continuous-pinfed Forms W-2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W-2 (Copy A) are filed with the SSA. The two Forms W-2 (Copy A) on the 11-inch page must not be separated (only the pages are to be separated (burst)). The words “Do Not Cut, Fold, or Staple Forms on This Page” must be printed twice between the two Forms W-2 (Copy A) in Flint red OCR dropout ink. All other copies (Copies 1, B, C, 2, and D) must be able to be distinguished and separated into individual forms.

.10 Box 12 of Form W-2 (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2 to report the additional items (see “Multiple forms” in the 2015 General Instructions for Forms W-2 and W-3). Do not report the same federal tax data to the SSA on more than one Form W-2 (Copy A). However, repeat the identifying information (employee’s name, address, and SSN; employer’s name, address, and EIN) on each additional form.

.11 The checkboxes in box 13 of Form W-2 (Copy A) must be .14 inches each; the space before the first checkbox is .20 inches; the spacing on each remaining side of the 3 checkboxes is .36 inches (see Exhibit A). The checkboxes in box b of Form W-3 must also be .14 inches.

Note. More than 50% of an applicable checkbox must be covered by an “X.”

.12 All substitute Forms W-2 (Copy A) and W-3 in the red-ink format must have the tax year, form number, and form title printed on the bottom face of each form using type identical to that of the official IRS form. The red-ink substitute Form W-2 (Copy A) and Form W-3 must have the form producer’s EIN entered directly to the left of “Department of the Treasury,” in red.

.13 The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed in Flint red OCR dropout ink in the same location as on the official Form W-2 (Copy A). The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed at the bottom of the page of Form W-3 in black ink.

.14 The Office of Management and Budget (OMB) Number must be printed on substitute Forms W-3 and W-2 (on each ply) in the same location as on the official IRS forms.

.15 All substitute Forms W-3 must include the instructions that are printed on the same sheet below the official IRS form.

.16 The back of substitute Form W-2 (Copy A) and Form W-3 must be free of all printing.

.17 All copies must be clearly legible. Fading must be minimized to assure legibility.

.18 Chemical transfer paper is permitted for Form W-2 (Copy A) only if the following standards are met:

- Only chemically-backed paper is acceptable for Form W-2 (Copy A). Front and back chemically-treated paper cannot be processed properly by scanning equipment.
- Chemically-transferred images must be black.
- Carbon-coated forms are not permitted.

.19 The Government Printing Office (GPO) symbol and the Catalog Number (Cat. No.) must be deleted from substitute Form W-2 (Copy A) and Form W-3.

Section 2.2 – Specifications for Substitute Black-and-White Copy A and W-3 Forms Filed with the SSA

.01 The SSA-approved substitute black-and-white Forms W-2 (Copy A) and W-3 are referred to as substitute black-and-white Copy A and W-3. Specifications for the substitute black-and-white Copy A and W-3 are similar to the red-ink forms (Section 2.1) except for the items that follow (see Exhibits E and F). Exhibits are samples only and must not be downloaded to meet tax obligations.

1. Forms must be printed on 8.5 × 11-inch single-sheet paper only. There must be two Forms W-2 (Copy A) printed on a page. There must be no horizontal perforations between the two Forms W-2 (Copy A) on each page.
2. All forms and data must be printed in nonreflective black ink only.
3. The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.
4. The forms must not contain corner register marks.
5. The forms must not contain any shaded areas, including those boxes that are entirely shaded on the red-ink forms.
6. Identifying numbers on both Form W-2 (“22222”) and Form W-3 (“33333”) must be preprinted in 14-point Arial bold font or a close approximation.
7. The form numbers (“W-2” and “W-3”) must be in 18-point Arial font or a close approximation. The tax year (for example, “2015”) on Forms W-2 (Copy A) and W-3 must be in 20-point Arial font or a close approximation.
8. No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.
9. Do not print any information in the margins of the substitute black-and-white Copy A and W-3 forms (for example, do not print “DO NOT STAPLE” in the top margin of Form W-3).
10. The word “Code” must not appear in box 12 on Form W-2 (Copy A).
11. A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/9876) must appear in 12-point Arial font, or a close approximation, under the tax year in place of the Cat. No. on Form W-2 (Copy A) and in the bottom right corner of the “For Official Use Only” box at the bottom of Form W-3. Do not display the form producer’s EIN to the left of “Department of the Treasury.” The vendor code will be used to identify the form producer.
12. Do not print Catalog Numbers (Cat. No.) on either Form W-2 (Copy A) or Form W-3.
13. Do not print the checkboxes in:
 - Box 13 of Form W-2 (Copy A). The “X” should be programmed to be printed and centered directly below the applicable box title.
14. Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.
15. The space between the two Forms W-2 (Copy A) is 1.33 inches.

.02 You must submit samples of your substitute black-and-white Copy A and W-3 forms to the SSA. Only black-and-white substitute Forms W-2 (Copy A) and W-3 for tax year 2015 will be accepted for approval by the SSA. Questions regarding other red-ink forms (that is, red-ink Forms W-2c, W-3c, 1099 series, 1096, etc.) must be directed to the IRS only.

.03 You will be required to send one set of blank and one set of dummy-data substitute black-and-white Copy A and W-3 forms for approval. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

.04 To receive approval, you may first contact the SSA at copy.a.forms@ssa.gov to obtain a template and further instructions in PDF or Excel format. You may also send your 2015 sample substitute black-and-white Copy A and W-3 forms to:

Social Security Administration
Data Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 360
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Send your sample forms via private mail carrier or certified mail in order to verify their receipt. You can expect approval (or disapproval) by the SSA within 30 days of receipt of your sample forms.

.05 The 4-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted on the sample substitute black-and-white Copy A and W-3 forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you have a valid vendor code provided to you through the National Association of Computerized Tax Processors, you should use that code. If you do not have a valid vendor code, contact the Social Security Administration at copy.a.forms@ssa.gov to obtain an SSA-issued code. (Additional information on vendor codes may be obtained from the SSA or the National Association of Computerized Tax Processors (NACTP) via email at president@nactp.org.)

Note. Vendor codes **from the NACTP** are required by those companies producing the W-2 family of forms as part of a product for resale to be used by multiple employers and payroll professionals. Employers developing Forms W-2 or W-3 to be used only for their individual company **require a vendor code issued by Social Security Administration.**

.06 If you use forms produced by a vendor and have questions concerning approval, do not send the forms to the SSA for approval. Instead, you may contact the software vendor to obtain a copy of SSA's dated approval notice supplied to that vendor.

.07 In response to feedback from the user community, the SSA (and the IRS) have added a 2-D barcoded version for the substitute Form W-2 and Form W-3 to the list of acceptable submission formats. This version is an optional alternative to the non-barcoded substitute Forms W-2 and W-3. Both versions are fully supported by the SSA. At this time, neither the IRS nor the SSA mandates the use of 2-D barcoded substitute forms.

Note. The data contained in the barcode must not differ from the data displayed on the form. If they differ, the data in the barcode will be ignored and the data displayed on the form will be considered the submission. This also occurs when the barcode is not read correctly. The information on the form needs to be manually keyed into the database.

To get the barcode information:

- See the SSA's BSO website at <http://www.socialsecurity.gov/bso>,
- Get the PDF version of the specifications at copy.a.forms@ssa.gov,
- Download the "TY 14 Substitute W3/W2 2-D Barcoding Standards" from <http://www.socialsecurity.gov/employer/subBarCodeStd.pdf>.

Section 2.3 – Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2)

Note. Rules in Section 2.3 apply only to employee copies of Form W-2 (Copies B, C, and 2). Printers are cautioned that the paper filers who send Forms W-2 (Copy A) to the SSA must follow the requirements in Sections 2.1 and/or 2.2 above.

.01 All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2 (three or more for employees required to file a state, city, or local income tax return). The following rules are guidelines for preparing employee copies.

The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of four items in box 12 of Form W-2 applies only to Copy A, which is filed with the SSA.

Note. Payee statements (Copies B, C, and 2 of Form W-2) may be furnished electronically if employees give their consent (as described in Treasury Regulations *Section 31.6051-1(j)*). See also Publication 15-A, Employer's Supplemental Tax Guide.

.02 The minimum dimensions for employee copies only (not Copy A) of Form W-2 should be 2.67 inches deep by 4.25 inches wide. The maximum dimensions should be no more than 6.5 inches deep by no more than 8.5 inches wide.

Note. The maximum and minimum size specifications in this document are for tax year 2015 only and may change in future years.

.03 Either horizontal or vertical format is permitted (see Exhibit D).

.04 The paper for all copies must be white and printed in black ink. The substitute Copy B, which employees are instructed to attach to their federal income tax returns, should be at least 9-pound paper (basis 17 × 22-500). Other copies furnished to employees should also be at least 9-pound paper (basis 17 × 22-500) unless a state, city, or local government provides other specifications.

.05 Employee copies of Form W-2 (Copies B, C, and 2), including those that are 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 of Forms W-2 that are furnished electronically to employees (as described in Treasury Regulations *Section 31.6051-1(j)*). However, these employees should be cautioned to carefully separate the copies of Form W-2. See Publication 15-A, Employer's Supplemental Tax Guide, for information on electronically furnishing Forms W-2 to employees.

.06 Interleaved carbon and chemical transfer paper employee copies must be clearly legible. Fading must be minimized to assure legibility.

.07 The electronic tax logo on the IRS official employee copies is not required on any of the substitute form copies. To avoid confusion and questions by employees, employers are encouraged to delete the identifying number ("22222") from the employee copies of Form W-2.

.08 All substitute employee copies must contain boxes, box numbers, and box titles that match the official IRS Form W-2. Boxes that do not apply can be deleted. However, certain core boxes must be included. The placement, numbering, and size of this information is specified as follows:

- The core boxes must be printed in the exact order shown on the official IRS form. The items and box numbers that constitute the core data are:

- Box 1 — Wages, tips, other compensation,
- Box 2 — Federal income tax withheld,
- Box 3 — Social security wages,
- Box 4 — Social security tax withheld,
- Box 5 — Medicare wages and tips, and
- Box 6 — Medicare tax withheld.

- The core data boxes (1 through 6) must be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form. Boxes or other information will definitely not be permitted to the right of the core data.
- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper right.
- Boxes 1 through 6 must each be a minimum of 1 1/8 inches wide × 1/4 inch deep.
- Other required boxes are:
 - a) Employee's social security number,
 - b) Employer identification number (EIN),
 - c) Employer's name, address, and ZIP code,
 - e) Employee's name, and
 - f) Employee's address and ZIP code.

Identifying items must be present on the form and be in boxes similar to those on the official IRS form. However, they may be placed in any location other than the top or upper right. You do not need to use the lettering system (a-c, e-f) used on the official IRS form. The employer identification number (EIN) may be included with the employer's name and address and not in a separate box.

Note. Box d ("Control number") is not required.

.09 All copies of Form W-2 furnished to employees must clearly show the form number, the form title, and the tax year prominently displayed together in one area of the form. The title of Form W-2 is "Wage and Tax Statement." It is recommended (but not required) that this be located on the bottom left of substitute Forms W-2. The reference to the "Department of the Treasury — Internal Revenue Service" must be on all copies of substitute Forms W-2 furnished to employees. It is recommended (but not required) that this be located on the bottom right of Form W-2.

.10 If the substitute employee copies are labeled, the forms must contain the applicable description:

- "Copy B, To Be Filed With Employee's FEDERAL Tax Return."
- "Copy C, For EMPLOYEE'S RECORDS."
- "Copy 2, To Be Filed With Employee's State, City, or Local Income Tax Return."

It is recommended (but not required) that these be located on the lower left of Form W-2. If the substitute employee copies are not labeled as to the disposition of the copies, then written notification using similar wording must be provided to each employee.

.11 The tax year (for example, 2015) must be clearly printed on all copies of substitute Form W-2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W-2. The use of 24-pt. OCR-A font is recommended (but not required).

.12 Boxes 1 and 2 (if applicable) on Copy B must be outlined in bold 2-point rule or highlighted in some manner to distinguish them. If “Allocated tips” are being reported, it is recommended (but not required) that box 8 also be outlined. If reported, “Social security tips” (box 7) must be shown separately from “Social security wages” (box 3).

Note. Boxes 8 and 9 may be omitted if not applicable.

.13 If employers are required to withhold and report state or local income tax, the applicable boxes are also considered core information and must be placed at the bottom of the form. State information is included in:

- Box 15 (State, Employer’s state ID number)
- Box 16 (State wages, tips, etc.)
- Box 17 (State income tax)

Local information is included in:

- Box 18 (Local wages, tips, etc.)
- Box 19 (Local income tax)
- Box 20 (Locality name)

.14 Boxes 7 through 14 may be omitted from substitute employee copies unless the employer must report any of that information to the employee. For example, if an employee did not have “Social security tips” (box 7), the form could be printed without that box. But if an employer provided dependent care benefits, the amount must be reported separately, shown in box 10, and labeled “Dependent care benefits.”

.15 Employers may enter more than four codes in box 12 of substitute Copies B, C, and 2 (and 1 and D) of Form W-2, but each entry must use Codes A-EE (see the 2015 General Instructions for Forms W-2 and W-3).

.16 If an employer has employees in any of the three categories in box 13, all checkbox headings must be shown and the proper checkmark made, when applicable.

.17 Employers may use box 14 for any other information that they wish to give to their employees. Each item must be labeled. (See the instructions for box 14 in the 2015 General Instructions for Forms W-2 and W-3.)

.18 The front of Copy C of a substitute Form W-2 must contain the note “This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.”

.19 Instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 must be provided to each employee. An employer may modify or delete instructions that do not apply to its employees. (For example, remove Railroad Retirement Tier 1 and Tier 2 compensation information for nonrailroad employees or information about dependent care benefits that the employer does not provide.)

.20 Employers must notify their employees who have no income tax withheld that they may be able to claim a tax refund because of the earned income credit (EIC). They will meet this notification requirement if they furnish a substitute Form W-2 with the EIC notice on the back of Copy B, IRS Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or on their own statement containing the same wording. They may also change the font on Copies B, C, and 2 so that the EIC notification and Form W-2 instructions fit differently. For more information about notification requirements, see Notice 1015, “Have You Told Your Employees About the Earned Income Credit (EIC)?”

Note. An employer does not have to notify any employee who claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate, for the calendar year.

Section 2.4 – Electronic Delivery of Form W-2 and W-2c Recipient Statements

.01 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 W-2 and W-2c.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

.02 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 statement electronically, the employer must provide to the employee a clear and conspicuous disclosure statement containing each of the disclosures described in Regulations Section 31.6051-1 or Publication 15-A.

- 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 until January 31 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 recipient's 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.

.03 Additionally, you must:

- Ensure the electronic format contains all the required information and complies with the guidelines in this document.
- If posting the statement on a website, post it for the recipient to access on or before the January 31 due date through October 15 of that year.
- Inform the recipient, in person, electronically or by mail, of the posting and how to access and print the statement.

Part 3 Additional Instructions

Section 3.1 – Additional Instructions for Form Printers

.01 If electronic media is not used for filing with the SSA, the substitute copies of Forms W-2 (either red-ink or substitute black-and-white forms) should be assembled in the same order as the official IRS Forms W-2. Copy A should be first, followed sequentially by perforated sets (Copies 1, B, C, 2, and D).

.02 The substitute form to be filed by the employer with the SSA must carry the designation "Copy A."

Note. Electronic filers do not submit either red-ink or substitute black-and-white paper Form W-2 (Copy A) or Form W-3 to the SSA.

.03 Substitute forms (red-ink or substitute black-and-white Copy A or W-3) do not require a copy to be retained by employers (Copy D of Form W-2). However, employers must retain copies of the Forms W-2 filed with SSA or have the ability to reconstruct the data for at least four years. Employers must be able to generate a facsimile of Form W-2 (Copy A), in case of loss.

.04 Except for copies in the official assembly, no additional copies that may be prepared by employers should be placed ahead of Form W-2 (Copy C) "For EMPLOYEE'S RECORDS."

.05 You must provide instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 to each employee. You may print them on the back of the substitute Copies B, C, and 2 or provide them to employees on a separate statement. You do not need to use the back of Copy 2. If you do not use Copy 2, you may include all the information that appears on the back of the official Copies B, C, and 2 on the back of your substitute Copies B and C only. As an example, you may use the "Note" on the back of the official Copy C as the dividing point between the text for your substitute Copies B and C. Do not print these instructions on the back of Copy 1. Any Forms W-2 (Copy A) and W-3 that are filed with the SSA must have no printing on the reverse side.

Section 3.2 – Instructions for Employers

.01 Only originals of Form W-2 (Copy A) and Form W-3 may be filed with the SSA. Carbon copies and photocopies are unacceptable.

.02 Employers should type or machine-print data entries on plain paper forms whenever possible. Ensure good quality by using a high-quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images. Black ink must be used with no script type, inverted font, italics, or dual-case alpha characters.

Note. 12-point Courier font is preferred by the SSA.

.03 Form W-2 (Copy A) requires decimal entries for wage data. Dollar signs should not be printed with money amounts on the Forms W-2 (Copy A) and W-3.

.04 The employer must provide a machine-scannable Form W-2 (Copy A). The employer must also provide employee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Do not print any data in the top margin of the payee copies of the forms.

.05 Any printing in box d (Control number) on Form W-2 or box a on Form W-3 may not touch any vertical or horizontal lines and should be centered in the box.

.06 The filer's employer identification number (EIN) must be entered in box b of Form W-2 and box e of Form W-3. The EIN entered on Form(s) W-2 (box b) and Form W-3 (box e) must be the same as on Forms 941, 941-SS, 943, 944, CT-1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS. Be sure to use EIN format (00-000000) rather than SSN format (000-00-0000).

.07 The employer's name, address, and EIN may be preprinted.

Section 3.3 – OMB Requirements for Both Red-Ink and Black-and-White Copy A and W-3 Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following:

- The Office of Management and Budget (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 assigned. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in Exhibits A, B, C, E, and F.)
- 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.

.02 This information must be provided to any users of official or substitute IRS forms or instructions.

.03 The OMB requirements for substitute IRS Form W-2 (Copy A) and Form W-3 are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- The OMB number (1545-0008) must appear exactly as shown on the official IRS form.
- For any copy of Form W-2 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).

.04 Any substitute Form W-2 (Copy A only) and Form W-3 must state “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” 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 3.4 – Order Forms and Instructions

.01 You can order IRS Forms W-2, Forms W-3, the General Instructions for Forms W-2 and W-3, and other tax material, online at IRS.gov. Click on the *Forms and Pubs* link and then the *Order Forms and Pubs* link or by clicking on www.IRS.gov/Businesses and then the *Online Ordering for Information Returns and Employer Returns* link.

.02 Copies of Form W-2 (Copy A) and Form W-3 downloaded from IRS.gov cannot be used for filing with the SSA. These copies of Forms W-2 and W-3 are for information purposes only.

Section 3.5 – Effect on Other Documents

.01 Publication 1141, Revised 11-2014, is superseded.

Section 3.6 – Exhibits

Exhibit A — Form W-2 (Copy A) (Red-Ink) 2015

Exhibit B — Form W-3 (Red-Ink) 2015

Exhibit C — Form W-2 (Copy B) 2015

Exhibit D — Form W-2 Alternative Employee Copies (Illustrating Horizontal and Vertical Formats)

Exhibit E — Form W-2 (Copy A) (Substitute Black-and-White) 2015

Exhibit F — Form W-3 (Laser-Printed) 2015

**Exhibit
A
Form
W-2
(Copy A)**
(Red-ink)

Form W-2 Wage and Tax Statement 2015 Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable. **For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.**
 Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page

Form W-2 Wage and Tax Statement 2015 Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable. **For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.**
 Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page

**Exhibit
B
Form
W-3**
(Red-Ink)

DO NOT STAPLE

a Control number 33333 0.85"		For Official Use Only MB No. 1545-0008		5.00"	
b Kind of Payer (Check one) <input type="checkbox"/> 941 Military <input type="checkbox"/> 943 Medicare gov't emp. <input type="checkbox"/> 944 CT-1 0.36"		Kind of Employer (Check one) <input type="checkbox"/> None apply <input type="checkbox"/> State/local non-501c <input type="checkbox"/> State/local 501c <input type="checkbox"/> Federal gov't		Third-party sick pay (Check if applicable)	
c Total number of Forms W-2 1.60"		d Establishment number 1.60"		1 Wages, tips, other compensation 2 Federal income tax withheld	
e Employer identification number (EIN) 3.20"		3 Social security wages 2.15"		4 Social security tax withheld 2.15"	
f Employer's name		5 Medicare wages and tips 4.67"		6 Medicare tax withheld	
		7 Social security tips 7.50"		8 Allocated tips	
		g Employer's address and ZIP code		9 10 Dependent care benefits	
h Other EIN used this year		11 Nonqualified plans		12a Deferred compensation	
15 State Employer's state ID number 0.60" 2.60"		13 For third-party sick pay use only		12b	
16 State wages, tips, etc.		17 State income tax		14 Income tax withheld by payer of third-party sick pay 0.33"	
Employer's contact person		Employer's telephone number		For Official Use Only	
Employer's fax number		Employer's email address			

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 _____

Form W-3 Transmittal of Wage and Tax Statements 2015

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder
Separate instructions. See the 2015 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

Purpose of Form
 A Form W-3 Transmittal is completed only when paper Copy A of Form(s) W-2, Wage and Tax Statement, is being filed. Do not file Form W-3 alone. All paper forms must comply with IRS standards and be machine readable. Photocopies are not acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

E-Filing
 The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website:
 • **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.
 • **File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's *Specifications for Filing Forms W-2 Electronically (EFW2)*.
 W-2 Online fill-in forms or file uploads will be on time if submitted by March 31, 2016. For more information, go to www.socialsecurity.gov/employer. First time filers, select "Go to Register", returning filers select "Go To Log In."

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 10159Y

**Exhibit
C
Form
W-2
(Copy B)**

		a Employee's social security number		Safe, accurate, FAST! Use  Visit the IRS website at www.irs.gov/efile		
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld		
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld		
		5 Medicare wages and tips		6 Medicare tax withheld		
		7 Social security tips		8 Allocated tips		
d Control number		9		10 Dependent care benefits		
e Employee's first name and initial Last name Suff.		11 Nonqualified plans		12a See instructions for box 12		
		13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b		
		14 Other		12c		
				12d		
f Employee's address and ZIP code						
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement **2015** Department of the Treasury—Internal Revenue Service
Copy B—To Be Filed With Employee's FEDERAL Tax Return.
 This information is being furnished to the Internal Revenue Service.

**Exhibit D
Form W-2
Alternative
Employee
Copies**

(Illustrating
Horizontal and
Vertical Formats)

a Employee's social security number		OMB No. 1545-0009		This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.			
b Employer identification number (EIN)		1 Wages, tips, other compensation	2 Federal income tax withheld				
c Employer's name, address, and ZIP code		3 Social security wages	4 Social security tax withheld				
		5 Medicare wages and tips	6 Medicare tax withheld				
		7 Social security tips	8 Allocated tips				
d Control number		9	10 Dependent care benefits				
e Employee's first name and initial Last name Suff.		11 Nonqualified plans		12a See instructions for box 12			
		13 Statutory employee <input type="checkbox"/>	Retirement plan <input type="checkbox"/>	Third-party sick pay <input type="checkbox"/>	12b		
		14 Other		12c		12d	
		f Employee's address and ZIP code					
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form **W-2 Wage and Tax Statement** **2015** Department of the Treasury—Internal Revenue Service
 Copy C—For EMPLOYEE'S RECORDS (See Notice to Employee on the back of Copy B.) Safe, accurate, FAST! Use 

Horizontal Format

Note: Exhibit D provides examples of employee copies of Form W-2 only. For examples of Copy A, see Exhibit A or Exhibit E. For the specifications of Copy A, which must be filed with the SSA, see Part B, sections 1A and 1B.

The core data boxes are 1 through 6 and, if applicable, 15 through 20. The core data must be similarly positioned, exactly numbered, and exactly titled as shown for each format. Other data may be placed in unoccupied areas based upon the employer's needs. Form identification may be placed before or after the core data. However, the employer's non-core elements may be positioned only between the sections of core data.

1 Wages, tips, other compensation	2 Federal income tax withheld	
3 Social security wages	4 Social security tax withheld	
5 Medicare wages and tips	6 Medicare tax withheld	
Employee's social security number		
Employer identification number (EIN)		
Employer's name, address and, ZIP code		
Employee's name		
Employee's address and ZIP code		
15 State	Employer's state ID number	18 Local wages, tips, etc.
16 State wages, tips, etc.		19 Local income tax
17 State income tax		20 Locality name

Copy B To Be Filed With Employee's FEDERAL Tax Return.

Form **W-2** **2015** Department of the Treasury—Internal Revenue Service
 Wage and Tax Statement

Vertical Format

**Exhibit E
Form W-2
(Copy A)**

(Substitute Black-and-White)

This form may be subject to change.

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
f Employee's address and ZIP code			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other		12c	
					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2 Wage and Tax Statement** 2015 Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
f Employee's address and ZIP code			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other		12c	
					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2 Wage and Tax Statement** 2015 Department of the Treasury—Internal Revenue Service
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page

**Exhibit
F
Form
W-3**

(Laser-Printed)

This form may be subject to change.

DO NOT STAPLE

33333		a Control number		For Official Use Only OMB No. 1545-0008			
b Kind of Payer (Check one)	<input type="checkbox"/> 941	<input type="checkbox"/> Military	<input type="checkbox"/> 943	<input type="checkbox"/> 944	Kind of Employer (Check one)	<input type="checkbox"/> None apply	<input type="checkbox"/> 501 c non-govt
	<input type="checkbox"/> CT-1	<input type="checkbox"/> Hshld. emp.	<input type="checkbox"/> Medicare govt. emp.			<input type="checkbox"/> State/local non-501 c	<input type="checkbox"/> State/local 501 c
c Total number of Forms W-2		d Establishment number		1 Wages, tips, other compensation		2 Federal income tax withheld	
e Employer identification number (EIN)				3 Social security wages		4 Social security tax withheld	
f Employer's name				5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
g Employer's address and ZIP code				9		10 Dependent care benefits	
				11 Nonqualified plans		12a Deferred compensation	
h Other EIN used this year				13 For third-party sick pay use only		12b	
15 State	Employer's state ID number			14 Income tax withheld by payer of third-party sick pay			
16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax	
Employer's contact person		Employer's telephone number		For Official Use Only			
Employer's fax number		Employer's email address		0.33*			

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

Form **W-3 Transmittal of Wage and Tax Statements** **2015**

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2015 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

Purpose of Form

A Form W-3 Transmittal is completed only when paper Copy A of Form(s) W-2, Wage and Tax Statement, is being filed. Do not file Form W-3 alone. All paper forms must comply with IRS standards and be machine readable. Photocopies are not acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

E-Filing

The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website.

• **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.

• **File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's Specifications for Filing Forms W-2 Electronically (EFW2).

W-2 Online fill-in forms or file uploads will be on time if submitted by March 31, 2016. For more information, go to www.socialsecurity.gov/employer. First time filers, select "Go to Register"; returning filers select "Go To Log In."

When To File

Mail Form W-3 with Copy A of Form(s) W-2 by February 29, 2016.

Where To File Paper Forms

Send this entire page with the entire Copy A page of Form(s) W-2 to:

**Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001**

Note: If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Publication 15 (Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 10159Y

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2015–27 through 2015–42

Announcements:

2015-17, 2015-28 I.R.B. 67
2015-18, 2015-33 I.R.B. 198
2015-19, 2015-32 I.R.B. 157
2015-20, 2015-38 I.R.B. 375
2015-21, 2015-34 I.R.B. 220
2015-22, 2015-35 I.R.B. 288
2015-23, 2015-36 I.R.B. 311
2015-24, 2015-36 I.R.B. 313
2015-25, 2015-39 I.R.B. 422

Notices:

2015-43, 2015-29 I.R.B. 73
2015-46, 2015-28 I.R.B. 64
2015-47, 2015-30 I.R.B. 76
2015-48, 2015-30 I.R.B. 77
2015-49, 2015-30 I.R.B. 79
2015-50, 2015-30 I.R.B. 81
2015-51, 2015-31 I.R.B. 133
2015-52, 2015-35 I.R.B. 227
2015-53, 2015-33 I.R.B. 190
2015-54, 2015-34 I.R.B. 210
2015-55, 2015-34 I.R.B. 217
2015-56, 2015-35 I.R.B. 235
2015-57, 2015-36 I.R.B. 294
2015-58, 2015-37 I.R.B. 322
2015-59, 2015-40 I.R.B. 459
2015-61, 2015-39 I.R.B. 408
2015-62, 2015-39 I.R.B. 411
2015-63, 2015-40 I.R.B. 461
2015-64, 2015-40 I.R.B. 464
2015-65, 2015-40 I.R.B. 466
2015-66, 2015-41 I.R.B. 541
2015-67, 2015-41 I.R.B. 546
2015-68, 2015-41 I.R.B. 547
2015-69, 2015-41 I.R.B. 550

Proposed Regulations:

REG-136459-09, 2015-37 I.R.B. 332
REG-155164-09, 2015-41 I.R.B. 560
REG-109370-10, 2015-33 I.R.B. 198
REG-112997-10, 2015-39 I.R.B. 422
REG-103033-11, 2015-37 I.R.B. 325
REG-109813-11, 2015-37 I.R.B. 330
REG-138344-13, 2015-41 I.R.B. 557
REG-139483-13, 2015-40 I.R.B. 475
REG-115452-14, 2015-32 I.R.B. 158
REG-127895-14, 2015-41 I.R.B. 556
REG-132075-14, 2015-35 I.R.B. 288
REG-138526-14, 2015-28 I.R.B. 67
REG-143800-14, 2015-37 I.R.B. 347
REG-102648-15, 2015-31 I.R.B. 134
REG-102837-15, 2015-27 I.R.B. 43
REG-123640-15, 2015-37 I.R.B. 350

Revenue Procedures:

2015-34, 2015-27 I.R.B. 4
2015-36, 2015-27 I.R.B. 20
2015-38, 2015-36 I.R.B. 295
2015-39, 2015-33 I.R.B. 195
2015-40, 2015-35 I.R.B. 236
2015-41, 2015-35 I.R.B. 263
2015-42, 2015-36 I.R.B. 310
2015-43, 2015-40 I.R.B. 467
2015-44, 2015-38 I.R.B. 374
2015-45, 2015-39 I.R.B. 412
2015-46, 2015-39 I.R.B. 414
2015-47, 2015-39 I.R.B. 419
2015-48, 2015-40 I.R.B. 469
2015-49, 2015-41 I.R.B. 555
2015-50, 2015-42 I.R.B. 583
2015-51, 2015-42 I.R.B. 583

Revenue Rulings:

2015-15, 2015-27 I.R.B. 1
2015-16, 2015-31 I.R.B. 130
2015-17, 2015-39 I.R.B. 358
2015-18, 2015-34 I.R.B. 209
2015-19, 2015-36 I.R.B. 291
2015-20, 2015-38 I.R.B. 373
2015-21, 2015-40 I.R.B. 447

Treasury Decisions:

9723, 2015-31 I.R.B. 84
9726, 2015-31 I.R.B. 98
9727, 2015-32 I.R.B. 154
9728, 2015-33 I.R.B. 169
9729, 2015-35 I.R.B. 221
9730, 2015-35 I.R.B. 223
9731, 2015-37 I.R.B. 314
9732, 2015-39 I.R.B. 371
9733, 2015-41 I.R.B. 494
9734, 2015-41 I.R.B. 500
9735, 2015-37 I.R.B. 316
9736, 2015-39 I.R.B. 402
9737, 2015-40 I.R.B. 449
9738, 2015-40 I.R.B. 453
9739, 2015-41 I.R.B. 528
9740, 2015-42 I.R.B. 573

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Finding List of Current Actions on Revenue Procedures:—Continued **Previously Published Items¹**

Bulletins 2015–27 through 2015–42

Notices:

2014-4

Modified by
Notice 2015-51, 2015-31 I.R.B. 133

2014-17

Superseded by
Notice 2015-67, 2015-41 I.R.B. 546

Proposed Regulations:

2009-57

Obsoleted by
REG-112997-10 2015-39 I.R.B. 422

Revenue Procedures:

1992-75

Clarified by
Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2003-40

Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2003-78

Modified by
Rev. Proc. 2015-46, 2015-39 I.R.B. 414

2006-9

Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2006-9

Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2006-54

Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2006-54

Superseded by
Rev. Proc. 2015-40, 2015-35 I.R.B. 236

2008-31

Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2008-31

Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2011-49

Modified by
Rev. Proc. 2015-36, 2015-27 I.R.B. 20

2011-49

Superseded by
Rev. Proc. 2015-36, 2015-27 I.R.B. 20

2015-14

Modified by
Rev. Proc. 2015-39, 2015-33 I.R.B. 195

2015-40

Amplified by
Rev. Proc. 2015-41, 2015-35 I.R.B. 263

2015-41

Amplified by
Rev. Proc. 2015-40, 2015-35 I.R.B. 236

Treasury Decisions:

58-422

Obsoleted by
T.D. 9739 2015-41 I.R.B. 528

66-284

Obsoleted by
T.D. 9739 2015-41 I.R.B. 528

79-250

Obsoleted by
T.D. 9739 2015-41 I.R.B. 528

79-289

Obsoleted by
T.D. 9739 2015-41 I.R.B. 528

96-29

Obsoleted by
T.D. 9739 2015-41 I.R.B. 528

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Internal Revenue Service

Washington, DC 20224

Official Business
Penalty for Private Use, \$300

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/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.