

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Notice 2016–1, page 265.

This notice provides the optional 2016 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan.

Rev. Rul. 2016–1, page 262.

This revenue ruling provides various prescribed rates for federal income tax purposes including the applicable federal interest rates, the adjusted applicable federal interest rates, the adjusted federal long-term rate, the adjusted federal long-term tax-exempt rate, and the blended annual rate. These rates are determined as prescribed by § 1274. This month's revenue ruling also contains the deemed rate of return for transfers made during calendar year 2016 to pooled income funds described in § 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

Notice 2016–2, page 265.

This notice provides guidance regarding the health coverage tax credit (HCTC) under § 35 of the Internal Revenue Code as modified by the Trade Preferences Extension Act of 2015, Pub. L. 114–27 (June 29, 2015). The notice provides information, including answers to frequently asked questions, on who may claim the HCTC, the amount of the HCTC, and the procedures to claim the HCTC for tax years 2014 and 2015. The notice also provides guidance for taxpayers eligible to claim the HCTC who enrolled in a qualified health plan through a Health Insurance Marketplace in tax years 2014 and 2015, and who claimed or are eligible to claim the premium tax credit under § 36B.

**Bulletin No. 2016–2
January 11, 2016**

T.D. 9745, page 256.

These final regulations (REG–125398–12) finalize rules proposed in 2013 dealing with various issues under section 36B relating to the health insurance premium tax credit. These regulations include rules for determining the amount of the credit for partial months of coverage and the effect of various employer arrangements, such as health reimbursement arrangements, wellness programs, and health flex contributions, on the affordability of employer-sponsored health coverage. Rules relating to minimum value, also part of the 2013 proposed regulations, are reserved here and will be finalized at a later time.

EXEMPT ORGANIZATIONS

Rev. Proc. 2016–10, page 270.

This document sets forth updated procedures for issuing determination letters on the private foundation status under § 509(a), operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1). Rev. Proc. 2015–10 is superseded.

(Continued on the next page)

ADMINISTRATIVE

Rev. Proc. 2016–10, page 270.

This document sets forth updated procedures for issuing determination letters on the private foundation status under § 509(a), operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1). Rev. Proc. 2015–10 is superseded.

Rev. Proc. 2016–11, page 274.

This procedure provides the inflation-adjusted items for 2015 for certain Civil Penalties under the Code for returns and statements required to be filed after December 31, 2015. In addition, this procedure modifies Rev. Proc. 2015–53 to correct section 3.48(3), Failure to File Correct Information Returns.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

26 CFR 1.36B-1

TD 9745

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act, 2011. These final regulations affect individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges, sometimes called Marketplaces) and claim the health insurance premium tax credit, and Exchanges that make qualified health plans available to individuals and employers.

DATES: *Effective Date:* These regulations are effective on December 18, 2015.

Applicability Dates: For dates of applicability, see §§ 1.36B-1(o) and 1.36B-6(g).

FOR FURTHER INFORMATION

CONTACT: For general questions on the premium tax credit, Shareen Pflanz, (202) 317-4718; for minimum value, Andrew Braden, (202) 317-7006 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code) relating to the health insurance premium tax credit. Section 36B was enacted by the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30377) (2012 section 36B final regulations). On May 3, 2013, a notice of proposed rulemaking (REG-125398-12) was published in the **Federal Register** (78 FR 25909). Written comments responding to the proposed regulations were received. The comments have been considered in connection with these final regulations and are available for public inspection at www.regulations.gov or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted, in part, as amended by this Treasury decision. Some rules proposed under REG-125398-12 on the minimum value of eligible employer-sponsored plans have been reserved and will be finalized separately under REG-119850-15. Two paragraphs on minimum value have been re-proposed, see REG-143800-14 (80 FR 52678) (2015 proposed minimum value regulations), are finalized in part, and will be finalized in part under REG-143800-14.

Explanation of Revisions and Summary of Comments

1. *Definition of Modified Adjusted Gross Income*

Section 36B(d)(2) provides that a taxpayer's household income includes the modified adjusted gross income of the taxpayer and the members of the taxpayer's

tax family who are required to file an income tax return. The 2012 section 36B final regulations provide that, in computing household income, whether a family member must file a tax return is determined without regard to section 1(g)(7). Under section 1(g)(7), a parent may elect to include a child's gross income in the parent's gross income if certain requirements are met.

The proposed regulations removed "without regard to section 1(g)(7)" from the 2012 section 36B final regulations because that language implied that the child's gross income is included in both the parent's adjusted gross income and the child's adjusted gross income in determining household income. Thus, the proposed regulations clarified that when a parent makes an election under section 1(g)(7), household income includes the child's gross income included on the parent's return only. These final regulations adopt that rule without change and clarify that the modified adjusted gross income of a parent who makes the section 1(g)(7) election includes the child's modified adjusted gross income. Thus, the parent's modified adjusted gross income includes not only the child's gross income but also the child's tax-exempt interest and nontaxable Social Security income, which are excluded from gross income but included in modified adjusted gross income in computing household income. (A parent may not make a section 1(g)(7) election if the child has income excluded under section 911, the third type of nontaxable income included in modified adjusted gross income.)

2. *Wellness Program Incentives*

Under section 36B(c)(2)(C)(i) and § 1.36B-2(c)(3)(v), an eligible employer-sponsored plan is affordable for an employee and related individuals only if the portion of the annual premium the employee must pay for self-only coverage does not exceed the required contribution percentage of the taxpayer's household income. Under section 36B(c)(2)(C)(ii), an eligible employer-sponsored plan provides minimum value only if the plan's

share of the total allowed cost of benefits is at least 60 percent and, under the 2015 proposed minimum value regulations, the plan provides substantial coverage of inpatient hospital services and physician services.

The proposed regulations provide that, for an employee eligible to participate in a wellness program, the affordability and minimum value of eligible employer-sponsored coverage are determined by assuming that each employee fails to satisfy the requirements of a wellness program, except the requirements of a nondiscriminatory wellness program related to tobacco use. Thus, the affordability and minimum value of a plan that charges a higher initial premium or higher cost-sharing for tobacco users are determined based on the premium or cost-sharing that is charged to non-tobacco users or to tobacco users who complete the related wellness program, such as attending smoking cessation classes.

Identical rules, addressing only an employee's required contribution for purposes of determining affordability, were proposed in regulations under section 5000A (REG-141036-13, 79 FR 4302, January 27, 2014) (section 5000A proposed regulations). The preamble to regulations finalizing the section 5000A proposed regulations (TD 9705, 79 FR 70464, November 26, 2014) (section 5000A final regulations) discusses the comments received on the proposed regulations under section 36B, except comments discussed in the next paragraph, and additional comments received on the section 5000A proposed regulations (79 FR 70466). Comments discussed in the preamble to the section 5000A proposed regulations are not discussed again in this preamble.

Because the standard for affordability for individuals eligible for coverage by reason of a relationship to an employee (related individuals) under section 5000A is different than the standard under section 36B, the section 5000A final regulations do not address certain comments on the treatment of wellness program incentives in determining affordability for related individuals. These commenters requested that wellness incentives related to tobacco use be treated as unearned for related individuals. The commenters expressed concern that treating wellness incentives related to tobacco use as earned in all

cases unfairly penalizes related individuals for an employee's tobacco use. However, section 36B(c)(2)(C) provides that the affordability of coverage for related individuals under section 36B is based on the cost of self-only coverage. Accordingly, the final regulations do not adopt this comment.

Thus, after considering all the comments, these final regulations, like the section 5000A final regulations, retain the rules in the proposed regulations that wellness incentives unrelated to tobacco use are treated as unearned and wellness incentives related to tobacco use are treated as earned in determining affordability. For purposes of both the section 5000A final regulations and these final regulations, nondiscriminatory wellness programs include both participatory and health-contingent wellness programs. Both the section 5000A final regulations and these final regulations also clarify that (1) a wellness incentive that includes any component unrelated to tobacco use is treated as unearned (however, as stated in the preamble to the section 5000A final regulations, if there is an incentive for completing a program unrelated to tobacco use and a separate incentive for completing a program related to tobacco use, then the incentive related to tobacco use may be treated as earned), and (2) the term *wellness program incentives* has the same meaning as the term *reward* in regulations issued by the Departments of Health and Human Services (HHS) and Labor as well as the Treasury Department, see § 54.9802-1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f). These final regulations also apply the rules described in this section of the preamble for purposes of determining minimum value.

3. Employer Contributions to Health Reimbursement Arrangements (HRA)

The proposed regulations provide that amounts newly made available in the current plan year under an HRA that is integrated with eligible employer-sponsored coverage and that an employee may use to pay premiums are counted toward the employee's required contribution for purposes of determining affordability. Amounts newly made available in the current plan year under an HRA that is integrated with eligible employer-sponsored coverage and

that an employee may use only to reduce cost-sharing for medical expenses covered by the primary plan count toward a plan's minimum value percentage.

The comments on the proposed regulations are discussed in the section 5000A final regulations. After considering all the comments, both the section 5000A final regulations and these final regulations (1) cross-reference Notice 2013-54 (2013-40 IRB 287, see § 601.601(d)) for guidance on the requirements for an HRA to be integrated with eligible employer-sponsored coverage, (2) clarify that amounts newly made available under an HRA reduce an employee's required contribution (or, for purposes of section 36B, count towards providing minimum value) if the HRA would have been integrated with eligible employer-sponsored coverage had the employee enrolled in the primary plan, (3) clarify that an HRA is taken into account in determining affordability (and minimum value for purposes of section 36B) only if the HRA and the primary eligible employer-sponsored coverage are offered by the same employer, (4) clarify that HRA contributions are taken into account for affordability and not minimum value if an employee may use the HRA contributions to pay premiums for the primary plan only or to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, and (5) clarify that employer contributions to an HRA reduce an employee's required contribution (or count towards providing minimum value for section 36B purposes) only to the extent the amount of the annual contribution is required under the terms of the plan or is otherwise determinable within a reasonable time before the employee must decide whether to enroll. For more information on how contributions to an HRA are taken into account for purposes of section 4980H(b) and related reporting under section 6056, see Notice 2015-87, 2015-52 IRB, released simultaneously with these final regulations.

Additional regulations will finalize other rules on minimum value in the proposed regulations.

4. Employer Contributions to Cafeteria Plans (Flex Contributions)

The preamble to the section 5000A proposed regulations requested comments on how employer contributions under a

section 125 cafeteria plan (flex contributions) that employees may not opt to receive as a taxable benefit should be taken into account in determining an employee's required contribution for purposes of the affordability of coverage. The section 5000A final regulations discussed the comments received and adopted the rule that an employee's required contribution is reduced by employer contributions under a section 125 cafeteria plan that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may be used only to pay for medical care within the meaning of section 213. These final regulations adopt this rule for purposes of determining affordability under section 36B.

For more information on the effect of flex contributions and other similar arrangements on affordability for purposes of sections 36B, 5000A, and related consequences under section 4980H, see Notice 2015-87, released simultaneously with these final regulations.

5. Post-Employment Coverage

Section 1.36B-2(c)(3)(iv) provides that an individual who may enroll in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage only for months that the individual is enrolled in the coverage. The proposed regulations provide that this rule applies only to former employees and extend the rule to retiree coverage. Accordingly, an individual who may enroll in retiree coverage is eligible for minimum essential coverage only for the months the individual is enrolled in the coverage.

Commenters opined that the continuation and retiree coverage rules should apply to individuals eligible for the coverage by reason of a relationship to an employee, for example, the spouse of a retired employee. In response to these comments, the final regulations clarify that an individual who may enroll in continuation coverage or retiree coverage because of a relationship to a former employee is eligible for the coverage only for the months the individual is enrolled in the coverage.

Commenters suggested that the rule for continuation coverage should apply to current employees eligible for continua-

tion coverage as a result of reduced hours. The final regulations do not adopt this suggestion. Eligible employer-sponsored coverage for current employees does not present the same administrability issues as for former employees. Current employees with continuation coverage should be subject to the same general rules on eligibility for employer-sponsored coverage as other current employees. Although employees may be subject to a higher required contribution for continuation coverage than is required for other eligible employer-sponsored coverage, for purposes of the premium tax credit, employees are eligible for eligible employer-sponsored coverage only if the coverage is both affordable and provides minimum value. Thus, current employees offered continuation coverage, like other current employees, may be eligible for the premium tax credit if the coverage offered either is not affordable or does not provide minimum value.

6. Newborns, Adopted Children, and Other Individuals Enrolled Midmonth

Regulations at 45 CFR 155.420(d)(2)(i) require issuers to provide coverage to a newborn child enrolled in a qualified health plan effective on the date of birth. Under section 36B(c)(2)(A)(i) and § 1.36B-3(c)(1)(i), a month is a coverage month for an individual only if the individual is enrolled in a qualified health plan through an Exchange as of the first day of the month. Under § 1.36B-3(d), the monthly premium assistance amount is determined, in part, by the adjusted monthly premium for the applicable second lowest cost silver (benchmark) plan (benchmark plan premium). The proposed regulations provide that a child enrolled in a qualified health plan in the month of the child's birth, adoption, or placement with the taxpayer for adoption or in foster care (birth month) is treated as enrolled as of the first day of the month.

Some commenters interpreted the coverage month rule for newborns as requiring that issuers must provide coverage for a newborn as of the first day of the month.

Other commenters noted that applying a new adjusted monthly premium as of the first of the month, thus increasing the premium assistance amount for the month, is inconsistent with HHS regulations that provide that the amount of advance credit payments (which approximates the pre-

mium assistance amount) does not change until the first day of the month following the birth month.

No changes are made to the final regulations to reflect these comments. The rules treat certain individuals as enrolled as of the first day of the month for purposes of the premium tax credit to conform with the general rules for coverage months but do not require issuers to enroll the individuals as of the first day of the month. Furthermore, HHS regulations published on July 15, 2013 (78 FR 42321) removed the rule providing that advance credit payments do not change until the month following a birth or other event for which a midmonth enrollment is allowed.

Under 45 CFR 155.420(b)(2)(i), Exchanges must ensure that a taxpayer eligible to enroll an individual in coverage may choose for the individual's coverage to be effective as of the individual's date of birth, adoption, or placement for adoption or in foster care or as of the first day of the following month. Similarly, for individual's placed with a taxpayer by court order, 45 CFR 155.420(b)(2)(v) provides that Exchanges must allow the individual's coverage to be effective as of the date the court order is effective. Accordingly, the final regulations provide that an individual is treated as enrolled as of the first day of the month of birth, adoption, or placement in adoption or foster care if the individual's enrollment is effective as of the date of birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order. The final regulations use the term *individual* instead of *child* to align with HHS regulations relating to midmonth enrollments.

The proposed regulations provide that the adjusted monthly premium is determined as if all members of the coverage family for that month were enrolled in a qualified health plan for the entire month. The intent of this rule was to specify that the adjusted monthly premium is determined as of the first day of a coverage month and is not prorated for midmonth changes in enrollment or eligibility for other minimum essential coverage. Accordingly, an individual who enrolls midmonth but who is treated as enrolled as of the first day of the month is a member of the coverage family (if all other requirements are met) in determining the ad-

justed monthly premium for that month. For other coverage family changes, the adjusted monthly premium does not change until the following month. The final regulations clarify these rules by providing that the term *coverage family* means the members of a taxpayer's family for whom a month is a coverage month (which requires being enrolled on the first day of the month) and that the adjusted monthly premium is determined as of the first day of a coverage month.

7. Partial Months of Coverage

The proposed regulations provide that the premium assistance amount for a coverage month is prorated by the number of days of coverage when a qualified health plan is terminated before the last day of a month and the issuer reduces or refunds a portion of the monthly premium.

The proposed rule for computing a prorated premium assistance amount has proven to be complex and may be difficult to administer. Accordingly, the final regulations provide that the premium assistance amount for a termination month is the lesser of (1) the enrollment premiums charged (reduced by any amounts that were refunded) and (2) the difference between the benchmark plan premium and contribution amount for the full month. The final regulations clarify that this computation also applies to a month an individual is enrolled in coverage effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order. The Treasury Department and the IRS anticipate publishing rules requiring Exchanges to report under section 36B(f)(3) for partial months of coverage the amount of enrollment premiums charged and advance credit payments made for the days of coverage and the benchmark plan premium for a full month of coverage.

Effective/Applicability Date

These final regulations apply to taxable years ending after December 31, 2013.

Special Analyses

Certain IRS regulations, including this one, 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. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal authors of these final regulations are Andrew Braden, Arvind Ravichandran, and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Par. 2. Section 1.36B-0 is amended by:

1. Revising the introductory text.
2. Revising the entries for §§ 1.36B-2(c)(3)(iv) and 1.36B-2(c)(3)(v)(A)(4).
2. Adding entries for §§ 1.36B-2(c)(3)(v)(A)(5) and (6).
3. Revising the entries for §§ 1.36B-3(c)(2) and (3).
4. Adding entries for §§ 1.36B-3(c)(4), 1.36B-3(d)(1) and (2), 1.36B-3(d)(2)(i) and (ii) and 1.36B-6.

The revisions and additions read as follows:

§ 1.36B-0 Table of contents.

This section lists the captions contained in §§ 1.36B-1 through 1.36B-6.

* * * * *

§ 1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(iv) Post-employment coverage.

(v) * * *

(A) * * *

(4) Wellness program incentives.

(5) Employer contributions to health reimbursement arrangements.

(6) Employer contributions to cafeteria plans.

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§ 1.36B-3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(2) Certain individuals enrolled during a month.

(3) Premiums paid for a taxpayer.

(4) Examples.

(d) * * *

(1) In general.

(2) Partial month of coverage.

(i) In general.

(ii) Examples.

* * * * *

§ 1.36B-6 Minimum value.

(a) In general.

(b) MV standard population.

(c) MV percentage.

(1) In general.

(2) Wellness program incentives.

(i) In general.

(ii) Example.

(3) Employer contributions to health savings accounts.

(4) Employer contributions to health reimbursement arrangements.

(5) Expected spending adjustments for health savings accounts and health reimbursement arrangements.

(d) Methods for determining MV.

(e) Scope of essential health benefits and adjustment for benefits not included in MV Calculator.

(f) Actuarial certification.

(1) In general.

(2) Membership in American Academy of Actuaries.

(3) Actuarial analysis.

- (4) Use of MV Calculator.
- (g) Effective/applicability date.
- (1) In general.
- (2) Exception.

Par. 3. Section 1.36B-1 is amended by revising paragraphs (e)(1)(i), (e)(1)(ii)(B), and (n) to read as follows:

§ 1.36B-1 Premium tax credit definitions.

* * * * *

(e) * * *

(1) * * *

(i) A taxpayer's modified adjusted gross income (including the modified adjusted gross income of a child for whom an election under section 1(g)(7) is made for the taxable year);

(ii) * * *

(B) Are required to file a return of tax imposed by section 1 for the taxable year.

* * * * *

(n) *Rating area.* The term *rating area* has the same meaning as used in section 2701(a)(2) of the Public Health Service Act (42 U.S.C. 300gg(a)(2)) and 45 CFR 147.102(b).

* * * * *

Par. 4. Section 1.36B-2 is amended by:

1. Revising paragraphs (c)(3)(iv) and (c)(3)(v)(A)(4).
2. Adding paragraphs (c)(3)(v)(A)(5) and (6) and (c)(3)(v)(D), *Example 9*.
3. Revising paragraph (c)(3)(vi).

The revisions and additions read as follows:

§ 1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(iv) *Post-employment coverage.* A former employee (including a retiree), or an individual related (within the meaning of paragraph (c)(3)(i) of this section) to a former employee, who may enroll in eligible employer-sponsored coverage or in continuation coverage required under Federal law or a State law that provides comparable continuation coverage is eligible for minimum essential coverage under this coverage only for months that the former employee or related individual is enrolled in the coverage.

(v) * * *

(A) * * *

(4) *Wellness program incentives.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining an employee's required contribution for purposes of affordability of an eligible employer-sponsored plan to the extent the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose. For purposes of this section, the term *wellness program incentive* has the same meaning as the term *reward* in § 54.9802-1(f)(1)(i) of this chapter.

(5) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that an employee may use to pay premiums, or may use to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, reduce the employee's required contribution if the health reimbursement arrangement would be integrated, as that term is used in Notice 2013-54 (2013-40 IRB 287) (see § 601.601(d) of this chapter), with an eligible employer-sponsored plan for an employee enrolled in the plan. The eligible employer-sponsored plan and the health reimbursement arrangement must be offered by the same employer. Employer contributions to a health reimbursement arrangement reduce an employee's required contribution only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide whether to enroll in the eligible employer-sponsored plan.

(6) *Employer contributions to cafeteria plans.* Amounts made available for the current plan year under a cafeteria plan, within the meaning of section 125, reduce an employee's or a related individual's required contribution if—

- (i) The employee may not opt to receive the amount as a taxable benefit;
- (ii) The employee may use the amount to pay for minimum essential coverage; and
- (iii) The employee may use the amount exclusively to pay for medical care, within the meaning of section 213.

* * * * *

(D) * * *

Example 9. Wellness program incentives. (i) Employer X offers an eligible employer-sponsored plan with a nondiscriminatory wellness program that reduces premiums by \$300 for employees who do not use tobacco products or who complete a smoking cessation course. Premiums are reduced by \$200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and the cost of his premiums is \$3,700. Employee C uses tobacco and the cost of her premiums is \$4,000.

(ii) Under paragraph (c)(3)(v)(A)(4) of this section, only the incentives related to tobacco use are counted toward the premium amount used to determine the affordability of X's plan. C is treated as having earned the \$300 incentive for attending a smoking cessation course regardless of whether C actually attends the course. Thus, the required contribution for determining affordability for both Employee B and Employee C is \$3,700. The \$200 incentive for completing cholesterol screening is treated as not earned and does not reduce their required contribution.

(vi) *Minimum value.* See § 1.36B-6 for rules for determining whether an eligible employer-sponsored plan provides minimum value.

* * * * *

Par. 5. Section 1.36B-3 is amended by:

1. Revising paragraph (b)(2).
2. Redesignating paragraphs (c)(2) and (3) as paragraphs (c)(3) and (4) and adding paragraph (c)(2).
3. Revising paragraph (d).
4. Adding a sentence to the end of paragraph (e).
5. Revising paragraphs (f)(4), (g)(2), and (j)(1) and (3).
6. Removing the language "(d)(1)" everywhere it appears in paragraphs (h), (j), and (k), and adding the language "(d)(1)(i)" in its place and removing the language "(d)(2)" everywhere it appears in paragraphs (h) and (j) and adding the language "(d)(1)(ii)" in its place.

The revisions and additions read as follows:

§ 1.36B-3 Computing the premium assistance credit amount.

* * * * *

(b) * * *

(2) The term *coverage family* means, in each month, the members of a taxpayer's family for whom the month is a coverage month.

(c) * * *

(2) *Certain individuals enrolled during a month.* If an individual enrolls in a qualified health plan and the enrollment is

effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the individual is treated as enrolled as of the first day of that month for purposes of this paragraph (c).

* * * * *

(d) *Premium assistance amount*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, the premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

(ii) The excess of the adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (the taxpayer's contribution amount).

(2) *Partial month of coverage*—(i) *In general.* If a qualified health plan is terminated before the last day of a month or an individual is enrolled in coverage effective on the date of the individual's birth, adoption, or placement for adoption

or in foster care, or on the effective date of a court order, the premium assistance amount for the month is the lesser of—

(A) The enrollment premiums for the month (reduced by any amounts that were refunded); or

(B) The excess of the benchmark plan premium for a full month of coverage over the full contribution amount for the month.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (d)(2).

Example 1. (i) Taxpayer R is single and has no dependents. R enrolls in a qualified health plan with a monthly premium of \$450. The difference between R's benchmark plan premium and contribution amount for the month is \$420. R's premium assistance amount for a coverage month with a full month of coverage is \$420 (the lesser of \$450 and \$420).

(ii) The issuer of R's qualified health plan is notified that R died on September 20. The issuer terminates coverage as of that date and refunds the remaining portion of the September enrollment premiums (\$150) for R's coverage.

(iii) Under this paragraph (d)(2), R's premium assistance amount for September is the lesser of the enrollment premiums for the month (\$300 (\$450-\$150)) or the difference between the benchmark plan premium for a full month of coverage and the full contribution amount for the month (\$420). R's premium assistance amount for September is \$300, the lesser of \$420 and \$300.

Example 2. The facts are the same as in *Example 1* of this paragraph (d)(2)(ii), except that the qualified health plan issuer does not refund any enrollment premiums for September. Under this paragraph (d)(2), R's premium assistance amount for September is \$420, the lesser of \$450 and \$420.

Example 3. The facts are the same as in *Example 1* of this paragraph (d)(2)(ii), except that the difference between R's benchmark plan premium and contribution amount for a month is \$275. Accordingly, R's premium assistance amount for a coverage month with a full month of coverage is \$275 (the lesser of \$450 and \$275). Under this paragraph (d)(2), R's premium assistance amount for September remains \$275, the lesser of \$300 and \$275.

(e) * * * The adjusted monthly premium for a coverage month is determined as of the first day of the month.

(f) * * *

(4) *Family members residing at different locations.* The benchmark plan premium determined under paragraphs (f)(1) and (2) of this section for family members who live in different States and enroll in separate qualified health plans is the sum of the premiums for the applicable benchmark plans for each group of family members living in the same State.

* * * * *

(g) * * *

(2) *Applicable percentage table.*

Household income percentage of Federal poverty line	Initial percentage	Final percentage
Less than 133%	2.0%	2.0%
At least 133% but less than 150%	3.0%	4.0%
At least 150% but less than 200%	4.0%	6.3%
At least 200% but less than 250%	6.3%	8.05%
At least 250% but less than 300%	8.05%	9.5%
At least 300% but not more than 400%	9.5%	9.5%

* * * * *

(j) *Additional benefits*—(1) *In general.* If a qualified health plan offers benefits in addition to the essential health benefits a qualified health plan must provide under section 1302 of the Affordable Care Act (42 U.S.C. 18022), or a State requires a qualified health plan to cover benefits in addition to these essential health benefits, the portion of the premium for the plan properly allocable to the additional benefits is excluded from the monthly premiums under paragraph (d)(1)(i) or (ii) of this section. Premiums are allocated to additional benefits before determining the applicable benchmark plan under paragraph (f) of this section.

* * * * *

(3) *Examples.* The following examples illustrate the rules of this paragraph (j):

Example 1. (i) Taxpayer B enrolls in a qualified health plan that provides benefits in addition to essential health benefits (additional benefits). The monthly premiums for the plan in which B enrolls are \$370, of which \$35 is allocable to additional benefits. B's benchmark plan premium (determined after allocating premiums to additional benefits for all silver level plans) is \$440, of which \$40 is allocable to additional benefits. B's monthly contribution amount, which is the product of B's household income and the applicable percentage, is \$60.

(ii) Under this paragraph (j), B's enrollment premiums and the benchmark plan premium are reduced by the portion of the premium that is allocable to the additional benefits provided under that plan. Therefore, B's monthly enrollment premiums are reduced to \$335 (\$370 - \$35) and B's benchmark plan premium is reduced to \$400 (\$440 - \$40). B's premium assistance

amount for a coverage month is \$335, the lesser of \$335 (B's enrollment premiums, reduced by the portion of the premium allocable to additional benefits) and \$340 (B's benchmark plan premium, reduced by the portion of the premium allocable to additional benefits (\$400), minus B's \$60 contribution amount).

Example 2. The facts are the same as in *Example 1* of this paragraph (j)(3), except that the plan in which B enrolls provides no benefits in addition to the essential health benefits required to be provided by the plan. Thus, under paragraph (j) of this section, B's benchmark plan premium (\$440) is reduced by the portion of the premium allocable to additional benefits provided under that plan (\$40). B's enrollment premiums (\$370) are not reduced under this paragraph (j). B's premium assistance amount for a coverage month is \$340, the lesser of \$370 (B's enrollment premiums) and \$340 (B's benchmark plan premium, reduced by the portion of the premium allocable to additional benefits (\$400), minus B's \$60 contribution amount).

* * * * *

Par. 6. Section 1.36B-6 is added to read as follows:

§ 1.36B-6 *Minimum value.*

(a) *In general.* An eligible employer-sponsored plan provides minimum value (MV) only if—

(1) The plan's share of the total allowed costs of benefits provided to an employee (the MV percentage) is at least 60 percent; and

(2) [Reserved]

(b) *MV standard population.* [Reserved]

(c) *MV percentage—(1) In general.* [Reserved]

(2) *Wellness program incentives—(i) In general.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect deductibles, copayments, or other cost-sharing are treated as earned in determining the plan's MV percentage if the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose. For purposes of this section, the term *wellness program incentive* has the same meaning as the term *reward* in § 54.9802-1(f)(1)(i) of this chapter.

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. (i) Employer X offers an eligible employer-sponsored plan that reduces the deductible by \$300 for employees who do not use tobacco products or who complete a smoking cessation course. The deductible is reduced by \$200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and his deductible is \$3,700. Employee C uses tobacco and her deductible is \$4,000.

(ii) Under paragraph (c)(2)(i) of this section, only the incentives related to tobacco use are considered in determining the plan's MV percentage. C is treated as having earned the \$300 incentive for attending a smoking cessation course regardless of whether C actually attends the course. Thus, the deductible for determining for the MV percentage for both Employees B and C is \$3,700. The \$200 incentive for completing cholesterol screening is disregarded.

(3) *Employer contributions to health savings accounts.* Employer contributions for the current plan year to health savings accounts that are offered with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage.

(4) *Employer contributions to health reimbursement arrangements.* Amounts

newly made available for the current plan year under a health reimbursement arrangement that would be integrated within the meaning of Notice 2013-54 (2013-40 IRB 287), see § 601.601(d) of this chapter, with an eligible employer-sponsored plan for an employee enrolled in the plan are taken into account for that plan year towards the plan's MV percentage if the amounts may be used to reduce only cost-sharing for covered medical expenses. A health reimbursement arrangement counts toward a plan's MV percentage only if the health reimbursement arrangement and the eligible employer-sponsored plan are offered by the same employer. Employer contributions to a health reimbursement arrangement count for a plan year towards the plan's MV percentage only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide whether to enroll in the eligible employer-sponsored plan.

(5) *Expected spending adjustments for health savings accounts and health reimbursement arrangements.* [Reserved]

(d) *Methods for determining MV.* [Reserved]

(e) *Scope of essential health benefits and adjustment for benefits not included in MV Calculator.* [Reserved]

(f) *Actuarial certification.* [Reserved]

(1) *In general.* [Reserved]

(2) *Membership in American Academy of Actuaries.* [Reserved]

(3) *Actuarial analysis.* [Reserved]

(4) *Use of MV Calculator.* [Reserved]

(g) *Effective/applicability date—in general.* (1) Except as provided in paragraph (g)(2) of this section, this section applies for taxable years ending after December 31, 2013.

(2) *Exception.* [Reserved]

Par. 7. Section 1.6011-8 is amended by revising paragraph (a) to read as follows:

§ 1.6011-8 *Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.*

(a) *Requirement of return.* A taxpayer for whom advance payments of the premium tax credit under section 36B are made in a taxable year must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing).

* * * * *

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

Approved: December 11, 2015

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

(Filed by the Office of the Federal Register on December 16, 2015, 4:15 p.m., and published in the issue of the Federal Register for December 18, 2015, 80 F.R. 78971)

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

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

Rev. Rul. 2016-1

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2016 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015, shall not be less than 9%.

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

nally, Table 6 contains the deemed rate of return for transfers made during calendar year 2016 to pooled income funds de- scribed in section 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

REV. RUL. 2016-1 TABLE 1				
Applicable Federal Rates (AFR) for January 2016				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	.75%	.75%	.75%	.75%
110% AFR	.83%	.83%	.83%	.83%
120% AFR	.90%	.90%	.90%	.90%
130% AFR	.98%	.98%	.98%	.98%
		<i>Mid-term</i>		
AFR	1.81%	1.80%	1.80%	1.79%
110% AFR	1.99%	1.98%	1.98%	1.97%
120% AFR	2.17%	2.16%	2.15%	2.15%
130% AFR	2.35%	2.34%	2.33%	2.33%
150% AFR	2.72%	2.70%	2.69%	2.68%
175% AFR	3.17%	3.15%	3.14%	3.13%
		<i>Long-term</i>		
AFR	2.65%	2.63%	2.62%	2.62%
110% AFR	2.91%	2.89%	2.88%	2.87%
120% AFR	3.18%	3.16%	3.15%	3.14%
130% AFR	3.45%	3.42%	3.41%	3.40%

REV. RUL. 2016-1 TABLE 2				
Adjusted AFR for January 2016				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.57%	.57%	.57%	.57%
Mid-term adjusted AFR	1.46%	1.45%	1.45%	1.45%
Long-term adjusted AFR	2.65%	2.63%	2.62%	2.62%

REV. RUL. 2016-1 TABLE 3	
Rates Under Section 382 for January 2016	
Adjusted federal long-term rate for the current month	2.65%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.65%

REV. RUL. 2016-1 TABLE 4	
Appropriate Percentages Under Section 42(b)(1) for January 2016	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.51%
Appropriate percentage for the 30% present value low-income housing credit	3.22%

REV. RUL. 2016-1 TABLE 5
Rate Under Section 7520 for January 2016

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest 2.2%

REV. RUL. 2016-1 TABLE 6
Deemed Rate for Transfers to New Pooled Income Funds During 2016

Deemed rate of return for transfers during 2016 to pooled income funds that have been in existence for less than 3 taxable years 1.2%

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

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

The adjusted applicable federal long-term rate is set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2015. See Rev. Rul. 2015-25, page 695.

Part III. Administrative, Procedural, and Miscellaneous

Notice 2016–1

2016 Standard Mileage Rates

SECTION 1. PURPOSE

This notice provides the optional 2016 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan.

SECTION 2. BACKGROUND

Rev. Proc. 2010–51, 2010–51 I.R.B. 883, provides rules for computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes, and for substantiating, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses of local transportation or travel away from home. Taxpayers using the standard mileage rates must comply with Rev. Proc. 2010–51. However, a taxpayer is not required to use the substantiation methods described in Rev. Proc. 2010–51, but instead may substantiate using actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence.

An independent contractor conducts an annual study for the Internal Revenue Service of the fixed and variable costs of operating an automobile to determine the standard mileage rates for business, medical, and moving use reflected in this notice. The standard mileage rate for charitable use is set by § 170(i).

SECTION 3. STANDARD MILEAGE RATES

The standard mileage rate for transportation or travel expenses is 54 cents per mile for all miles of business use (busi-

ness standard mileage rate). See section 4 of Rev. Proc. 2010–51.

The standard mileage rate is 14 cents per mile for use of an automobile in rendering gratuitous services to a charitable organization under § 170. See section 5 of Rev. Proc. 2010–51.

The standard mileage rate is 19 cents per mile for use of an automobile (1) for medical care described in § 213, or (2) as part of a move for which the expenses are deductible under § 217. See section 5 of Rev. Proc. 2010–51.

SECTION 4. BASIS REDUCTION AMOUNT

For automobiles a taxpayer uses for business purposes, the portion of the business standard mileage rate treated as depreciation is 23 cents per mile for 2012, 23 cents per mile for 2013, 22 cents per mile for 2014, 24 cents per mile for 2015, and 24 cents per mile for 2016. See section 4.04 of Rev. Proc. 2010–51.

SECTION 5. MAXIMUM STANDARD AUTOMOBILE COST

For purposes of computing the allowance under a FAVR plan, the standard automobile cost may not exceed \$28,000 for automobiles (excluding trucks and vans) or \$31,000 for trucks and vans. See section 6.02(6) of Rev. Proc. 2010–51.

SECTION 6. EFFECTIVE DATE

This notice is effective for (1) deductible transportation expenses paid or incurred on or after January 1, 2016, and (2) mileage allowances or reimbursements paid to an employee or to a charitable volunteer (a) on or after January 1, 2016, and (b) for transportation expenses the employee or charitable volunteer pays or incurs on or after January 1, 2016.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2014–79 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax and Ac-

counting). For further information on this notice contact Bernard P. Harvey on (202) 317-7005 (not a toll-free number).

Notice 2016–2

Claiming the Health Coverage Tax Credit for 2014 and 2015

SECTION 1. PURPOSE

This notice provides guidance regarding the health coverage tax credit (HCTC) under § 35 of the Internal Revenue Code, as modified by the Trade Preferences Extension Act of 2015, Pub. L. 114–27 (June 29, 2015) (Extension Act). This notice provides information on who may claim the HCTC, the amount of the HCTC, and the procedures to claim the HCTC for tax years 2014 and 2015. This notice also provides guidance for taxpayers eligible to claim the HCTC who enrolled in a qualified health plan (QHP) offered through a Health Insurance Marketplace (Marketplace, also known as an Exchange) in tax years 2014 or 2015, and who claimed or are eligible to claim the premium tax credit (PTC) under § 36B (including taxpayers who received the benefit of advance payments of the PTC (APTC)).

SECTION 2. BACKGROUND

In General

Section 35 was originally enacted by the Trade Act of 2002, Pub. L. 107–210 (August 6, 2002), was amended multiple times, and expired at the end of 2013. However, § 35 was reinstated, modified, and extended through 2019 by the Extension Act.

Section 35(a) provides that the HCTC is 72.5 percent of the amount paid by an eligible individual for qualified health coverage of the individual and qualifying family members for eligible coverage months.

Notice 2005–50, 2005–2 C.B. 14, provides guidance on various issues relating to the HCTC, including information about eligibility for the HCTC, qualifying health

coverage for purposes of the HCTC, and computation of the HCTC. Taxpayers may continue to rely on Notice 2005–50, except as provided below.

Eligibility for the HCTC

Section 35(b) provides that an individual has an eligible coverage month if, as of the first day of the month, the taxpayer: (1) is an eligible individual, (2) is covered by qualified health coverage, the premium for which is paid by the taxpayer, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority. These rules are described more fully below.

Eligible Individuals and Qualifying Family Members. There are three categories of eligible individuals. Eligible individuals are: (1) eligible trade adjustment assistance (TAA) recipients (individuals eligible for trade adjustment assistance under a program administered by the Employment and Training Administration of the U.S. Department of Labor), (2) eligible alternative TAA (ATAA) recipients and reemployment TAA (RTAA) recipients (individuals eligible for alternative or reemployment trade adjustment assistance under a program administered by the Employment and Training Administration of the U.S. Department of Labor), and (3) eligible Pension Benefit Guaranty Corporation (PBGC) pension recipients (individuals who are at least age 55 and who are receiving a benefit any portion of which is paid by the PBGC). Whether someone is an eligible individual is determined on a month-by-month basis.

An eligible individual may claim the HCTC for his or her qualifying family members. Qualifying family members are the eligible individual's spouse and any person the eligible individual can claim as a dependent on the eligible individual's federal income tax return. Qualifying family members do not include an individual with other specified coverage (described below), or, in the case of divorced parents, a child of a noncustodial parent.

In general, an individual is an eligible individual for a month if the relevant benefit is received, or the individual is entitled to the relevant benefit, in any day in that month or in the prior month.

Qualified Health Coverage. Section 35(e) describes eleven categories of qual-

ified health coverage. Seven categories are qualified coverage only if a state government elects for them to be qualified and the coverage meets certain requirements. The other four categories of qualified health coverage are Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage, coverage under a group health plan that is available through the eligible individual's spouse, coverage in the individual market, and coverage under certain employee benefit plans funded by a voluntary employees' beneficiary association. Qualified health coverage does not include flexible spending or similar arrangements, nor does it include insurance if substantially all of its coverage is of excepted benefits described in § 9832(c).

The Extension Act did not eliminate any coverage from the list of qualified health coverage – all prior qualified health coverage remains qualified. The Extension Act added individual health insurance through the Marketplace as qualified health coverage for coverage months in 2014 and 2015 taxable years. However, coverage through the Marketplace is not qualified health coverage for months in taxable years beginning after 2015. In addition, the Extension Act removed the requirement that applied for taxable years before 2014 that individual market coverage must start at least 30 days before the taxpayer becomes separated from employment to be qualified health coverage.

To learn more about qualifying coverage for the HCTC, go to www.irs.gov/HCTC.

Other Specified Coverage. In general, individuals otherwise eligible for the HCTC cannot receive the HCTC if they were enrolled in or had access to certain government-provided health insurance coverage, or were enrolled in or had access to health insurance coverage maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and the employer subsidized 50 percent or more of the cost of coverage.

Eligibility for the HCTC is described more fully in Notice 2005–50 and the instructions for Form 8885, *Health Coverage Tax Credit*. The IRS has updated Form 8885 and its instructions for tax year 2015. The rules described in the updated

instructions for tax year 2015 apply for tax years 2014 and 2015.

Electing the HCTC

Under § 35(g)(11), for coverage months in taxable years beginning after December 31, 2013, an eligible individual must make an election to claim the HCTC. The election must be made annually, applies to all subsequent coverage months in the taxable year for which the taxpayer is eligible to take the HCTC, and is irrevocable for all such coverage months. In general, the election must be made by the due date of the tax return (including extensions) for the applicable taxable year. However, an HCTC election may be made within the 3-year period of limitation prescribed in § 6511(a) (generally 3 years from the date a return is filed) for a taxable year beginning after December 31, 2013 and before June 29, 2015. Thus, for example, a calendar year taxpayer who filed his 2014 return on April 15, 2015, must claim the HCTC for 2014 by filing an amended 2014 return by April 17, 2018 (an extended date because April 15, 2018, will fall on a weekend).

Advance Payment of the HCTC

The Extension Act reauthorized monthly advance payments of the HCTC as provided under § 7527. Section 7527(a) provides that the Secretary shall establish the HCTC advance payment system not later than 1 year from the date of enactment of the Extension Act (which was June 29, 2015).

SECTION 3. ELIGIBLE INDIVIDUALS ENROLLED IN A QHP THROUGH THE MARKETPLACE

The Premium Tax Credit (PTC)

Section 36B allows a PTC to applicable taxpayers to help individuals and families afford the cost of premiums for QHPs purchased through the Marketplace. In general, an individual is an applicable taxpayer if the individual's household income is at least 100% but not more than 400% of the Federal poverty line for the individual's family size, no one can claim the individual as a dependent, and if married, the individual files a joint return.

Individuals who receive the benefit of APTC, and individuals who do not receive the benefit of APTC but who wish to claim the PTC, are required to file Form 8962, *Premium Tax Credit (PTC)*, and attach it to their tax return (Form 1040, 1040A, or 1040NR).

Interaction of the HCTC and the PTC

A QHP offered through the Marketplace is qualified health coverage for the HCTC for months in taxable years beginning in 2014 or 2015. Therefore, an individual enrolled in a QHP who is both an eligible individual for purposes of the HCTC and eligible for the PTC in a month may claim either the HCTC or the PTC for the month.

Once the HCTC election is made for an eligible coverage month, the individual is ineligible to claim the PTC for the same coverage in that coverage month and for all subsequent months in the taxable year for which the individual is eligible for the HCTC. Thus, for example, if for every month of 2014 a taxpayer was enrolled in coverage through the Marketplace and was HCTC-eligible, the taxpayer could elect the HCTC beginning in July. The election would apply to coverage for July through December, and the taxpayer could claim the PTC for coverage for January through June. If the taxpayer's HCTC eligibility instead ended in August, the election would apply for coverage for July and August only, and the taxpayer could claim the PTC for coverage for September through December.

The HCTC election prevents a taxpayer from claiming both the PTC and the HCTC for the same month for the same coverage. However, a taxpayer may claim the PTC and the HCTC in the same month for different coverage. For example, if a taxpayer elects the HCTC for self-only coverage for a month, the taxpayer may claim the PTC for Marketplace coverage of the taxpayer's family members for that same month, if otherwise eligible to claim the PTC.

A unique situation arises if qualifying health coverage covers individuals eligible for the HCTC in addition to other individuals for whom the HCTC is not elected. Q&A3 of Notice 2005-50 provides that if qualifying health coverage covers eligible individuals, qualifying

family members, and individuals who are neither eligible individuals nor qualifying family members (nonqualifying beneficiaries), then qualifying health coverage premiums are allocated on an incremental basis, attributing amounts first to the eligible individuals and qualifying family members before allocating amounts to nonqualifying beneficiaries. Section 36B and its accompanying regulations, issued after Notice 2005-50, include special rules for allocating premium amounts when a QHP covers individuals in more than one tax family. See § 1.36B-3(h). For simplicity, to determine the allowable HCTC, taxpayers should apply the rules under § 36B to allocate premium amounts and APTC among tax families instead of the rule described in Q&A3 of Notice 2005-50. Accordingly, if the individuals enrolled in a QHP belong to different tax families, one family may claim the HCTC for the HCTC-eligible individuals in the plan, and the other family may claim the PTC for the other individuals enrolled in the plan, and each family determines their portion of the enrollment premiums and APTC using the allocation rules provided under § 36B. Notice 2005-50 is modified to the extent its rules are inconsistent with this paragraph. See Q&A9, below.

In general, a taxpayer with APTC in excess of allowable PTC must repay the difference as additional tax. Although the amount of additional tax that must be repaid may be limited by § 36B(f)(2), the repayment limitations in § 36B(f)(2) do not apply to coverage for 2014 or 2015 if the taxpayer elects the HCTC for any month in that year for that coverage. Therefore, a taxpayer who elects the HCTC for coverage in 2014 or 2015 and who received the benefit of APTC for that coverage must repay all APTC in excess of allowable PTC.

SECTION 4. FREQUENTLY ASKED QUESTIONS

Q1. I already filed my tax year 2014 return. I was eligible for and wish to claim the HCTC for coverage in 2014. May I amend my return and retroactively claim the HCTC for coverage for 2014?

Yes. File Form 1040X, *Amended U.S. Individual Income Tax Return*, to make the election and claim the HCTC. You

generally have 3 years after you timely file your original return to make the election on an amended return. See "Health coverage tax credit (HCTC) for 2014" in the instructions for Form 1040X for information on how to claim the HCTC on Form 1040X, including special instructions for completing Form 8885.

Q2. I have not yet filed my tax year 2014 return. I was eligible for and wish to claim the HCTC for coverage in 2014. May I claim the HCTC on an original tax year 2014 return?

No. File your original tax year 2014 return first without claiming the HCTC and then file an amended 2014 return to claim the HCTC. See "Health coverage tax credit (HCTC) for 2014" in the instructions for Form 1040X for information on how to claim the HCTC on Form 1040X, including special instructions for completing Form 8885.

Q3. I was eligible for and wish to claim the HCTC for coverage in 2015. How will I claim the HCTC for tax year 2015?

You will be able to claim the HCTC on your original 2015 return by filing the 2015 Form 8885 with your return.

Make the HCTC election on line 1 of Form 8885 for the first coverage month you are electing to take the HCTC. Once you elect to take the HCTC for a month in a taxable year, the election to take the HCTC applies to all subsequent coverage months in that taxable year for which you are eligible to take the HCTC, and you should check the box for each such month. For example, the election would not apply to your September coverage if your last month of being a qualified individual is August (because, for example, your trade adjustment allowance ended on July 13). Thus, even if you had elected the HCTC for your January coverage, although your election applies to January through August, your election would not apply to your coverage for September and any later months in which you are not eligible for the HCTC.

The IRS has updated Form 8885 and its instructions for tax year 2015. The rules described in the updated instructions for tax year 2015 apply for tax years 2014 and 2015.

Q4. I am enrolled in a QHP through the Marketplace and am eligible for

both the HCTC and the PTC. May I claim both the PTC and the HCTC in one taxable year? What about for the same coverage month?

A QHP offered through the Marketplace is qualified health coverage for both the PTC and the HCTC for coverage months in taxable years beginning in 2014 or 2015. For coverage in those months for which you are eligible for both the HCTC and the PTC, you may choose to claim either the PTC or the HCTC for your Marketplace coverage. Therefore, you may be able to claim both the PTC and the HCTC in the same year. However, an election to claim the HCTC for coverage in a month applies to all subsequent coverage months in your taxable year that you are eligible for the HCTC.

In addition, you cannot claim both the PTC and the HCTC for the same coverage for the same month. For example, if you elected to claim the HCTC for your coverage for June to December, you cannot claim the PTC for the same coverage for June through December.

If you claim the HCTC for some months of a taxable year and the PTC for other months of the taxable year, you will need to file both a Form 8962 and a Form 8885 with your return.

For coverage months in taxable years beginning after 2015, individual health insurance coverage through the Marketplace is not qualified health coverage for purposes of the HCTC.

Q5. My spouse enrolled in a QHP through the Marketplace for the entire year, and I enrolled in COBRA for the entire year. I am eligible for the HCTC for every month of the year and wish to claim the HCTC for each month of the year. My spouse wishes to claim the PTC for each month of the year. May we claim the HCTC for the COBRA coverage and the PTC for the Marketplace coverage in the same month on a joint tax return?

Yes. On the same joint return, you can make an HCTC election that applies only to your coverage, and your spouse also may claim the PTC for your spouse's coverage. You must complete and file both Form 8885 and Form 8962 when you file your tax return. Although for 2014 and 2015 the APTC repayment limitation does not apply to coverage for which you elect

the HCTC, your spouse may apply the repayment limitation in § 36B(f)(2), if applicable, for your spouse's coverage for which the HCTC is not elected by following the instructions for Form 8962, line 28.

Q6. I was enrolled in a QHP through the Marketplace for all of 2014 and claimed the PTC when I filed my tax return. I meet the requirements to claim the HCTC in every month of 2014. How should I compare the PTC and the HCTC to determine whether to amend my tax year 2014 return to claim the HCTC instead of the PTC? If I decide to claim the HCTC for 2014, how do I do that?

In general, if you and your family were enrolled in a QHP through the Marketplace for the entire year, the HCTC will provide you with a larger subsidy than the PTC if the amount of the HCTC is greater than the sum of: (1) your PTC without reduction for any APTC paid (this is the amount on line 24 of the Form 8962) and (2) any APTC that you were not required to repay due to the repayment limitation because your household income was below 400 percent of the Federal poverty line (this is the amount, if any, by which line 27 exceeds line 28 of Form 8962).

As explained in the Background, the amount of the HCTC is 72.5 percent of the amount paid by eligible individuals for qualified health coverage of the individual and qualifying family members for eligible coverage months.

If you wish to amend your 2014 return to claim the HCTC for the entire year, you must file Form 1040X and attach both Form 8885 to claim the HCTC and Form 8962 to correct your net PTC to \$0 (line 26) and report the repayment of any excess APTC. If you are electing the HCTC for all coverage months of the year and you had received the benefit of APTC, all of the APTC (line 25) will be excess APTC (line 27).

Q7. I was enrolled in a QHP through the Marketplace in 2014 and some payments were made by the APTC. I was not eligible for the HCTC for the first six months of the year (January through June); I was eligible for and am electing the HCTC for the last six months of the year (July through December). How do I treat the APTC?

The APTC repayment limitation that applies to a taxpayer with household income below 400% of the Federal poverty line does not apply to coverage for 2014 or 2015 if the taxpayer elects the HCTC for any month in that year for that coverage. Because you are claiming the HCTC but you received the benefit of the APTC, you will need to file with your amended return a Form 8885 to claim the HCTC and a Form 8962 to reconcile and, to the extent applicable, repay the APTC for the months for which you are electing HCTC. On Form 8962, enter the amount of APTC in column (f) of line 11 or lines 12 through 23, as applicable, for all months APTC was paid, even those coverage months checked on Form 8885. If you are instructed, in the Form 8962 instructions, to complete Form 8962, Part III, enter the amount from line 27 (excess APTC) on line 29 (excess APTC repayment). Leave line 28 (repayment limitation) blank.

Taxpayers who receive the benefit of monthly advance payments of the HCTC may be eligible to apply a repayment limitation in certain circumstances in 2016 and thereafter. The IRS anticipates additional guidance to address the application of the repayment limitation for taxable years beginning after 2015.

Q8. I was enrolled in a QHP through the Marketplace in 2014 or 2015, and APTC was provided for some or all of the payments. I understand that the amount of the HCTC is 72.5 percent of the amount paid by an eligible individual for qualified health coverage. How do I determine the amount paid for coverage for purposes of the HCTC, considering that some or all of the coverage was paid for by the APTC?

APTC payments are treated as amounts paid by you for purposes of the HCTC. Thus, you can determine the amount paid for coverage for purposes of the HCTC as the sum of (1) the amount you paid to your insurance provider for all coverage months for which you are claiming the HCTC (that is, for all coverage months checked on Form 8885) and (2) the amount of the monthly APTC shown on Form 1095-A, lines 21-32, column C, for all coverage months for which you are claiming the HCTC (that is, for all coverage months checked on Form 8885).

Q9. I was enrolled in a QHP through the Marketplace in 2015, and APTC was provided for some of the payments. The QHP covered me, my son, and my daughter. Both children lived with me in 2015, and, when we all enrolled, I expected to claim both of my children as my dependents. However, I claimed only my son as a dependent for 2015. My ex-spouse claimed my daughter as a dependent. I am eligible for and am electing the HCTC for the entire year. I understand that my son and daughter are both treated as my qualifying children for the HCTC, but that I cannot claim the PTC for my daughter's cov-

erage because she was not my tax dependent. Can I claim the HCTC on the entire amount of my 2015 QHP premiums?

No. You may only claim the HCTC for the portion of the premiums that are allocated to you under § 36B. Check “Yes” on line 9 of Form 8962 and follow the instructions for Part IV to allocate the shared policy amounts for your daughter to your ex-spouse. Report the APTC allocated to you on Form 8962 line 11, column (f), and on lines 25, 27, and 29. Then, to compute your HCTC, report on Form 8885, line 2, the enrollment premiums allocated to you.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2005–50 is modified.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Shareen Pflanz of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Pflanz at (202) 317-7006 (not a toll-free number). For further information about the HCTC, go to www.irs.gov/HCTC.

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SECTION 1. PURPOSE AND SCOPE

The purpose of this revenue procedure is to set forth updated procedures of the Internal Revenue Service (the “Service”) for issuing determination letters on the private foundation status under § 509(a) of the Internal Revenue Code (Code), operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1).

SECTION 2. WHAT CHANGES HAVE BEEN MADE TO REV. PROC. 2015-10?

- .01 This revenue procedure is a general update of Rev. Proc. 2015-10, 2015-2 I.R.B. 262.
- .02 Section 6 has been modified to eliminate the sentence indicating that an organization could request a letter ruling from the Associate Chief Counsel (Tax Exempt and Government Entities (TEGE)) that a given change in facts and circumstances will not adversely affect exempt status because Rev. Proc. 2016-3, last Bulletin, has been amended to provide that the Associate Chief Counsel (TEGE) will not issue such letter rulings. *See* Rev. Proc. 2016-3, § 3.01(31), (69), (72), (109).
- .03 In addition to minor, non-substantive changes, dates, cross references, and names have been changed to reflect the appropriate annual revenue procedures.

SECTION 3. BACKGROUND

.01 All § 501(c)(3) organizations are classified as private foundations under § 509(a) unless they qualify as a public charity under § 509(a)(1) (which cross-references § 170(b)(1)(A)(i)-(vi)), (2), (3), or (4). *See* Treas. Reg. §§ 1.170A-9, 1.509(a)-1 through 1.509(a)-7. The Service determines an organization’s private foundation or public charity status when the organization files its Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or, when eligible, Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. This status will be included in the organization’s determination letter.

.02 In its Form 990, *Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)*, a public charity indicates the paragraph of § 509(a), and subparagraph of § 170(b)(1)(A), if applicable, under which it qualifies as a public charity. Because of changes in its activities or operations, this may differ from the public charity status listed in its original determination letter. Although an organization is not required to obtain a determination letter to qualify for the new public charity status, in order for Service records to recognize any change in public charity status, an organization must obtain a new determination of foundation status pursuant to this revenue procedure.

.03 If a public charity no longer qualifies as a public charity under § 509(a)(1)–(4), then it becomes a private foundation, and as such, it must file Form 990–PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*. It is not necessary for the organization to obtain a determination letter on its new private foundation status (although it is permitted to do so pursuant to this revenue procedure). The organization indicates this change in foundation status by filing its Form 990–PF return and following any procedures specified in the form, instructions, or other published guidance. Thereafter, the organization may terminate its private foundation status, such as by giving notice and qualifying as a public charity again under § 509(a)(1)–(3) during a 60-month termination period in accordance with the procedures under § 507(b)(1)(B) and Treas. Reg. § 1.507–2(b).

.04 This revenue procedure applies to organizations that may have erroneously determined that the organization was a private foundation and wish to correct the error. For example, an organization may have erroneously classified an item or items in its calculation of public support, causing the organization to classify itself as a private foundation and to file Forms 990–PF. Pursuant to this revenue procedure, the organization can request to be classified as a public charity by showing that it continuously met the public support tests during the relevant periods. See section 7 below.

.05 A private foundation may qualify as an operating foundation under § 4942(j)(3) without a determination letter from the Service, but the Service will not recognize such status in its records without a determination letter from the Service. An organization claiming to be an exempt operating foundation under § 4940(d)(2) must obtain a determination letter from the Service recognizing such status to be exempt from the § 4940 tax on net investment income.

SECTION 4. DETERMINATIONS OF FOUNDATION STATUS

.01 EO Determinations will issue determination letters on foundation status, including whether an organization is—

- (1) A private foundation;
- (2) A public charity described in §§ 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii), and (viii));
- (3) A public charity described in § 509(a)(2) or (4);
- (4) A public charity described in § 509(a)(3), whether such organization is described in § 509(a)(3)(B)(i), (ii), or (iii) (“supporting organization type”), and whether or not a Type III supporting organization is functionally integrated;
- (5) A private operating foundation described in § 4942(j)(3); or
- (6) An exempt operating foundation described in § 4940(d)(2).

.02 EO Determinations will also issue determination letters on whether a nonexempt charitable trust described in § 4947(a)(1) is described in § 509(a)(3).

.03 EO Determinations will issue such determinations in response to applications for recognition of exempt status under § 501(c)(3) (Form 1023 or, when eligible, Form 1023–EZ), submitted by organizations pursuant to § 508(b). EO Determinations will also issue such determinations in response to separate requests for determination of foundation status submitted

on Form 8940, *Request for Miscellaneous Determination Under Section 507, 509(a), 4940, 4945, and 6033 of the Internal Revenue Code*, or as a written request pursuant to Rev. Proc. 2016–4, last Bulletin, this revenue procedure, or their successor revenue procedures.

**SECTION 5.
APPLICABILITY OF
ANNUAL REVENUE
PROCEDURES**

.01 Rev. Proc. 2016–1, last Bulletin, governs requests for ruling letters from the Associate Offices of Chief Counsel. Rev. Proc. 2016–3, last Bulletin, lists issues on which the Associate Offices of Chief Counsel will not issue letter rulings or determination letters. Rev. Proc. 2016–4, last Bulletin, describes how the Internal Revenue Service gives guidance to taxpayers on issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division. Rev. Proc. 2016–5, last Bulletin, provides procedures for processing applications for recognition of exemption from Federal income tax under § 501(c)(3), including applications made on Form 1023–EZ. Rev. Proc. 2016–8, last Bulletin, prescribes user fees for applications and other types of determinations and rulings from the Tax Exempt and Government Entities Division. Rev. Procs. 2016–4, 2016–5, and 2016–8 and their annual successors also apply to requests for the determinations of foundation status described in this revenue procedure.

.02 The provisions of Rev. Proc. 2016–5 and its successor revenue procedure regarding § 7428, protest, conference, and appeal rights also apply to all determinations of foundation status described in section 4.01 (except section 4.01(6) relating to exempt operating foundation status) and section 4.02, whether or not the request for determination is made in connection with an application for recognition of tax-exempt status.

**SECTION 6.
GENERALLY NO NEW
DETERMINATION
LETTER IF SAME
STATUS IS SOUGHT**

EO Determinations generally will not issue a new determination letter to a taxpayer that seeks a determination of foundation status that is identical to its current foundation status as determined by EO Determinations. For example, an organization that is already recognized as described in §§ 509(a)(1) and 170(b)(1)(A)(ii) as a school generally will not receive a new determination letter that it is still described in §§ 509(a)(1) and 170(b)(1)(A)(ii) under the currently extant facts. EO Determinations also will not issue a new determination letter to an organization that is already recognized as exempt under § 501(c) confirming that the organization is still exempt under the same Code section under the currently extant facts. *See* Rev. Proc. 2016–4, § 7.04(2) (noting that EO Determinations will not issue determination letters on the “effect of changes in activities on exempt status”). In addition, the Associate Chief Counsel (TEGE) will not issue a letter ruling on whether a given change of facts and circumstances will affect an organization’s exempt or foundation status. *See* Rev. Proc. 2016–3, § 3.01(31), (69), (72), and (109).

**SECTION 7. FORMAT
OF REQUEST**

.01 Organizations that are seeking to change their foundation status (including requests from public charities for private foundation status and requests from public charities to change from one public charity classification to another public charity classification), seeking a determination or a change as to supporting organization type or functionally integrated status, or seeking operating foundation or exempt operating foundation status, or subordinate organizations included in a group exemption letter seeking a change in public charity status, must submit Form 8940, along with all information, documentation, and other materials required by Form 8940 and the instructions thereto, as well as the appropriate user fee pursuant to Rev. Proc. 2016–8, last Bulletin, or its successor revenue procedure.

.02 For complete information about filing requirements and the submission process, refer to Form 8940 and the Instructions for Form 8940.

**SECTION 8. REQUESTS
BY NONEXEMPT
CHARITABLE TRUSTS**

.01 A nonexempt charitable trust described in § 4947(a)(1) seeking a determination that it is described in § 509(a)(3) may submit a Form 8940 (following the instructions to the Form) or may submit a written request for a determination pursuant to Rev. Proc. 2016–4, last Bulletin, or its successor revenue procedure.

.02 The written request for determination pursuant to Rev. Proc. 2016–4, last Bulletin, or its successor revenue procedure, must include the following information items, from the date that the organization became described in § 4947(a)(1) (but not before October 9, 1969) to the present:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating “NONEXEMPT CHARITABLE TRUST REQUEST FOR DETERMINATION THAT IT IS DESCRIBED IN § 509(a)(3)”;

(2) The name, address, and Employer Identification Number of the beneficiary organizations, together with a statement whether each such beneficiary organization is described in § 509(a)(1) or (2);

(3) A list of all of the trustees that have served, together with a statement stating whether such trustees were disqualified persons within the meaning of § 4946(a) (other than as foundation managers);

(4) A copy of the original trust instrument and all subsequently adopted amendments to that instrument;

(5) Sufficient information to otherwise establish that the trust has met the requirements of § 509(a)(3) as provided for in Treas. Reg. § 1.509(a)-4; if the trust did not qualify under § 509(a)(3) in one or more prior years (after October 9, 1969) in which it was described in § 4947(a)(1), then it cannot be issued a § 509(a)(3) determination letter except in accordance with the procedures for termination of private foundation status under § 507(b)(1)(B); and

(6) Such other information as is required for a determination under Rev. Proc. 2016-4, last Bulletin, or any successor revenue procedure.

Determinations as to foundation status are open to public inspection pursuant to § 6104(a).

**SECTION 9.
DETERMINATIONS
OPEN TO PUBLIC
INSPECTION**

These procedures do not apply to a private foundation seeking to terminate its status under § 507. These procedures also do not apply to the examination of an organization which results in changes to its foundation status.

**SECTION 10. NOT
APPLICABLE TO
PRIVATE FOUNDATION
TERMINATIONS UNDER
§ 507 OR CHANGES OF
STATUS PURSUANT TO
EXAMINATION**

Rev. Proc. 2015-10 is superseded.

**SECTION 11. EFFECT
ON OTHER REVENUE
PROCEDURES**

This revenue procedure is effective January 11, 2016.

**SECTION 12.
EFFECTIVE DATE**

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1520.

**SECTION 13.
PAPERWORK
REDUCTION ACT**

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

The collections of information in this revenue procedure are in sections 7.02 and 8.02. This information is required to evaluate and process the request for a determination letter. The collections of information are required to obtain a determination letter. The likely respondents are tax-exempt organizations.

**DRAFTING
INFORMATION**

The principal author of this revenue procedure is Amber MacKenzie of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, please contact Ms. MacKenzie at (202) 317-4086 (not a toll-free number).

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SECTION 1. PURPOSE

Rev. Proc. 2015-53, I.R.B. 2015-44, provides inflation-adjusted items for 2016 for certain Civil Penalties under the Internal Revenue Code (§§ 6651, 6652(c), 6695, 6698, 6699, 6721 and 6722) for returns and statements required to be filed after December 31, 2016. This revenue procedure sets forth inflation-adjusted items for 2015 for certain Civil Penalties under the Code (§§ 6651, 6652(c), 6695, 6698, 6699, 6721, and 6722) for returns and statements required to be filed after December 31, 2015. In addition, this revenue procedure modifies Rev. Proc. 2015-53 to correct section 3.48(3), Failure to File Correct Information Returns.

SECTION 2. LEGISLATIVE HISTORY

Section 2102 of the Small Business Jobs Act of 2010, Pub. L. 111-240, 124

Stat. 2504, provides that for each fifth calendar year beginning after 2012, the penalty under § 6721, Failure to File Correct Information Returns, and the penalty under § 6722, Failure to Furnish Correct Payee Statements, will be adjusted for inflation.

Section 208 of the Tax Increase Prevention Act of 2014, Achieving a Better Life Experience (ABLE) Act, Pub. L. 113-295, 128 Stat. 4010, provides for inflation adjustments for certain Civil Penalties under the Code (§§ 6651, 6652(c), 6695, 6698, 6699, 6721, and 6722) for returns and statements required to be filed after December 31, 2014. For returns and statements required to be filed after December 31, 2015, Section 806 of the Trade Preferences Extension Act of 2015, Pub. L. 114-27, 129 Stat. 362, increased the tax penalties for failure to file correct information returns and furnish correct payee statements under §§ 6721 and 6722, respectively.

SECTION 3. 2015 PENALTY ADJUSTED ITEMS

.01 *Failure to File Tax Return.* For taxable years beginning in 2015, the amount of the additional tax under § 6651(a) for failure to file a tax return within 60 days of the due date of such return (determined with regard to any extensions of time for filing) shall not be less than the lesser of \$135 or 100 percent of the amount required to shown as tax on such returns.

.02 *Failure to File Certain Information Returns, Registration Statements, etc.* For taxable years beginning in 2015, the penalty amounts under § 6652(c) are:

(1) for failure to file a return required under § 6033(a)(1) (relating to returns by exempt organization) or § 6012(a)(6) (relating to returns by political organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization (§ 6652(c)(1)(A))	\$20	Lessor of \$10,000 or 5% of gross receipts of the organization for the year.
Organization with gross receipts exceeding \$1,015,500 (§ 6652(c)(1)(A))	\$100	\$50,500
Managers (§ 6652(c)(1)(B))	\$10	\$5,000
Public inspection of annual returns and reports (§ 6652(c)(1)(C))	\$20	\$10,000
Public inspection of applications for exemption and notice of status (§ 6652(c)(1)(D))	\$20	No Limits

(2) for failure to file a return required under § 6034 (relating to returns by certain trust) or § 6043(b) (relating to terminations, etc., of exempt organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization or trust (§ 6652(c)(2)(A))	\$10	\$5,000
Managers (§ 6652(c)(2)(B))	\$10	\$5,000
Split-Interest Trust (§ 6652(c)(2)(C)(ii))	\$20	\$10,000
Any trust with gross receipts exceeding \$253,500 (§ 6652(c)(2)(C)(ii))	\$100	\$50,500

(3) for failure to file a disclosure required under § 6033(a)(2):

Scenario	Daily Penalty	Maximum Penalty
Tax-exempt entity (§ 6652(c)(3)(A))	\$100	\$50,500
Failure to comply with written demand (§ 6652(c)(3)(B)(ii))	\$100	\$10,000

.03 *Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons.* For taxable years beginning in 2015, the penalty amounts under § 6695 are:

Scenario	Per Return or Claim for Refund	Maximum Penalty
Failure to furnish copy to taxpayer (§ 6695(a))	\$50	\$25,000
Failure to sign return (§ 6695(b))	\$50	\$25,000
Failure to furnish identifying number (§ 6695(c))	\$50	\$25,000
Failure to retain copy or list (§ 6695(d))	\$50	\$25,000
Failure to file correct information returns (§ 6695(e))	\$50 per return or item in return	\$25,000
Negotiation of check (§ 6695(f))	\$505 per check	No limit
Failure to be diligent in determining eligibility for earned income credit (§ 6695(g))	\$505	No limit

.04 *Failure to File Partnership Return.* For taxable years beginning in 2015, the dollar amount used to determine the amount of the penalty under § 6698(b)(1) is \$195.

.05 *Failure to File S Corporation Return.* For taxable years beginning in 2015, the dollar amount used to determine the amount of the penalty under § 6699(b)(1) is \$195.

.06 *Failure to File Correct Information Returns.* For taxable years beginning in 2015, the penalty amounts under § 6721 are:

(1) for persons with average annual gross receipts for the most recent three taxable years of more than \$5,000,000, for failure to file correct information returns:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(a)(1))	\$260	\$3,178,500
Corrected on or before 30 days after required filing date (§ 6721(b)(1))	\$50	\$529,500
Corrected after 30 th day but on or before August 1 (§ 6721(b)(2))	\$100	\$1,589,000

(2) for persons with average annual gross receipts for the most recent three taxable years of \$5,000,000 or less, for failure to file correct information returns:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(d)(1)(A))	\$260	\$1,059,500
Corrected on or before 30 days after required filing date (§ 6721(d)(1)(B))	\$50	\$185,000
Corrected after 30 th day but on or before August 1 (§ 6721(d)(1)(C))	\$100	\$529,500

(3) for failure to file correct information returns due to intentional disregard of the filing requirement (or the correct information reporting requirement):

Scenario	Penalty Per Return	Calendar Year Maximum
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A))	Greater of (i) \$520, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B))	Greater of (i) \$520, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C))	Greater of (i) \$26,480, or (ii) amount of cash received up to \$105,500	No limit
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) \$520, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return	No limit

.07 *Failure to Furnish Correct Payee Statements.* For taxable years beginning in 2015, the penalty amounts under § 6722 are:

(1) for persons with average annual gross receipts for the most recent three taxable years of more than \$5,000,000, for failure to file correct payee statements:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(a)(1))	\$260	\$3,178,500
Corrected on or before 30 days after required filing date (§ 6722(b)(1))	\$50	\$529,500
Corrected after 30 th day but on or before August 1 (§ 6722(b)(2))	\$100	\$1,589,000

(2) for persons with average annual gross receipts for the most recent 3 taxable years of \$5,000,000 or less, for failure to file correct payee statements:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(d)(1)(A))	\$260	\$1,059,500
Corrected on or before 30 days after required filing date (§ 6722(d)(1)(B))	\$50	\$185,000
Corrected after 30 th day but on or before August 1 (§ 6722(d)(1)(C))	\$100	\$529,500

(3) for failure to file correct payee statements due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement):

Scenario	Penalty Per Return	Calendar Year Maximum
Statement other than a statement required under §§ 6045(b), 6041A(e) (in respect of a return required under § 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c) (§ 6722(e)(2)(A))	Greater of (i) \$520, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Payee statement required under §§ 6045(b), 6050K(b), or 6050L(c) (§ 6722(e)(2)(B))	Greater of (i) \$520, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2015-53 is modified to correct section 3.48(3) of that revenue procedure concerning the penalty amounts under § 6721 for failure to file correct information returns due to intentional disregard of the filing requirement (or the correct information reporting requirement) under § 6050V (§ 6721(e)(2)(D)) for taxable years beginning in 2016. Section 3.48(3) of Rev. Proc. 2015-53 is modified as follows:

Scenario	Penalty Per Return	Calendar Year Maximum
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) \$530, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return	No limit

SECTION 5. EFFECTIVE DATES

Section 3 of this revenue procedure applies to taxable years beginning in 2015.

Section 4 of this revenue procedure applies to taxable years beginning in 2016.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information

regarding this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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