

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2016-3**  
**January 19, 2016**

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

#### **Announcement 2016-01, page 283.**

Announcement 2016-01 updates the mailing address in Revenue Procedure 2007-21, section 4.08, to which a taxpayer or other person may send a written request for rescission of a penalty imposed by either Code section 6707 or 6707A.

#### **Announcement 2016-02, page 283.**

Announcement 2016-02 informs the public that the IRS will not assert that an individual must include in gross income the value of identity protection services provided to employees or other individuals before a data breach occurs. Additionally, the IRS will not assert that an employer providing identity protection services to its employees must include the value of the identity protection services in the employees gross income and wages. Accordingly, this announcement extends Announcement 2015-22, 2015-35 I.R.B. 288, to include identity protection services provided to employees or other individuals before a data breach occurs.

### EMPLOYEE PLANS

#### **Notice 2016-03, page 278.**

This notice provides that the Treasury and the IRS will issue guidance with respect to (1) Cycle A elections made by controlled groups and affiliated service groups; (2) expiration dates on determination letters issued prior to January 4, 2016; and (3) the extension of deadlines for certain defined contribution pre-approved plans. Employers may rely on this notice until Rev. Proc. 2007-44, 2007-2 C.B. 54, is updated to include the changes described in this notice.

### EXCISE TAX

#### **Rev. Rul. 2016-3, page 282.**

The Internal Revenue Service (IRS) has reconsidered Revenue Ruling 2008-15, 2008-1 C.B. 633, in view of the decision of the United States Court of Appeals for the District of Columbia Circuit in the case of *Validus Reinsurance, Ltd. v. United States*, 786 F.3d 1039 (2015). As a result, the IRS will no longer apply the one-percent excise tax imposed by section 4371(3) to premiums paid on a policy of reinsurance issued by one foreign reinsurer to another foreign insurer or reinsurer under the situations described in Rev. Rul. 2008-15. Rev. Rul. 2008-15 is hereby revoked.

### ADMINISTRATIVE

#### **Notice 2016-04, page 279.**

This notice extends the due dates for the 2015 information reporting requirements, both furnishing to individuals and filing with the Internal Revenue Service, for insurers, self-insuring employers, and certain other providers of minimum essential coverage under I.R.C. § 6055, and the information reporting requirements for applicable large employers under I.R.C. § 6056. This Notice also provides guidance to individuals who, as a result of these extensions, might not receive a Form 1095-B or Form 1095-C by the time they file their 2015 tax 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 III. Administrative, Procedural, and Miscellaneous

### Revisions to the Employee Plans Determination Letter Program Regarding Cycle A Elections, Determination Letter Expiration Dates, and Extension of Deadlines for Certain Defined Contribution Pre-Approved Plans

#### Notice 2016-03

##### I. PURPOSE

In anticipation of the elimination, effective January 1, 2017, of the 5-year remedial amendment cycle system for individually designed plans under the Employee Plans determination letter program, this notice provides that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) will issue guidance providing that: (1) controlled groups and affiliated service groups that have previously made a Cycle A election are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017; (2) expiration dates on determination letters issued prior to January 4, 2016, are no longer operative; and (3) the period during which certain employers may, on or after January 1, 2016, establish or adopt a defined contribution pre-approved plan and, if permissible, apply for a determination letter, is extended from April 30, 2016, to April 30, 2017.

The changes described in this notice will be reflected in an update to Revenue Procedure 2007-44, 2007-2 C.B. 54. Employers may rely on this notice until Rev. Proc. 2007-44 is updated to include these changes.

##### II. BACKGROUND

Rev. Proc. 2007-44 sets forth rules and procedures for 5-year remedial amendment cycles for individually designed plans and 6-year remedial amendment/approval cycles for pre-approved plans.

Section 9.03 of Rev. Proc. 2007-44 provides that, in general, an individually designed plan's 5-year remedial amendment cycle is determined based on the last digit of the plan sponsor's employer identification number. However, under section 10.06 of Rev. Proc. 2007-44, if more than one plan is maintained by members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the employers may elect that the 5-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans under § 414(f), multiple employer plans, governmental plans under § 414(d), or certain jointly trustee single employer collectively bargained plans) will be Cycle A. In general, the Cycle A election must be made jointly by all members of the controlled group or affiliated service group. However, in the case of a parent-subsidiary controlled group, this election may be made on behalf of all of the members by the parent. Section 10.08(1) of Rev. Proc. 2007-44 provides that, in the case of a Cycle A election under section 10.06 that does not involve a parent-subsidiary controlled group, if a new member joins the controlled group, that member must make an election no later than one year from the date the new member joins the controlled group in order for other members to maintain the existing election.

Section 10.08 of Rev. Proc. 2007-44 provides that the Cycle A election must be made by the end of Cycle A. For example, if, absent the Cycle A election, the remedial amendment cycle for one member of a controlled group would be Cycle B and the remedial amendment cycle for another member of the controlled group would be Cycle C, the Cycle A election would have to be made by the end of Cycle A.

Section 13.02 of Rev. Proc. 2007-44 provides that determination letters issued for individually designed plans will include a statement that the letter may not be relied on after the end of the plan's first 5-year remedial amendment cycle that ends more than 12 months after the application was received, and will include the specific "expiration date."

Section 13.03 of Rev. Proc. 2007-44 provides that, in appropriate circumstances, the IRS may, through generally applicable published guidance, extend the expiration dates of determination letters.

Section 16.03 of Rev. Proc. 2007-44 provides that when the review of a 6-year remedial amendment cycle for pre-approved plans has neared completion, the IRS will publish an announcement providing the date by which adopting employers must adopt the newly approved plans in order to be eligible for such cycle. This date is intended to give adopting employers a window of approximately 2 years in which to adopt newly approved pre-approved plans and, if permissible, to apply for individual determination letters.

Rev. Proc. 2011-49, 2011-44 I.R.B. 608, provides that the second 6-year remedial amendment cycle for pre-approved defined contribution plans began on February 1, 2011, and ends on January 31, 2017, and that the on-cycle submission period for opinion and advisory letter applications began on February 1, 2011, and ended on January 31, 2012 (later extended to April 2, 2012, by Ann. 2012-3, 2012-4 I.R.B. 335). The 2010 Cumulative List of Changes in Plan Qualification Requirements, Notice 2010-90, 2010-52 I.R.B. 909 (2010 Cumulative List), was to be used by plan sponsors and practitioners submitting opinion or advisory letter applications for plans during that period.

Announcement 2014-16, 2014-17 I.R.B. 983, provides generally that an adopting employer whose defined contribution plan is eligible for the 6-year remedial amendment cycle under section 17 of Rev. Proc. 2007-44 and who adopts, by April 30, 2016, a master and prototype (M&P) or volume submitter (VS) defined contribution plan that was approved based on the 2010 Cumulative List, will be considered to have adopted the plan within the second 6-year remedial amendment cycle.

Announcement 2015-19, 2015-32 I.R.B. 157, describes changes the Treasury and the IRS intend to make to the Employee Plans determination letter program for qualified retirement plans. Effective January 1, 2017, staggered 5-year remedial amendment cycles for

individually designed plans will be eliminated and the scope of the determination letter program will be limited to initial plan qualification, qualification upon plan termination, and certain other limited circumstances. Ann. 2015–19 provides that sponsors of Cycle A plans described in section 9.03 of Rev. Proc. 2007–44 (that is, sponsors with employer identification numbers ending in 1 or 6) will continue to be permitted to submit determination letter applications during the period beginning February 1, 2016, and ending January 31, 2017. The announcement also provides that the Commissioner intends to extend the remedial amendment period for individually designed plans to a date that is expected to end no earlier than December 31, 2017.

Sections 8 and 9 of Revenue Procedure 2016–6, 2016–1 I.R.B. 200, set forth the limited circumstances under which an employer that has adopted a pre-approved plan may apply for a determination letter.

Section 21.01(2) of Rev. Proc. 2016–6 provides that, effective as of January 4, 2016, determination letters issued to individually designed plans will no longer contain expiration dates (currently required under section 13.02 of Rev. Proc. 2007–44). In response to comments submitted with respect to Ann. 2015–19, Rev. Proc. 2016–6 provides that Treasury and the IRS intend to issue guidance with respect to the status of existing expiration dates on determination letters issued prior to January 4, 2016.

### III. CYCLE A ELECTIONS MADE BY CONTROLLED GROUPS AND AFFILIATED SERVICE GROUPS

Rev. Proc. 2007–44 will be modified to provide that controlled groups and affiliated service groups that maintain more than one plan are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017, provided that a prior Cycle A election with respect to the controlled group or affiliated service group had been made by January 31, 2012 (the last day of the previous Cycle A submission period).

### IV. EXPIRATION DATES ON DETERMINATION LETTERS ISSUED PRIOR TO JANUARY 4, 2016, ARE NO LONGER OPERATIVE

Rev. Proc. 2007–44 will be modified to provide that expiration dates included in determination letters issued prior to January 4, 2016, are no longer operative. Future guidance will clarify the extent to which an employer may rely on a determination letter after a subsequent change in law or plan amendment.

### V. EXTENSION OF ADOPTION PERIOD AND DETERMINATION LETTER SUBMISSION PERIOD FOR CERTAIN ADOPTERS OF DEFINED CONTRIBUTION PRE-APPROVED PLANS

Rev. Proc. 2007–44 will be modified to provide that the deadline for an employer to adopt a current defined contribution pre-approved plan and to apply for a determination letter, if otherwise permissible, is extended from April 30, 2016, to April 30, 2017, with respect to any defined contribution pre-approved plan adopted on or after January 1, 2016, other than a plan that is adopted as a modification and restatement of a defined contribution pre-approved plan that had been maintained by the employer prior to January 1, 2016. This extension will facilitate a plan sponsor's ability to convert an existing individually designed plan into a current defined contribution pre-approved plan. For purposes of this section V, a "current defined contribution pre-approved plan" is one that was approved based on the 2010 Cumulative List.

An employer that had adopted a defined contribution pre-approved plan prior to January 1, 2016, continues to have until April 30, 2016, to adopt a modification and restatement of the defined contribution pre-approved plan within the current 6-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

#### *Examples*

*Example 1.* Employer A currently maintains Plan X, a defined contribution individually designed plan. Employer A is considering converting Plan X into a defined contribution pre-approved plan. Employer A has until April 30, 2017, to adopt a current defined contribution pre-approved plan within the current 6-year remedial amendment cycle for defined con-

tribution plans and to apply for a determination letter, if permissible.

*Example 2.* Employer B establishes Plan Y, a defined contribution individually designed plan, on January 1, 2016. Employer B is considering converting Plan Y into a defined contribution pre-approved plan. Employer B has until April 30, 2017, to adopt a current defined contribution pre-approved plan within the current 6-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

*Example 3.* On April 1, 2010, Employer C initially adopted the defined contribution VS plan of Sponsor Z, which was approved based on the 2004 Cumulative List. On January 15, 2016, Employer C adopts the current defined contribution VS plan of Sponsor Z as a modification and restatement of Employer C's existing defined contribution VS plan. Employer C continues to have until April 30, 2016, to apply for a determination letter, if permissible.

*Example 4.* On April 1, 2010, Employer C initially adopted the defined contribution VS plan of Sponsor Z, which was approved based on the 2004 Cumulative List. On January 15, 2016, Employer C adopts the current defined contribution VS plan of Sponsor Y as a modification and restatement of Employer C's existing defined contribution VS plan, instead of adopting the current defined contribution VS plan of Sponsor Z. Employer C continues to have until April 30, 2016, to apply for a determination letter, if permissible.

### VI. RELIANCE

Employers may rely on this notice until Rev. Proc. 2007–44 is updated to implement the changes referenced in this notice.

### DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

## **EXTENSION OF THE DUE DATES FOR 2015 INFORMATION REPORTING UNDER I.R.C. §§ 6055 AND 6056**

### **Notice 2016–04**

#### **PURPOSE**

This notice extends the due dates for the 2015 information reporting requirements (both furnishing to individuals and filing with the Internal Revenue Service

(Service)) for insurers, self-insuring employers, and certain other providers of minimum essential coverage under section 6055 of the Internal Revenue Code (Code), and the information reporting requirements for applicable large employers under section 6056 of the Code. Specifically, this notice extends the due date (1) for furnishing to individuals the 2015 Form 1095-B, *Health Coverage*, and the 2015 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from February 1, 2016, to March 31, 2016, and (2) for filing with the Service the 2015 Form 1094-B, *Transmittal of Health Coverage Information Returns*, the 2015 Form 1095-B, *Health Coverage*, the 2015 Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and the 2015 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from February 29, 2016, to May 31, 2016, if not filing electronically, and from March 31, 2016, to June 30, 2016 if filing electronically. This notice also provides guidance to individuals who might not receive a Form 1095-B or Form 1095-C by the time they file their 2015 tax returns.

The Service is prepared to accept filings of the information returns on Forms 1094-B, 1095-B, 1094-C, and 1095-C beginning in January 2016. Following consultation with stakeholders, however, the Department of the Treasury (Treasury) and the Service have determined that some employers, insurers, and other providers of minimum essential coverage need additional time to adapt and implement systems and procedures to gather, analyze, and report this information. Notwithstanding the extensions provided in this notice, employers and other coverage providers are encouraged to furnish statements and file the information returns as soon as they are ready.

## BACKGROUND

Section 6055 and section 6056 were added to the Internal Revenue Code by sections 1502 and 1514 of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, Pub. L. No. 111-148. Section 6055 requires health insurance issuers, self-insuring employers, government agencies, and other providers

of minimum essential coverage to file and furnish annual information returns and statements regarding coverage provided. Section 6056 requires applicable large employers (generally those with 50 or more full-time employees, including full-time equivalents, in the previous year) to file and furnish annual information returns and statements relating to the health insurance that the employer offers (or does not offer) to its full-time employees. Section 6056 was amended by sections 10106(g) and 10108(j) of the ACA and was further amended by section 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. Section 36B, which was added to the Code by section 1401 of the ACA, provides a premium tax credit for eligible individuals who enroll in coverage through a Health Insurance Marketplace (Marketplace). Section 5000A, which was added to the Code by section 1501(b) of the ACA, generally provides that individuals must have minimum essential coverage, qualify for an exemption from the minimum essential coverage requirement, or make an individual shared responsibility payment when they file their federal income tax return.

Section 6721 of the Code imposes a penalty for failing to timely file an information return or filing an incorrect or incomplete information return. Section 6722 of the Code imposes a penalty for failing to timely furnish an information statement or furnishing an incorrect or incomplete information statement. Section 6721 and 6722 penalties are imposed with regard to information returns and statements listed in section 6724(d) of the Code, and section 6724(d) lists the information returns and statements required by sections 6055 and 6056.

Final regulations, published on March 10, 2014, relating to the reporting requirements under sections 6055 and 6056, specify the deadlines for information reporting required by those sections. See Information Reporting of Minimum Essential Coverage, T.D. 9660, 79 FR 13220-01; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, T.D. 9661, 79 FR 13231-01. The regulations under section 6055 provide that every person that

provides minimum essential coverage to an individual during a calendar year must file with the Service an information return and a transmittal on or before the following February 28 (March 31 if filed electronically) and must furnish to the responsible individual identified on the return a written statement on or before January 31 following that calendar year. (In 2016, the January 31 and February 28 due dates referred to above in this paragraph and in the following paragraph fall on weekend days; accordingly, in 2016 these two due dates are February 1 and February 29, respectively.) The Service has designated Form 1094-B and Form 1095-B to meet the requirements of the section 6055 regulations.

The regulations under section 6056 require every applicable large employer or a member of an aggregated group that is determined to be an applicable large employer (ALE member) to file with the Service an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 following that calendar year. The Service has designated Form 1094-C and Form 1095-C to meet the requirements of the section 6056 regulations.

The preambles to the section 6055 and section 6056 regulations (T.D. 9660, 79 FR 13220; T.D. 9661, 79 FR 13231-01) provide that, for 2015 coverage, the Service will not impose penalties under section 6721 and section 6722 on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements, and that this relief applies only to furnishing and filing incorrect or incomplete information, including TINs or dates of birth, reported on a return or statement and not to a failure to timely furnish or file a statement or return. Notice 2015-87, 2015-52 I.R.B. 889, reiterates that relief, and Notice 2015-68, 2015-41 I.R.B. 547, provides additional information about that relief with regard to reporting under section 6055. The preambles also note, however, the general rule that, under section 6724 and the related regulations, the section 6721 and section 6722 penalties may be waived if a failure to timely furnish or

file a statement or return is due to reasonable cause, that is, the reporting entity demonstrates that it acted in a responsible manner and the failure is due to significant mitigating factors or events beyond the reporting entity's control.

### **TRANSITION RELIEF**

This notice extends the due date for furnishing the 2015 Form 1095-B and the 2015 Form 1095-C from February 1, 2016, to March 31, 2016. This notice also extends the due date for filing with the Service the 2015 Form 1094-B and the 2015 Form 1094-C from February 29, 2016, to May 31, 2016, if not filing electronically, and from March 31, 2016, to June 30, 2016, if filing electronically. In view of these extensions, the provisions regarding automatic and permissive extensions of time for filing information returns and permissive extensions of time for furnishing statements will not apply to the extended due dates. Employers or other coverage providers that do not comply with these extended due dates are subject to penalties under section 6722 or 6721 for failure to timely furnish and file. However, employers and other coverage providers that do not meet the extended due dates are still encouraged to furnish and file, and the Service will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause. The Service will also take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the Service and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the Service, or testing its ability to transmit information to the Service. In addition, the Service will take into account the extent to which the employer or other coverage provider is taking steps to ensure that it is able to comply with the reporting requirements for 2016.

Some individual taxpayers may be affected by the extension of the due date for employers to furnish information under section 6056 on Form 1095-C. Under section 36B(c)(2)(C), an employee is not eligible for the premium tax credit for any month for which the employee is eligible

for coverage under an eligible employer-sponsored plan that provides minimum value and is affordable (or for any month for which the employee enrolls in an eligible employer-sponsored plan, regardless of whether the plan is affordable or provides minimum value). The Form 1095-C generally includes information on the coverage (if any) offered by the applicable large employer to the full-time employee. The information reported will assist the employee in determining eligibility for the premium tax credit. However, most individuals offered employer-provided coverage will not be affected by the extension. This is partly because section 1.36B-2(c)(3)(v)(A)(3) of the Income Tax Regulations provides that an offer of employer-sponsored coverage is generally treated as unaffordable for section 36B purposes if the individual enrolls in coverage through the Marketplace and receives the benefit of advance payments of the premium tax credit based on a determination from the Marketplace that the offer of employer-sponsored coverage is unaffordable. Specifically, the extension will not affect employees who enrolled in the employer-sponsored coverage or in other coverage that was not offered through the Marketplace; employees who for any other reason would not qualify for a premium tax credit (for example, an employee who qualifies for Medicare or has household income in excess of the limits); employees who enrolled in coverage through the Marketplace and received the benefit of advance payments of the premium tax credit based on a determination by the Marketplace that the employee's offer of employer-sponsored coverage was unaffordable; or employees who did not enroll in any coverage.

Nonetheless, some employees (and related individuals) who enrolled in coverage through the Marketplace but did not receive a determination from the Marketplace that the offer of employer-sponsored coverage was not affordable could be affected by the extension if they do not receive their Forms 1095-C before they file their income tax returns. As a result, for 2015 only, individuals who rely upon other information received from employers about their offers of coverage for purposes of determining eligibility for the premium tax credit when filing their in-

come tax returns need not amend their returns once they receive their Forms 1095-C or any corrected Forms 1095-C. Individuals need not send this information to the Service when filing their returns but should keep it with their tax records.

Similarly, some individual taxpayers may be affected by the extension of the due date for providers of minimum essential coverage to furnish information under section 6055 on either Form 1095-B or Form 1095-C. Individuals generally use this information to confirm that they had minimum essential coverage for purposes of sections 36B and 5000A. Because, as a result of the extension, individuals may not have received this information before they file their income tax returns, for 2015 only individuals who rely upon other information received from their coverage providers about their coverage for purposes of filing their returns need not amend their returns once they receive the Form 1095-B or Form 1095-C or any corrections. Individuals need not send this information to the Service when filing their returns but should keep it with their tax records.

The extensions of due dates provided by this notice apply only to section 6055 and section 6056 information returns and statements for calendar year 2015 filed and furnished in 2016 and do not require the submission of any request or other documentation to the Service. Because these extensions apply automatically to all filers and are more generous than extensions of time to file or furnish 2015 returns and information statements under sections 6055 and 6056 that have already been requested by some filers in submissions to the Service, such requests will not be formally granted. These extensions for the information reporting provisions of sections 6055 and 6056 for calendar year 2015 have no effect on these information reporting provisions for other years or on the effective date or application of other ACA provisions (except as described above with respect to sections 36B and 5000A for 2015).

### **DRAFTING INFORMATION**

The principal author of this notice is Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding

this notice contact Michael Hara at (202) 317-6845 (not a toll-free number).

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## **Section 4371.—Foreign Insurance Excise Tax**

### **Rev. Rul. 2016–3**

The Internal Revenue Service (IRS) has reconsidered Revenue Ruling 2008–15, 2008–1 C.B. 633, in view of the decision of the United States Court of Appeals for the District of Columbia Circuit in the case of *Validus Reinsurance, Ltd. v. United States*, 786 F.3d 1039 (2015). As a result, the IRS will no longer apply the one-percent excise tax imposed by section 4371(3) to premiums paid on a policy of reinsurance issued by one foreign reinsurer to another foreign insurer or rein-

surer under the situations described in Rev. Rul. 2008–15. Rev. Rul. 2008–15 is hereby revoked.

No inference should be drawn that the revocation of Rev. Rul. 2008–15 affects the liability for excise tax under section 4371 on any other policies of insurance or reinsurance. For example, absent a foreign reinsurer qualifying for a treaty waiver or an exemption from tax under section 4373(1), the IRS will apply a one-percent excise tax under section 4371(3) to reinsurance premiums paid on a policy of reinsurance, as defined in section 4372(f), issued by that foreign reinsurer to either:

(i) a foreign insurer that has elected to be treated as a domestic corporation under section 953(d); or

(ii) a foreign insurer or reinsurer that is exempt from excise tax on the premiums it receives under section 4373(1) because the premiums are effectively connected to

the conduct of a U.S. trade or business and taxable under section 882(a).

The IRS also will continue to enforce the provisions of treaties that place limits on the availability of a treaty waiver for premiums paid to a foreign insurer or reinsurer.

#### **EFFECT ON OTHER REVENUE RULINGS**

Rev. Rul. 2008–15 is revoked.

#### **DRAFTING INFORMATION**

The principal author of this revenue ruling is Stephen M. Peng of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Peng at (202) 317-4966 (not a toll-free number).

## Part IV. Items of General Interest

### Updated Mailing Address for Penalty Rescission Requests - Rev. Proc. 2007-21

#### Announcement 2016-01

Revenue Procedure 2007-21, 2007-1 C.B. 613, includes procedures for making a written request for rescission of a penalty imposed by either Internal Revenue Code section 6707 or section 6707A with respect to a reportable transaction that is not a listed transaction. A section 6707 penalty applies to a material advisor who is required to file a return (Material Advisor Disclosure Statement (Form 8918) or successor form) under section 6111(a) with respect to a reportable transaction and who fails to file a timely return or who files a return with false or incomplete information. A section 6707A penalty applies to any person who fails to include on any return or statement (Reportable Transaction Disclosure Statement (Form 8886) or successor form) any information required to be disclosed under section 6011 with respect to a reportable transaction.

The mailing address listed in Revenue Procedure 2007-21, 2007-1 C.B. 613, Section 4.08 has been changed, and the new address, effective immediately, is as follows:

Internal Revenue Service  
Office of Tax Shelter Analysis  
1973 North Rulon White Blvd  
M/S 4916  
Ogden, UT 84201

The principal author of this announcement is Gerald Semasek of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Gerald Semasek at (202) 317-6845 (not a toll-free number).

### Federal Tax Treatment of Identity Protection Services

#### Announcement 2016-02

On August 13, 2015, the Treasury Department and the IRS released Announcement 2015-22, 2015-35 I.R.B. 288, which

provides information on the Federal tax treatment of identity protection services that are provided to victims of a data breach. The announcement provides that the IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach. Announcement 2015-22 also provides that the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's) recordkeeping system must include the value of the identity protection services in the employees' gross income and wages. The announcement further provides that the IRS will not assert that these amounts must be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to such individuals.

In Announcement 2015-22, the Treasury Department and the IRS requested comments on whether organizations commonly provide identity protection services in situations other than as a result of a data breach, and whether additional guidance would be helpful in clarifying the tax treatment of the services provided in those situations. The IRS received four comments. Several commenters requested that the Treasury Department and the IRS clarify the taxability of identity protection services provided at no cost to employees or other individuals before a data breach occurs. The commenters stated that data security has become a major concern for many organizations due to data breaches. Some commenters cited statistics showing a significant increase in the number of data breaches that result in unauthorized access to information systems containing personal information of employees and other individuals. Despite heightened efforts by organizations to prevent data breaches using traditional information technology security features (such as firewalls and antivirus software), some organizations are making security decisions based on the belief that breaches of their information systems are inevitable. The commenters further stated that an increas-

ing number of organizations are combating data breaches by providing identity protection services to employees or other individuals before a data breach occurs in order to help detect any occurrence of a breach in their information systems, and to minimize the impact to their operations.

The Treasury Department and the IRS have considered the comments received, including statements by commenters that providing identity protection services to employees and other individuals before a data breach occurs will allow earlier detection of a data breach and minimize the impact of a breach on operations. The Treasury Department and the IRS have determined that Announcement 2015-22 should be extended to include identity protection services provided to employees or other individuals before a data breach occurs. Accordingly, the IRS will not assert that an individual must include in gross income the value of identity protection services provided by the individual's employer or by another organization to which the individual provided personal information (for example, name, social security number, or banking or credit account numbers). Additionally, the IRS will not assert that an employer providing identity protection services to its employees must include the value of the identity protection services in the employees' gross income and wages. The IRS also will not assert that these amounts must be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to such individuals. Any further guidance on the taxability of these benefits will be applied prospectively.

This announcement does not apply to cash received in lieu of identity protection services. This announcement also does not apply to proceeds received under an identity theft insurance policy; the treatment of insurance recoveries is governed by existing law.

#### DRAFTING INFORMATION

The principal author of this announcement is Innessa Glazman of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement, contact Ms. Glazman at (202) 317-7006 (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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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–27 through 2015–52 is in Internal Revenue Bulletin 2015–52, dated December 28, 2015.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–27 through 2015–52 is in Internal Revenue Bulletin 2015–52, dated December 28, 2015.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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## **We Welcome Comments About the Internal Revenue Bulletin**

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