

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

REG-123867-14, page 484.

This document contains proposed regulations that amend the utility allowance regulations concerning the low-income housing credit. The proposed regulations relate to the circumstances in which utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company. The proposed regulations extend those rules to situations in which a building owner sells to tenants energy that is produced from a renewable source and that is not delivered by a local utility company. The proposed regulations affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

Notice 2016-21, page 465.

Section 911 of the Internal Revenue Code provides that qualified U.S. citizens and residents living abroad can elect to exclude from income certain foreign earned income and foreign housing cost amounts. This notice provides adjustments to the limitation on housing expenses for tax year 2016 for purposes of section 911 of the Code for specific locations, on the basis of geographic differences in housing costs relative to housing costs in the United States.

T.D. 9755, page 442.

This document contains final and temporary regulations that provide guidance on the utility allowance regulations under § 1.42-10 concerning the low-income housing credit. The final regulations clarify the circumstances in which utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company. The temporary regulations extend the principles of these submetering rules to situations in which a building owner sells to tenants energy that is produced from a renewable source and that is not delivered by a local utility company.

Bulletin No. 2016-12
March 21, 2016

T.D. 9756, page 450.

This proposed regulation relates to awards of administrative costs and attorneys fees under section 7430 to conform the regulations to the amendments made in the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

T.D. 9757, page 462.

Proposed regulations that provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for federal estate tax purposes. In addition, these proposed regulations provide guidance on the reporting requirements for executors or other persons required to file federal estate tax returns. These proposed regulations affect executors or other persons who file estate tax returns after July 31, 2015. The proposed regulations also affect beneficiaries who acquire certain property from these estates, and subsequent transferees to whom beneficiaries transfer the property in transactions that do not result in the recognition of gain or loss for federal income tax purposes.

ESTATE TAX

REG-127923-15, page 473.

Temporary regulations that provide transition rules under section 6035 extending the due date for statements required by that section to be filed or furnished prior to February 29, 2016, until February 29, 2016. These temporary regulations are applicable to executors and other persons who file after July 31, 2015, returns required by section 6018(a) or (b).

ADMINISTRATIVE

T.D. 9756, page 450.

This proposed regulation relates to awards of administrative costs and attorneys fees under section 7430 to conform the regulations to the amendments made in the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

T.D. 9755

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Utility Allowances Submetering

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that amend the utility allowance regulations concerning the low-income housing credit. The final regulations clarify the circumstances in which utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company. The temporary regulations extend the principles of these submetering rules to situations in which a building owner sells to tenants energy that is produced from a renewable source and that is not delivered by a local utility company. The final and temporary regulations affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and State and local housing credit agencies. The text of these temporary regulations also serves as the text of the proposed regulations (REG-123867-14) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Bulletin**.

DATES: *Effective Date:* These regulations are effective on March 3, 2016.

Applicability Date: For dates of applicability, see §§ 1.42-12(a)(5) and 1.42-10T(f)-(g).

FOR FURTHER INFORMATION

CONTACT: James Rider (202) 317-4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to § 1.42-10 of the Income Tax Regulations (26 CFR Part 1), which concerns the applicable utility allowance relating to the low-income housing credit under section 42 of the Internal Revenue Code. On May 5, 2009, the Treasury Department and the IRS released Notice 2009-44 (2009-21 IRB 1037) (see § 601.601(d)(2)(ii)(b)) to provide guidance on how the utility allowance regulations apply to buildings with a submetering system. On August 7, 2012, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking under section 42(g)(2)(B)(ii) (77 FR 46987) (the 2012 proposed regulations) to provide that utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company and thus do not count against the maximum rent that the building owner can charge. The 2012 proposed regulations generally incorporated the guidance in Notice 2009-44. The Treasury Department and the IRS received written and electronic comments responding to the 2012 proposed regulations. No requests for a public hearing were made and no public hearing was held.

After consideration of all the comments, the final regulations adopt the 2012 proposed regulations as amended by this Treasury decision, and the temporary regulations extend those rules to the provision of energy that the building owner acquires directly from renewable sources and then provides to low-income tenants. The text of the temporary regulations also serves as the text of the proposed regulations (REG-123867-14) for purposes of the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Bulletin**.

Summary of Comments and Explanation of Provisions

Comments Specifically Relating to Submetering

Commenters generally stated that the 2012 proposed regulations provided for accurate utility allowance determinations, which would promote energy efficiency and help maintain the financial stability of housing credit properties.

1. Actual-Consumption Submetering Arrangements and Ratio Utility Billing Systems

The 2012 proposed regulations defined an actual-consumption submetering arrangement for utility allowance purposes as not including a ratio utility billing system (RUBS). RUBS uses a formula that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not actual consumption by the tenant(s) in the unit. A commenter expressed concern that the inability to use RUBS for utility allowance purposes could be interpreted to prohibit the use of RUBS for any low-income housing credit project. This concern is unwarranted. Although the 2012 proposed regulations precluded an arrangement such as RUBS from qualifying as an actual consumption submetering arrangement, they did not prohibit the use of RUBS for low-income housing credit projects. However, any amount paid by a tenant for utilities using RUBS must be included in gross rent. Accordingly, the final regulations follow the approach in the 2012 proposed regulations and continue to define an actual-consumption submetering arrangement as not including RUBS.

2. Administrative Costs of Submetering

The 2012 proposed regulations provided that, if the owner charges a unit's tenants an administrative fee for the owner's actual monthly costs of administering an actual-consumption submetering

arrangement, then the fee is not considered gross rent for purposes of section 42(g)(2) so long as the aggregate monthly fee or fees for all of the unit's utilities under one or more actual-consumption submetering arrangements does not exceed the lesser of (A) five dollars per month; or (B) the owner's actual monthly costs paid or incurred for administering the arrangement. One commenter recommended that the final regulations simply require owners to include in gross rent any amounts that exceed five dollars and not require the owner to determine actual monthly cost. According to the commenter, requiring the building owner to determine actual cost is overly burdensome and would lead to technical non-compliance as a result of nominal amounts. Two commenters requested that the final regulations also permit building owners to charge tenants an administrative fee in accordance with State law as currently permitted in Notice 2009-44. According to these commenters, this rule is regionally tuned and therefore allows building owners to recoup the full cost of submetering in a fair manner. The commenters suggested that by not allowing building owners to recover State-approved charges for electricity, the 2012 proposed regulations would create a disincentive for developers to invest in high performance, sustainable low income housing or build additional housing units.

In response to these comments, the final regulations do not include a requirement to determine actual monthly cost, and they generally permit owners to charge tenants an administrative fee in accordance with a State or local law that specifically prescribes a dollar amount for the administrative fee. The final regulations authorize the Treasury Department and the IRS, by publication in the Internal Revenue Bulletin (IRB) (see § 601.601(d)(2)(ii)), both to provide for administrative fees in excess of five dollars per month even in the absence a State or local law doing so and to put an upper bound on administrative fees even if State or local law allows higher fees.

Thus, if a building owner or its agent charges a unit's tenants a fee for administering an actual-consumption submetering arrangement, then gross rent includes any amount by which the aggregate amount of monthly fees for all of the

unit's utilities under one or more actual-consumption submetering arrangements exceeds the greater of—(i) five dollars per month; (ii) an amount (if any) designated by publication in the IRB; or (iii) the lesser of a dollar amount (if any) specifically prescribed under a State or local law or a maximum amount (if any) designated by publication in the IRB.

3. *Energy Acquired Directly from a Renewable Source*

During consideration of the comments on the 2012 proposed regulations, the Treasury Department and the IRS realized that the proposed definition of an actual-consumption submetering arrangement assumed that the building owner was purchasing the utility in question from a local utility company. For example, proposed § 1.42-10(e)(1)(iv) referred to “the utility company rate incurred by the building owner for the particular utility.” This assumption appeared to preclude applying submetering principles to electricity generated from renewable sources by the building owner or by some other person from whom the building owner purchases it directly.

The legislative purposes of the low-income housing credit, however, are fully consistent with applying submetering principles to energy that is acquired without the intervention of a local utility company. Accordingly, this Treasury decision contains temporary regulations that apply those principles to energy that the building owner provides to tenants after having acquired it directly from renewable sources. Qualification for this submetering treatment, however, depends on the charges to the tenants for this energy being comparable to local utility rates. To the extent that tenants consume this energy, charges by the building owner must not exceed the rates that the local utility company would have charged the tenants if they had instead acquired the energy from that company. Information about how to provide comments on the substance of the temporary regulations is in the notice of proposed rulemaking on this subject (REG-123867-14), which is in the Proposed Rules section in this issue of the **Bulletin**.

Comments Relating to Utility Allowances Generally

In addition to comments responding to the 2012 proposed regulations, the Treasury Department and the IRS received comments relating to the utility allowance regulations that existed prior to these final regulations. The final regulations incorporate certain changes suggested in those comments, as described in this preamble.

1. *Role of Agencies Regarding the Utility Allowance Methods*

Section 1.42-10(b) provides the rules for determining the applicable utility allowance based upon whether (1) the building receives rental assistance from the Rural Housing Service (RHS) (“RHS-assisted building”), (2) the building has any tenant that receives RHS rental assistance payments (“RHS tenant assistance”), (3) the rents and utility allowances of the building are reviewed by the Department of Housing and Urban Development (HUD) (“HUD-regulated building”), or (4) the building is not described in (1), (2), or (3) (“other buildings”).

For an RHS-assisted building and a building with RHS tenant assistance, the applicable utility allowance is the applicable RHS utility allowance. For a HUD-regulated building, the applicable utility allowance is the applicable HUD utility allowance. In other buildings, for all rent-restricted units occupied by tenants receiving HUD tenant assistance, the applicable utility allowance is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program. For all other tenants in rent-restricted units in other buildings, the applicable utility allowance is the applicable PHA utility allowance, a local utility company estimate, an estimate from the State or local housing credit agency (Agency) that has jurisdiction over the building, the HUD Utility Schedule Model, or an energy consumption model. See § 1.42-10(b)(4)(ii) to determine which utility allowance applies.

Prior to these final regulations, the existing regulations provided that, under the energy consumption model, utility consumption estimates must be calculated by “either a properly licensed engineer or a

qualified professional approved by the Agency that has jurisdiction over the building.” The 2012 proposed regulations requested comments on whether approval by the agency with jurisdiction over the building should be required by the regulations for both properly licensed engineers and other qualified professionals or only for qualified professionals that are not properly licensed engineers.

One commenter suggested that the Agency’s approval should be required for determinations by both properly licensed engineers and other qualified professionals, because the Agency should have the ability to approve or deny a utility allowance method unless the building is a RHS property or a HUD-regulated building. Other commenters suggested that Agency approval should be required only for professionals who are not properly licensed engineers. According to these commenters, the intent and benefit of a project sponsor using a licensed engineering professional is not only to receive the benefit of the third-party professional’s expertise but also to simplify evaluation of the third-party by the Agency. One commenter suggested that when reviewing consumption model estimates, an Agency should need to check for only the seal of an engineer, because State certification of the engineer already imposes standards for expertise, performance, and conduct and exposes the certified individual and firm, if any, to possible sanctions through the professional certification and oversight process.

In response to these comments, the final regulations provide that Agency approval is required only for qualified professionals that are not properly licensed engineers. However, the final regulations also clarify that an Agency continues to have the option to review, and take appropriate action regarding, utility estimates based on the energy consumption model or the other optional methods.

One commenter suggested that the final regulations should clarify that an Agency has the ability to approve or deny any owner’s utility allowance, unless the building is an RHS property or a HUD-regulated building. By contrast, another commenter expressed concern that the existing regulations give an Agency too much discretion to approve or disapprove

any of the methods of calculating utility allowances. In particular, the commenter suggested that the final regulations require an Agency to accept utility estimates based on an energy consumption model whenever the estimate is calculated by a properly licensed engineer.

The final regulations do not adopt this latter suggestion. The existing regulations appropriately allow an Agency to approve or disapprove a method or to require certain information before permitting use of the method. Additionally, an Agency should have the ability to review the energy consumption model even when the model is used by a properly licensed engineer, who is not subject to Agency approval. Therefore, the final regulations specifically authorize an Agency to approve or disapprove use of the energy consumption model or require information about the model before permitting its use, regardless of the type of professional who calculates the utility estimates.

2. Use of Consumption Data for the Energy Consumption Model

Under the existing regulations prior to these final regulations, use of the energy consumption model was limited to the building’s consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under § 1.42–10(c)(1). One commenter was concerned about the perceptions that may arise if engineering models yield allowances that are out of line with past consumption. The commenter requested additional guidance on the development of acceptable assumptions for use in engineering models to avoid this problem.

Another commenter stated that it is unclear whether the required building consumption data refers to the calculated consumptions derived from an energy consumption model or a separate set of consumption data such as historical tenant utility billing information. According to the commenter, several Agencies that regulate the acceptable utility allowance methodologies either have had an unclear understanding of what additional information, if any, is required for an engineering analysis under the energy consumption model or have taken the position that ac-

tual historical tenant utility bills for the most recent 12-month period are necessary to process an energy consumption model utility allowance submittal.

The commenter also asserted that historical utility data may be inaccessible and, even if the data were accessible, collection of the data imposes an additional paperwork burden on property owners. The commenter further contended that historical utility billing data does not take into account energy-efficient behavior and does not promote energy conservation. According to the commenter, most utility providers do not maintain utility information beyond the most recent 12-month period. As year-to-year variations occur, the most recent 12 months may not be a representative set of consumption data to provide an ongoing utility allowance. The commenter suggested amending the energy consumption model to allow an engineering approach that analyzes specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.

For the reasons stated by the commenters, the final regulations remove the provision requiring that an energy consumption model use the building’s consumption data for a particular twelve-month period. Instead, the final regulations revise the specific factors used in determining estimates under the energy consumption model to include available historical data.

3. Areas with No Public Housing Authorities

The existing regulations provide that, if the building is neither an RHS-assisted building nor a HUD-regulated building and no tenant in the building receives RHS tenant assistance, then the appropriate utility allowance for the units in the building is the applicable PHA utility allowance. One commenter requested clarification as to which method of calculating utility allowances applies if no PHA exists under these circumstances. Under the existing regulations, if a building owner obtains a local utility company estimate or uses one of the other options for determining the applicable utility allowance, then the selected option replaces the applicable PHA allowance as the appropriate utility allowance. The regulations do not include

an option for using the allowance of a neighboring PHA.

Allowing the use of a neighboring PHA's utility allowance might not be appropriate because climate and utility consumption can be dissimilar from one PHA jurisdiction to a neighboring jurisdiction. Comments are requested on how the rules might best address situations in which no PHA exists. Comments should be submitted in the manner described in the notice of proposed rulemaking on submetering (REG-123867-14), which is in the Proposed Rules section in this issue of the **Bulletin**.

4. Changes in Public Housing Authority Utility Allowances

One commenter requested that a building owner be required to check for a change in a PHA utility allowance only annually. The existing regulations provide that, if the applicable utility allowance for units changes, the building owner must use the new utility allowance to compute gross rents of the units due 90 days after the change (the 90-day period). For example, if a tenant provides a local utility company estimate that shows a higher utility cost than the otherwise applicable PHA utility allowance, then the building owner must lower the rent. The lower rent must be in effect for rent due at the end of the 90-day period. The commenter stated that a building owner must continuously monitor for changes in the PHA utility allowance because a PHA is not required to update utility allowances on a regular, fixed schedule.

The final regulations do not adopt this recommendation because it might result in tenants paying more than the gross rent amount under section 42(g)(2). If a PHA utility allowance were to change after the one-time date suggested by the commenter, then tenants would pay a higher rent until the next annual date to review the PHA utility allowance and the higher rent might exceed the gross-rent limit under section 42(g)(2). Compliance with the 90-day period does not require continuous monitoring. A building owner that checks the PHA utility allowance every 60 days would have at least 30 days in which to adjust rents.

5. HUD-Regulated Building

Prior to these final regulations, the existing regulations defined a HUD-regulated building as one in which neither the building nor any tenant in the building receives RHS assistance and the rents and utility allowances of the building are reviewed by HUD on an annual basis. One commenter recommended amending this definition because HUD does not review the rents and utility allowances on an annual basis for all HUD programs. In response to this comment, the final regulations define a HUD-regulated building to mean one in which the rents and utility allowances of the building are regulated by HUD.

6. Disclosure to Tenants

One commenter suggested that the final regulations address how utility estimates are to be made available to all tenants in the building. Because circumstances may vary and different reasonable options may exist, the final regulations do not adopt this suggestion.

Comments

Information about how to provide comments is in the notice of proposed rulemaking on this subject (REG-123867-14), which is in the Proposed Rules section in this issue of the **Bulletin**.

Table of Contents

The final regulations update the table of contents to include all of the current provisions under section 42.

Effect on Other Documents

Notice 2009-44 (2009-21 IRB 1037) is obsolete for taxable years beginning on or after March 3, 2016.

Statement of Availability of IRS Documents

Notice 2009-44 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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 author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.42-10T also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42-0 is amended by:

1. Revising the introductory text.
2. Revising the heading and adding entries for § 1.42-1.
3. Adding entries for § 1.42-1T.
4. Adding entries for §§ 1.42-3 through 1.42-18.

The additions and revisions read as follows:

§ 1.42-0 Table of contents.

This section lists the paragraphs contained in §§ 1.42-1 through 1.42-18 and § 1.42-1T.

§ 1.42-1 Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.

- (a) through (g) [Reserved]
- (h) Filing of forms.
- (i) [Reserved]
- (j) Effective dates.

§ 1.42-1T Limitation on low-income housing credit allowed with respect to qualified low income buildings receiving housing credit allocations from a State or local housing credit agency (temporary).

- (a) In general.
 - (1) Determination of amount of low-income housing credit.
 - (2) Limitation on low-income housing credit allowed.
 - (b) The State housing credit ceiling.
 - (c) Apportionment of State housing credit ceiling among State and local housing credit agencies.
 - (1) In general.
 - (2) Primary apportionment.
 - (3) States with 1 or more constitutional home rule cities.
 - (i) In general.
 - (ii) Amount of apportionment to a constitutional home rule city.
 - (iii) Effect of apportionment to constitutional home rule cities on apportionment to other housing credit agencies.
 - (iv) Treatment of governmental authority within constitutional home rule city.
 - (4) Apportionment to local housing credit agencies.
 - (i) In general.
 - (ii) Change in apportionment during a calendar year.
 - (iii) Exchanges of apportionments.
 - (iv) Written records of apportionments.
 - (5) Set-aside apportionments for projects involving a qualified nonprofit organization.
 - (i) In general.
 - (ii) Projects involving a qualified nonprofit organization.

- (6) Expiration of unused apportionments.
 - (d) Housing credit allocation made by State and local housing credit agencies.
 - (1) In general.
 - (2) Amount of a housing credit allocation.
 - (3) Counting housing credit allocations against an agency's aggregate housing credit dollar amount.
 - (4) Rules for when applications for housing credit allocations exceed an agency's aggregate housing credit dollar amount.
 - (5) Reduced or additional housing credit allocations.
 - (i) In general.
 - (ii) Examples.
 - (6) No carryover of unused aggregate housing credit dollar amount.
 - (7) Effect of housing credit allocations in excess of an agency's aggregate housing credit dollar amount.
 - (8) Time and manner for making housing credit allocations.
 - (i) Time.
 - (ii) Manner.
 - (iii) Certification.
 - (iv) Fee.
 - (v) No continuing agency responsibility.
 - (e) Housing credit allocation taken into account by owner of a qualified low-income building.
 - (1) Time and manner for taking housing credit allocation into account.
 - (2) First-year convention limitation on housing credit allocation taken into account.
 - (3) Use of excess housing credit allocation for increases in qualified basis.
 - (i) In general.
 - (ii) Example.
 - (4) Separate housing credit allocations for new buildings and increases in qualified basis.
 - (5) Acquisition of building for which a prior housing credit allocation has been made.
 - (6) Multiple housing credit allocations.
 - (f) Exception to housing credit allocation requirement.
 - (1) Tax-exempt bond financing.
 - (i) In general.
 - (ii) Determining use of bond proceeds.
 - (iii) Example.

- (g) Termination of authority to make housing credit allocation.
 - (1) In general.
 - (2) Carryover of unused 1989 apportionment.
 - (3) Expiration of exception for tax-exempt bond financed projects.
 - (h) [Reserved]
 - (i) Transitional rules.
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§ 1.42-3 Treatment of buildings financed with proceeds from a loan under an Affordable Housing Program established pursuant to section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

- (a) Treatment under sections 42(i) and 42(b).
- (b) Effective date.

§ 1.42-4 Application of not-for-profit rules of section 183 to low-income housing credit activities.

- (a) Inapplicability to section 42.
- (b) Limitation.
- (c) Effective date.

§ 1.42-5 Monitoring compliance with low-income housing credit requirements.

- (a) Compliance monitoring requirement.
 - (1) In general.
 - (2) Requirements for a monitoring procedure.
 - (i) In general.
 - (ii) Order and form.
 - (iii) [Reserved]
 - (b) Recordkeeping and record retention provisions.
 - (1) Recordkeeping provision.
 - (2) Record retention provision.
 - (3) Inspection record retention provision.
 - (c) Certification and review provisions.
 - (1) Certification.
 - (2) Review.
 - (ii) [Reserved]
 - (iii) [Reserved]
 - (3) [Reserved]
 - (4) Exception for certain buildings.
 - (i) In general.
 - (ii) Agreement and review.
 - (iii) Example.

(5) Agency reports of compliance monitoring activities.

(d) Inspection provision.

(1) In general.

(2) Inspection standard.

(3) Exception from inspection provision.

(4) Delegation.

(e) Notification-of-noncompliance provisions.

(1) In general.

(2) Notice to owner.

(3) Notice to Internal Revenue Service.

(i) In general.

(ii) Agency retention of records.

(4) Correction period.

(f) Delegation of authority.

(1) Agencies permitted to delegate compliance monitoring functions.

(i) In general.

(ii) Limitations.

(2) Agencies permitted to delegate compliance monitoring functions to another Agency.

(g) Liability.

(h) Effective/applicability dates.

(1) In general.

(2) [Reserved]

§ 1.42-6 Buildings qualifying for carryover allocations.

(a) Carryover allocations.

(1) In general.

(2) 10 percent basis requirement.

(i) Allocation made before July 1.

(ii) Allocation made after June 30.

(b) Carryover-allocation basis.

(1) In general.

(2) Limitations.

(i) Taxpayer must have basis in land or depreciable property related to the project.

(ii) High cost areas.

(iii) Amounts not treated as paid or incurred.

(iv) Fees.

(3) Reasonably expected basis.

(4) Examples.

(c) Verification of basis by Agency.

(1) Verification requirement.

(2) Manner of verification.

(3) Time of verification.

(i) Allocations made before July 1.

(ii) Allocations made after June 30.

(d) Requirements for making carryover allocations.

(1) In general.

(2) Requirements for allocation.

(3) Special rules for project-based allocations.

(i) In general.

(ii) Requirement of section 42(h)(1)(F)(1)(III).

(4) Recordkeeping requirements.

(i) Taxpayer.

(ii) Agency.

(5) Separate procedure for election of appropriate percentage month.

(e) Special rules.

(1) Treatment of partnerships and other flow-through entities.

(2) Transferees.

§ 1.42-7 Substantially bond-financed buildings. [Reserved]

§ 1.42-8 Election of appropriate percentage month.

(a) Election under section 42(b)(2)(A)(ii)(I) to use the appropriate percentage for the month of a binding agreement.

(1) In general.

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(ii) Increases in credit.

(5) Amount allocated.

(6) Procedures.

(i) Taxpayer.

(ii) Agency.

(7) Examples.

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(i) In general.

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(1) In general.

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(i) In general.

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(c) Exception.

(d) Effect of current resident moving within building.

(e) Available unit rule applies separately to each building in a project.

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Par. 3. Section 1.42-0T is added to read as follows:

§ 1.42-0T *Table of contents.*

This section lists the paragraphs contained in §§ 1.42-5T and 1.42-10T.

§ 1.42-5T *Monitoring compliance with low-income housing credit requirements (temporary).*

- (a)(1) through (a)(2)(ii) [Reserved]
- (iii) Effect of guidance published in the Internal Revenue Bulletin.
- (b) through (c)(2)(i) [Reserved]
- (3) Frequency and form of certification.
- (c)(4) through (g) [Reserved]
- (h) Effective/applicability dates.
- (1) [Reserved]
- (2) Effective/applicability dates of the REAC inspection protocol.

§ 1.42-10T *Energy obtained directly from renewable sources (temporary).*

- (a) through (e)(1)(i)(A) [Reserved]
- (B) Utility not purchased from or through a local utility company.
- (C) Renewable source.
- (2) [Reserved]
- (f) Date of applicability.
- (g) Expiration date.

Par. 4. Section 1.42-10 is amended by:

1. Adding a sentence after the first sentence of paragraph (a).
2. Revising paragraph (b)(3).
3. Revising the first sentence of paragraph (b)(4)(ii)(A).
4. Revising paragraph (b)(4)(ii)(E).
5. Adding paragraph (e).

The additions and revisions read as follows:

§ 1.42-10 *Utility allowances.*

(a) * * * For purposes of the preceding sentence, if the cost of a particular utility for a residential unit is paid pursuant to an actual-consumption submetering arrangement within the meaning of paragraph (e)(1) of this section, then that cost is treated as being paid directly by the tenant(s) and not by or through the owner of the building. * * *

- (b) * * *
- (3) *Buildings regulated by the Department of Housing and Urban Development.*

If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are regulated by HUD (HUD-regulated buildings), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

- (4) * * *
- (ii) * * *
- (A) * * * If none of the rules of paragraphs (b)(1), (2), (3), and (4)(i) of this section apply to determine the appropriate utility allowance for a rent-restricted unit, then the appropriate utility allowance for the unit is the applicable PHA utility allowance. * * *

(E) *Energy consumption model.* A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data. The utility consumption estimates must be calculated by a properly licensed engineer or other qualified professional. The qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). If a qualified professional is not a properly licensed engineer and if the building owner wants to utilize that qualified professional to calculate utility consumption estimates, then the owner must obtain approval from the Agency that has jurisdiction over the building. Further, regardless of the type of qualified professional, the Agency may approve or disapprove of the energy consumption model or require information before permitting its use. In addition, utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section.

- * * * * *
- (e) *Actual-consumption submetering arrangements*—(1) *Definition.* For purposes of this section, an actual-consumption submetering arrangement for a utility in a residential unit possesses all of the following attributes:

attributes:

- (i) The utility consumed in the unit is described in paragraph (e)(1)(i)(A) of this section or in § 1.42-10T(e)(1)(i)(B);
- (A) The utility is purchased from or through a local utility company by the building owner (or its agent or other party acting on behalf of the building owner).
- (B) [Reserved]. For further guidance see § 1.42-10T(e)(1)(i)(B) through (e)(1)(i)(C)(3).

(ii) The tenants in the unit are billed for, and pay the building owner (or its agent or other party acting on behalf of the building owner) for, the unit's consumption of the utility;

(iii) The billed amount reflects the unit's actual consumption of the utility. In the case of sewerage charges, however, if the unit's sewerage charges are combined on the bill with water charges and the sewerage charges are determined based on the actual water consumption of the unit, then the bill is treated as reflecting the actual sewerage consumption of the unit; and

(iv) The rate at which the building owner bills for the utility satisfies the following requirements:

- (A) To the extent that the utility consumed is described in paragraph (e)(1)(i)(A) of this section, the utility rate charged to the tenants of the unit does not exceed the rate incurred by the building owner for that utility; and
- (B) To the extent that the utility consumed is described in § 1.42-10T(e)(1)(i)(B), the utility rate charged to the tenants of the unit does not exceed the rate described in § 1.42-10T(e)(1)(iv)(B).

(2) *Administrative fees.* If the owner charges a unit's tenants a fee for administering an actual-consumption submetering arrangement, the fee is not considered gross rent for purposes of section 42(g)(2). The preceding sentence, however, does not apply unless the fee is computed in the same manner for every unit receiving the same submetered utility service, nor does it apply to any amount by which the aggregate monthly fee or fees for all of the unit's utilities under one or more actual-consumption submetering arrangements exceed the greater of—

- (i) Five dollars per month;

(ii) An amount (if any) designated by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter); or

(iii) The lesser of—

(A) The dollar amount (if any) specifically prescribed under a State or local law; or

(B) A maximum amount (if any) designated by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

Par. 5. Section 1.42–10T is added to read as follows:

§ 1.42–10T Energy obtained directly from renewable sources (temporary).

(a) through (e)(1)(i)(A) [Reserved]. For further guidance see § 1.42–10(a) through (e)(1)(i)(A).

(B) *Utility not purchased from or through a local utility company.* The utility is not described in § 1.42–10(e)(1)(i)(A) and is produced from a renewable source (within the meaning of paragraph (e)(1)(i)(C) of this section).

(C) *Renewable source.* For purposes of paragraph (e)(1)(i)(B) of this section, a utility is produced from a renewable source if—

(1) It is energy that is produced from energy property described in section 48;

(2) It is energy that is produced from property that is part of a facility described in section 45(d)(1) through (4), (6), (9), or (11); or

(3) It is a utility that is described in guidance published for this purpose in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(ii) through (iv)(A) [Reserved]. For further guidance see § 1.42–10(e)(1)(ii) through (e)(1)(iv)(A).

(B) The rate described in this paragraph (e)(1)(iv)(B) is the rate at which the local utility company would have charged the tenants in the unit for the utility if that entity had provided it to them.

(2) [Reserved]

(f) *Date of applicability.* This section applies to a building owner's taxable years beginning on or after March 3, 2016. A building owner may apply the provisions of this section to the building owner's taxable years beginning before March 3, 2016.

(g) *Expiration date.* The applicability of this section expires on March 1, 2019.

Par. 6. Section 1.42–12 is amended by adding paragraph (a)(5) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) * * *

(5) *Additional effective dates affecting utility allowances.* (i) The following provisions apply to a building owner's taxable years beginning on or after March 3, 2016—

(A) The second sentence in § 1.42–10(a);

(B) Section 1.42–10(b)(3);

(C) The first sentence in § 1.42–10(b)(4)(ii)(A);

(D) Section 1.42–10(b)(4)(ii)(E); and

(E) Section 1.42–10(e).

(ii) A building owner may apply these provisions to the building owner's taxable years beginning before March 3, 2016. Otherwise, the utility allowances provisions that apply to taxable years beginning before March 3, 2016 are contained in § 1.42–10 (see 26 CFR part 1 revised as of April 1, 2015).

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

Approved: February 8, 2016.

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

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

T.D. 9756

**Regulations under IRC
Section 7430 Relating to
Awards of Administrative
Costs and Attorneys' Fees**

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to awards of administrative costs and attorneys' fees. The final regulations conform the regulations to the amendments made in the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998. The regulations affect taxpayers seeking attorneys' fees and costs.

DATES: *Effective date:* The final regulations are effective on March 1, 2016.

Applicability date: For date of applicability, see § 301.7430–6.

FOR FURTHER INFORMATION
CONTACT: Shannon K. Castañeda at
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SUPPLEMENTARY INFORMATION:

Background

I. In General

This document contains final amendments to Treasury Regulations under section 7430 of the Internal Revenue Code (Code) relating to awards of administrative and attorneys' fees. Section 7430 generally permits a prevailing party in an administrative or court proceeding to seek an award for reasonable administrative and litigation costs incurred in connection with such proceedings. The amendments incorporate the 1997 and 1998 amendments to section 7430, which were enacted as part of the Taxpayer Relief Act of 1997 (TRA), Public Law No. 105–34, 111 Stat. 788 (Aug. 5, 1997), and the IRS Restructuring and Reform Act of 1998 (RRA '98), Public Law No. 105–206, 112 Stat. 685 (Jul. 22, 1998).

The Treasury Department and the Internal Revenue Service published a notice of proposed rulemaking (REG–111833–99) in the **Federal Register**, 74 FR 61589, on November 25, 2009 (the NPRM), proposing amendments to the regulations under section 7430. A public hearing was scheduled for March 10, 2010. The Internal Revenue Service did not receive any requests to testify at the public hearing, and the public hearing was cancelled. Two written comments responding to the NPRM were received and are available for public inspection at <http://www.regulations.gov>

or upon request. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury Decision.

II. Statutory Provisions

Section 7430 generally authorizes a court to award administrative and litigation costs, including attorneys' fees, to a prevailing party in an administrative or court proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty. To qualify as a "prevailing party" a taxpayer must substantially prevail as to the amount in controversy or the most significant issue or set of issues in the proceeding, exhaust the administrative remedies, meet net worth and size limitations, and pay or incur the costs. The taxpayer generally cannot qualify for an award of such costs, however, if the government establishes that its position in the proceeding was substantially justified.

The TRA contained several amendments to section 7430 that are incorporated in the amendments to the regulations. First, the TRA provided that a taxpayer has ninety days after the date the Internal Revenue Service mails to the taxpayer a final decision determining tax, interest, or a penalty, to file an application with the Internal Revenue Service to recover administrative costs. Section 7430 had previously been silent as to the timing for seeking administrative costs. Second, the TRA provided that a taxpayer has ninety days after the date the Internal Revenue Service mails to the taxpayer, by certified or registered mail, a final adverse decision regarding an award of administrative costs, to file a petition with the Tax Court. Section 7430 had previously been silent as to the timing for seeking review in the Tax Court. Third, the TRA clarified the application of the net worth and size limitations imposed by section 7430(c)(4) by providing that individuals filing joint returns should be treated as separate taxpayers for purposes of determining net worth. The TRA added trusts to the list of taxpayers subject to the net worth and size limitations and also specified the date on which the net worth and size determination should be made. Before the TRA's

clarification of the net worth and size limitations, section 7430 had stated only that a prevailing party must meet the requirement of the first sentence of section 2412(d)(1)(B) of Title 28. Section 2412(d)(2)(B) establishes the net worth and size limitations of the Equal Access to Justice Act. See 28 U.S.C. 2412 (EAJA). The TRA also added section 7436 to the Code, which gives the Tax Court jurisdiction in certain employment tax cases. Section 7436(d)(2) provides that section 7430 applies to proceedings brought under section 7436.

RRA '98 also contained several amendments affecting section 7430. First, RRA '98 increased the hourly rate limitation for attorneys' fees in section 7430(c)(1) from \$110 per hour to \$125 per hour. Second, two special factors were added that may be considered to allow an increase in an attorney's hourly rate: (1) Difficulty of the issues presented and (2) local availability of tax expertise. Prior to the enactment of RRA '98, the only special factor included in section 7430(c)(1) was the limited availability of qualified attorneys. Third, RRA '98 added a provision that requires a court to consider whether the Internal Revenue Service has lost cases with substantially similar issues in other circuit courts of appeal in deciding whether the Internal Revenue Service's position was substantially justified. Fourth, RRA '98 created an exception to the requirement that to recover attorneys' fees, the taxpayer must have paid or incurred the fees. The exception provides that if an individual who is authorized to practice before the Tax Court or the Internal Revenue Service is representing the taxpayer on a *pro bono* basis, then the taxpayer may petition for an award of reasonable attorneys' fees in excess of the amounts that the taxpayer paid or incurred, as long as the fee award is ultimately paid to the individual who represented the taxpayer or such individual's employer. The Treasury Department and the Internal Revenue Service are releasing, simultaneously with these final regulations, a revenue procedure detailing the procedures for the recovery of attorneys' fees in the *pro bono* context. Fifth, RRA '98 extended the period for recovery of reasonable administrative costs to include costs incurred after the date on which the first letter of pro-

posed deficiency, commonly known as a 30-day letter, is mailed to the taxpayer. Previously, administrative costs only included costs incurred on or after the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Summary of Regulations

The final regulations reflect the changes made by the TRA as originated in the proposed regulations. Clarifying changes included in the proposed regulations and adopted here address the calculation of net worth. Section 7430 imposes net worth and size limitations on who can recover costs. First, the proposed and final regulations specify which limitations with respect to net worth and size apply when a taxpayer is an owner of an unincorporated business. Second, the proposed and final regulations clarify the net worth and size limitations in cases involving partnerships subject to the unified audit and litigation procedures of sections 6221 through 6234 of the Code (the TEFRA partnership procedures).

The final regulations reflect a further clarification that was not included in the proposed regulations. The proposed regulations merely noted that the net worth of taxpayers who filed joint returns should be calculated separately. The final regulations further explain how the separate calculation will be conducted in various situations. When taxpayers who file joint returns jointly petition the court and incur joint costs, each taxpayer qualifies for a separate net worth limitation of \$2 million, but the limitation will be evaluated jointly. As such, taxpayers will meet the net worth limitation so long as their combined assets are equal to or less than \$4 million, regardless of how the assets are distributed. This prevents high net worth taxpayers from avoiding the net worth limitation by seeking costs on behalf of a spouse with a lower net worth. When taxpayers file a joint return, but petition the court separately and incur separate costs, the limitation will be evaluated separately. As such, each taxpayer will have his/her assets applied toward a separate \$2 million cap for each spouse. This analysis protects the ability of spouses with fewer assets to seek representation when the

spouse with higher-value assets is unwilling or unable to incur those costs.

The final regulations do not adopt the proposed rule in §§ 301.7430–5(g)(1) and (2) that the net worth limitation is computed based on the fair market value of the taxpayer’s assets. The existing section 7430 regulations do not address this issue and no comments from the public were received on this issue. The existing case law, however, generally recognizes that the net worth calculation is made based on the acquisition costs of the taxpayer’s assets. Because the case law is clear and provides an existing standard for determining net worth, the final regulations follow the case law and do not adopt the proposed rule in § 301.7430–5(g)(1) and (2) relating to the determination of the value of the taxpayer’s assets. Accordingly, the final regulations add a new paragraph (6) to § 301.7430–5(g) to clarify that for purposes of determining net worth, assets are valued based on the cost of their acquisition.

Consistent with the changes made by RRA ’98, the final regulations clarify that a taxpayer may be eligible to recover reasonable administrative costs from the date of the 30-day letter only if at least one issue (other than recovery of administrative costs) remains in dispute as of the date that the Internal Revenue Service takes a position in the administrative proceeding. This requirement follows RRA ’98’s prevailing party definition. Under the changes made by RRA ’98, the position of the United States is established in the administrative proceeding on the earlier of the date the taxpayer receives the notice of the decision of the Internal Revenue Service Office of Appeals or the date of the notice of deficiency. Where the Internal Revenue Service concedes an issue in the Office of Appeals prior to issuing a notice of deficiency or notice of the decision of the Office of Appeals, the United States does not take a position, so an award of administrative costs is not available. Where the Internal Revenue Service concedes an issue in the notice of decision, the position of the United States is necessarily substantially justified. *See, for example, Fla. Country Clubs, Inc. v. Commissioner*, 122 T.C. 73, 78–86 (2004), *aff’d*, 404 F.3d 1291 (11th Cir. 2005) (Where the Office of Appeals determined that taxpayer did not owe any additional tax after issuing a 30-

day letter, but without ever issuing a notice of deficiency or notice of determination, the Internal Revenue Service did not take a position), *Purciello v. Commissioner*, T.C. Memo. 2014–50 (Where the Internal Revenue Service conceded the matter at issue in full in the notice of decision, the Internal Revenue Service was substantially justified).

Summary of Comments and Explanation of Revisions

The Treasury Department and the Internal Revenue Service received two written comments in response to the NPRM, both of which related to the provisions in the proposed regulations providing for the award of reasonable attorneys’ fees when an individual is representing a party on a *pro bono* basis. This section addresses those comments. This section also describes the significant differences between the rules proposed in the NPRM and those adopted in the final regulations.

As discussed in this preamble, prior to RRA ’98, only those costs incurred by the taxpayer were eligible for payment under section 7430. RRA ’98 provided that the court could award costs in excess of the costs actually incurred by the taxpayer if those costs were less than the reasonable attorneys’ fees because an individual is representing the taxpayer on a *pro bono* basis. The statute defined *pro bono* as representation provided for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. Finally, the statute directed that awards for *pro bono* representation must be paid to the representative or that representative’s employer, as opposed to section 7430’s general requirement that awards are paid to the taxpayer.

1. *Persons on whose behalf pro bono representation must be provided*

Section 7430 establishes net worth and size limitations that a taxpayer must meet in order to recover administrative or litigation costs. The proposed regulations included an additional requirement related to a taxpayer’s net worth: they stated that, for reasonable administrative costs to be awarded for legal services provided on a *pro bono* basis, the services must be provided to or on behalf of either (A) persons of limited financial means who meet the

eligibility requirements for programs funded by the Legal Services Corporation, or (B) organizations operating primarily to address the needs of persons with limited means if payment of a standard legal fee would significantly deplete the organization’s financial resources. Both of the commentators recommended revising the regulations to provide that organizations to whom or on whose behalf representation may be provided include low income taxpayer clinics, clinics participating in the Internal Revenue Service student tax clinic program, and clinics operating as approved clinics in the United States Tax Court. Both commentators also proposed changes in the proposed regulations’ income limitation for persons on whose behalf *pro bono* legal representation must be provided. The proposed regulations provided an income limitation based on the eligibility requirements for programs funded by the Legal Services Corporation (see 42 U.S.C. 2996e(a)(1)(A)), which is 125 percent of the current Federal Poverty Guidelines published by the United States Department of Health and Human Services. One commentator recommended that the limitation be expanded to include individuals and households whose incomes do not exceed 250 percent of the poverty level as determined in accordance with criteria established by the Director of the Office of Management and Budget. The other commentator recommended that the regulations should not contain an income threshold for persons on whose behalf *pro bono* representation is provided, and recommended that the only limitation should be that *pro bono* representation must be provided to persons with limited means if payment of a standard legal fee would significantly deplete the person’s financial resources.

The Treasury Department and the Internal Revenue Service have carefully considered both comments and have considered the difficulty of establishing fair and easily applied limitations on eligibility for attorneys’ fees for *pro bono* representation based upon the income and financial resources of the taxpayer. The Treasury Department and the Internal Revenue Service have determined that eligibility should not be limited based on the income or financial resources of the recipient of the representation beyond the limit pro-

vided by section 7430(c)(4)(A)(ii). As a result, the rule contained in the proposed regulations is not being finalized. This change makes it unnecessary to revise the eligibility requirements as proposed by the commentators.

2. Rate of reimbursement for attorneys who do not have a customary hourly rate

An example in the proposed regulations stated that an award for representation by attorneys employed by a low income taxpayer clinic who do not have a customary hourly rate would be limited to the rate prescribed under section 7430(c)(1)(B). Section 7430(c)(1)(B)(iii) provides for attorneys' fees based on prevailing market rates for the kind or quality of services furnished, except that the fee is limited to a statutory rate of \$125 an hour plus cost of living adjustments, unless a special factor justifies a higher rate. One commentator stated that because of the difficulty of determining the prevailing market rates for the kind or quality of services furnished in the case of attorneys representing low income taxpayers, and because of the unlikelihood that a low income taxpayer clinic or student taxpayer clinic program would become involved in a case that would justify a rate in excess of the statutory rate, the rate for *pro bono* attorneys who do not have a customary hourly rate should be set at the statutory rate.

After publishing the proposed regulations, the Treasury Department and the Internal Revenue Service determined that details such as the rate of compensation for *pro bono* attorneys who do not have a customary hourly rate would more logically be contained in a revenue procedure. The Treasury Department and the Internal Revenue Service are releasing simultaneously Rev. Proc. 2016-17, which provides that *pro bono* attorneys who do not charge an hourly rate receive the statutory rate for their services unless they establish that a special factor, as described in section 7430(c)(1)(B)(iii), applies to justify a higher hourly rate. The final regulations, therefore, do not contain the example in the proposed regulations on the rate applicable to *pro bono* attorneys who do not have a customary hourly rate. Instead,

these recommendations are taken into account in Rev. Proc. 2016-17.

3. Enhanced rate based on limited availability of *pro bono* representatives with tax expertise

One commentator recommended a change to the section of the proposed regulations that provided that the limited local availability of tax expertise is a special factor that would justify an award at a rate higher than the statutory rate. The proposed regulations provided that limited local availability of tax expertise is established by demonstrating that a representative possessing tax expertise is not available in the taxpayer's geographical area. The commentator stated that she did not think this special factor produces a fair result in the case of *pro bono* representatives because, even if attorneys possessing tax expertise practice within a taxpayer's geographic area, those attorneys may not be willing or able to take on *pro bono* cases. The commentator suggested that the regulation be revised so that, in *pro bono* cases, the special factor based on the limited local availability of tax expertise would apply if there is no representative possessing tax expertise practicing within the taxpayer's geographic area who is willing or able to represent the taxpayer on a *pro bono* basis.

The Treasury Department and the Internal Revenue Service disagree that the proposed rule does not produce a fair result in the case of *pro bono* representatives. The rule permits the award of an enhanced rate based on the limited local availability of tax expertise because such a circumstance reasonably could have an unfair impact on a taxpayer who pays or incurs liability for attorneys' fees. For example, the taxpayer who must go outside his geographic area to retain a representative with tax expertise might be required to pay more for the representation than the generally prevailing market rate for representatives in the taxpayer's geographic area. Taxpayers who are represented on a *pro bono* basis are entitled to the enhanced rate in the same manner as taxpayers who incur fees. Therefore, the final regulations adopt the rule in the proposed regulations without change.

4. Payments for work performed by students and hourly rates for students

The proposed regulations did not discuss issues relating to the award of attorneys' fees based on the work of volunteer law students. Both commentators recommended clarifying the proposed regulations to state that payment for work performed by law students should be made to the attorneys under whom the students work or to such an attorney's employer rather than to the law students.

One commentator expressed concern that fees may be awarded based on the work of law students who volunteer in low income taxpayer clinics and clinics participating in the Internal Revenue Service student taxpayer clinic program, but that such students do not have customary hourly rates. The commentator proposed setting an hourly rate for law students at 40 percent of the statutory hourly rate for attorneys. The commentator also requested clarification that the work of law students can be compensated as attorneys' fees or costs regardless of whether the students have special orders authorizing them to practice before the Internal Revenue Service.

The Treasury Department and the Internal Revenue Service agree that awarding fees based on the work of volunteer students may be appropriate and are addressing this issue in a revenue procedure being released contemporaneously with these final regulations. In Rev. Proc. 2016-17, the Treasury Department and the Internal Revenue Service clarify that work performed by students authorized to practice before the Internal Revenue Service or the Tax Court may be compensable at 35 percent of the statutory hourly rate for attorneys, unless the student can demonstrate that a rate in excess of that 35 percent is appropriate, with the award payable to the clinic or organization with which the student is affiliated. Rev. Proc. 2016-17 further clarifies that with respect to students who are not authorized to practice before the Internal Revenue Service or the Tax Court, the requester will have the burden of proving that an award of costs is appropriate and what rate of compensation is reasonable.

5. Effective/applicability date

The proposed regulations provided that the changes in §§ 301.7430-2, 301.7430-3, 301.7430-4, and 301.7430-5 would apply to costs incurred and services performed as of the date of publication of the final regulations, without regard to when a petition was filed. That meant that these changes could have applied in cases where a petition was filed before publication of the final regulations in the **Federal Register**. To ensure that these changes are not mandatory for cases in which a petition was filed before publication of the final regulations in the **Federal Register**, the effective/applicability date in § 301.7430-6 of the final regulations has been revised to provide that the changes in §§ 301.7430-2, 301.7430-3, 301.7430-4, and 301.7430-5 apply to costs incurred and services performed in cases in which the petition was filed on or after the date of publication of the final regulations in the **Federal Register**. However, taxpayers may rely on the changes contained in §§ 301.7430-2, 301.7430-3, 301.7430-4, and 301.7430-5 of the final regulations for costs incurred and services performed in which a petition was filed prior to March 1, 2016.

In addition, no effective/applicability date was proposed with respect to the rules for qualified offers under § 301.7430-7, but one has been added to the final regulations. Accordingly, under § 301.7430-7(f) of the final regulations, section 301.7430-7 applies to qualified offers made in administrative court proceedings described in section 7430 after December 24, 2003, except that section 301.7430-7(c)(8) is effective as of the date these final regulations are published in the **Federal Register**.

Statement of Availability for IRS Document

For copies of recently issued Revenue Procedures, Revenue Ruling, notices and other guidance published in the Internal Revenue Bulletin, visit the IRS Web site at <http://www.irs.gov>.

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking 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 author of these regulations is Shannon K. Castañeda, Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoptions of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7430-0 is amended by:

1. Adding an entry for § 301.7430-3(c)(4).
2. Adding entries to § 301.7430-4, paragraphs (b)(3)(iii)(A) through (F) and (d).
3. Revising the entries for § 301.7430-5.
4. Revising the section heading for § 301.7430-6.
5. Adding entries for §§ 301.7430-7 and 301.7430-8.

The additions and revisions read as follows:

§ 301.7430-0 Table of contents.

* * * * *

§ 301.7430-3 Administrative proceeding and administrative proceeding date.

* * * * *

(c) * * *

(4) First letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals.

* * * * *

§ 301.7430-4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) In general.

(B) Special factor.

(C) Limited availability.

(D) Local availability of tax expertise.

(E) Difficulty of the issues.

(F) Example.

* * * * *

(d) Pro bono representation.

(1) In general.

(2) Requirements.

(3) Nominal fee.

(4) Payment when representation provided for a nominal fee.

(5) Requirements.

(6) Hourly rate.

(7) Examples.

§ 301.7430-5 Prevailing party.

(a) In general.

(b) Position of the Internal Revenue Service.

(c) Examples.

(d) Substantially justified.

(1) In general.

(2) Position in courts of appeal.

(3) Examples.

(4) Included costs.

(5) Examples.

(6) Exception.

(7) Presumption.

(e) Amount in controversy.

(f) Most significant issue or set of issues presented.

(1) In general.

(2) Example.

(g) Net worth and size limitations.

(1) Individuals.

(2) Estates and trusts.

- (3) Others.
- (4) Special rule for charitable organizations and certain cooperatives.
- (5) Special rule for TEFRA partnerships.
- (6) Determining net worth.
- (h) Determination of prevailing party.
- (i) Examples.

§ 301.7430–6 *Effective/applicability dates.*

§ 301.7430–7 *Qualified offers.*

- (a) In general.
- (b) Requirements for treatment as a prevailing party based upon having made a qualified offer.
 - (1) In general.
 - (2) Liability under the last qualified offer.
 - (3) Liability pursuant to the judgment.
- (c) Qualified offer.
 - (1) In general.
 - (2) To the United States.
 - (3) Specifies the offered amount.
 - (4) Designated at the time it is made as a qualified offer.
 - (5) Remains open.
 - (6) Last qualified offer.
 - (7) Qualified offer period.
 - (8) Interest as a contested issue.
- (d) [Reserved].
- (e) Examples.
- (f) Effective date.

§ 301.7430–8 *Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.*

- (a) In general.
- (b) Prevailing party.
- (c) Administrative proceeding.
- (d) Costs incurred after filing of bankruptcy petition.
- (e) Time for filing claim for administrative costs.
- (f) Effective date.

Par. 3. Section 301.7430–1 is amended by revising paragraphs (b)(1)(ii)(A), (d)(1)(i) and (ii) and (d)(2) introductory text to read as follows:

§ 301.7430–1 *Exhaustion of administrative remedies.*

- * * * * *
- (b) * * *
- (1) * * *

- (ii) * * *
- (A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter or any successor published guidance; and

- * * * * *
- (d) * * *
- (1) * * *

(i) The party follows all applicable Internal Revenue Service procedures for contesting the matter (including filing a written protest or claim, requesting an administrative appeal, and participating in an administrative hearing or conference); or

(ii) If there are no applicable Internal Revenue Service procedures, the party submits to the Area Director of the area having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to the requested relief, and the Area Director denies the claim for relief in writing or fails to act on the claim within a reasonable period after the claim is received by the Area Director.

(2) For purposes of paragraph (d)(1)(ii) of this section, a *reasonable period* is—

Par. 4. Section 301.7430–2 is amended by:

1. Revising paragraph (a).
2. Removing the semicolon at the end of paragraph (c)(3)(i)(B) and adding a period in its place, and adding a sentence at the end of the paragraph.
3. Adding a sentence at the end of paragraph (c)(3)(i)(E).
4. Revising paragraph (c)(3)(ii)(C), adding paragraph (c)(3)(iii)(C), and revising paragraph (c)(5).
5. Adding a sentence at the end of paragraph (c)(7).
6. Revising paragraph (e).

The additions and revisions read as follows:

§ 301.7430–2 *Requirements and procedures for recovery of reasonable administrative costs.*

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an administrative proceeding before the In-

ternal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs from the Internal Revenue Service. Paragraph (c) of this section describes the procedures that a taxpayer must follow to recover reasonable administrative costs. Paragraphs (b) and (c) apply to requests for administrative costs regarding all administrative proceedings within the Internal Revenue Service.

- * * * * *
- (c) * * *
- (3) * * *
- (i) * * *

(B) * * * For costs incurred after January 18, 1999, if the taxpayer alleges that the United States has lost in courts of appeal for other circuits on substantially similar issues, the taxpayer must provide, for each such case, the full name of the case, volume and pages of the reporter in which the opinion appears, the circuit in which the case was decided, and the year of the opinion;

(E) * * * This statement must identify whether the representation is on a pro bono basis as defined in § 301.7430–4(d) and, if so, to whom payment should be made. Specifically, the statement must direct whether payment should be made to the taxpayer’s representative or to the representative’s employer.

- (ii) * * *

(C) For costs incurred after January 18, 1999, if more than \$125 per hour (as adjusted for an increase in the cost of living pursuant to § 301.7430–4(b)(3)) is claimed for the fees of a representative in connection with the administrative proceeding, an affidavit is necessary stating that a special factor described in § 301.7430–4(b)(3) is applicable, such as the difficulty of the issues presented in the case or the lack of local availability of tax expertise. If a special factor is claimed based on specialized skills and distinctive knowledge as described in § 301.7430–4(b)(2)(ii), the affidavit should state—

- (1) Why the specialized skills and distinctive knowledge were necessary in the representation;
- (2) That there is a limited availability of representatives possessing these spe-

cialized skills and distinctive knowledge; and

(3) How the representative's education and experience qualifies the representative as someone with the necessary specialized skills and distinctive knowledge.

(iii) * * *

(C) In cases of pro bono representation, time records similar to billing records, detailing the time spent and work completed, must be submitted for the requested fees.

* * * * *

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a written request for costs within 90 days after the date the final adverse decision of the Internal Revenue Service with respect to all tax, additions to tax, interest, and penalties at issue in the administrative proceeding is mailed or otherwise furnished to the taxpayer. For purposes of this section, *interest* means the interest that is specifically at issue in the administrative proceeding independent of the taxpayer's objections to the underlying tax, additions to tax, and penalties imposed. The final decision of the Internal Revenue Service for purposes of this section is the document that resolves the taxpayer's liability with regard to all tax, additions to tax, interest, and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed or otherwise furnished to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day that is not a Saturday, Sunday, or a legal holiday as defined by section 7503.

* * * * *

(7) * * * Once a notice of decision denying (in whole or in part) an award for reasonable administrative costs is mailed by the Internal Revenue Service via certified mail or registered mail as required by paragraph (c)(6) of this section, a taxpayer may obtain judicial review of that decision by filing a petition for review with the Tax Court prior to the 91st day after the mailing of the notice of decision.

* * * * *

(e) The following examples primarily illustrate paragraph (a) of this section:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. The administrative file contains certain documents provided by A as substantiation for the tax matters at issue. Appeals determines that the information submitted is insufficient. Appeals then issues a notice of deficiency. After receiving the notice of deficiency but before the 90-day period for filing a petition with the Tax Court has expired, and before filing a petition with the Tax Court, A convinces Appeals that the information previously submitted and reviewed by Appeals is sufficient and, therefore, the notice of deficiency is incorrect and A owes no additional tax. Pursuant to section 6212(d), the notice of deficiency is rescinded. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that Appeals did not rely on any new information provided by A in rescinding the notice of deficiency and that all of the other requirements of section 7430 are satisfied, A may recover reasonable administrative costs incurred after the date of the 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, A must file a request for administrative costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no additional tax.

Example 2. Taxpayer B files a request for an abatement of interest pursuant to section 6404 and the regulations thereunder. The Area Director issues a notice of proposed disallowance of the abatement request (akin to a 30-day letter). B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of disallowance of the abatement request. B does not file suit in the Tax Court, but instead contacts the Appeals office within 180 days after the mailing date of the notice of disallowance of the abatement request to attempt to reverse the decision. B convinces the Appeals office that the notice of disallowance is in error. The Appeals office agrees to abate the interest and mails the taxpayer a notification of this decision. The mailing date of the notification from Appeals of the decision to abate interest commences the 90-day period from which the taxpayer may request administrative costs. Assuming that Appeals did not rely on any new information provided by B in reversing its notice of disallowance, and that all of the other requirements of section 7430 are satisfied, B may recover reasonable administrative costs incurred after the date the Area Director issued the notice of proposed disallowance of the abatement request (the administrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, B must file a request for costs with the Appeals office personnel who settled B's tax matter, or if that person is unknown to B, with the Area Director of the area that considered the underlying matter within 90 days after the date of mailing of the Office of Appeals'

final decision that B is entitled to abatement of interest.

Example 3. Taxpayer C receives a notice of proposed adjustment and employment tax 30-day letter. C requests and is granted Appeals office consideration. The administrative file contains certain documents provided by C to support C's position in the tax matters at issue. Appeals determines that the documents submitted are insufficient. Appeals then issues a notice of determination of worker classification. After receiving the notice of determination of worker classification but before the 90-day period for filing a petition with the Tax Court has expired, C convinces Appeals that the documents previously submitted and reviewed by Appeals adequately support its position and, therefore, C owes no additional employment tax. Appeals then closes the case showing a zero tax adjustment and mails C a no-change letter. Assuming that Appeals did not rely on any new information provided by C in reversing its notice of determination of worker classification, and that all of the other requirements of section 7430 are satisfied, C may recover reasonable administrative costs incurred after the date of the notice of proposed adjustment and 30-day letter (the administrative proceeding date as defined in Treas. Reg. § 301.7430-3(c)). To recover these costs, C must file a request for administrative costs with the Appeals office personnel who settled C's tax matter, or if that person is unknown to C, with the Area Director of the area that considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that C owes no additional tax.

Par. 5. Section 301.7430-3 is amended by:

1. Revising paragraphs (b), (c)(1), and (3).
2. Adding paragraph (c)(4).
3. Revising paragraph (d).

The addition and revisions read as follows:

§ 301.7430-3 Administrative proceeding and administrative proceeding dates.

* * * * *

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). A collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to

collect a tax. Collection actions also include collection due process hearings under sections 6320 and 6330 (unless the underlying tax liability is properly at issue), and those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 or to remedy any unauthorized collection action as described by section 7433, except those collection actions described by section 7433(e). An action or procedure directly relating to a claim for refund after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date*—
(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term *administrative proceeding date* means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals;

(ii) The date of the notice of deficiency;
or

(iii) The date on which the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent.

* * * * *

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, the following will be treated as a notice of deficiency:

(i) A notice of final partnership administrative adjustment described in section 6223(a)(2).

(ii) A notice of determination of worker classification issued pursuant to section 7436.

(iii) A final notice of determination denying innocent spouse relief issued pursuant to section 6015.

(4) *First letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals.* Generally, the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Office of Appeals is the first letter issued to the taxpayer that describes the proposed adjustments and advises the tax-

payer of the opportunity to contact the Office of Appeals. It also may be a claim disallowance or the first letter of determination that allows the taxpayer an opportunity for administrative review in the Office of Appeals.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency, A does not file a petition with the Tax Court. Instead, A pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the Area Director issues a notice of proposed claim disallowance. A requests and is granted Appeals office consideration. A convinces Appeals that A's claim is correct and Appeals allows A's claim. A may recover reasonable administrative costs incurred on or after the date of the notice of proposed deficiency (30-day letter), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. A cannot recover costs incurred prior to the date of the 30-day letter because these costs were incurred before the administrative proceeding date.

Example 2. Taxpayer B files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a Notice Of Intent to Levy And Notice Of Your Right To A Hearing pursuant to sections 6330(a) and 6331(d). B timely requests and is granted a Collection Due Process (CDP) hearing. In connection with the CDP hearing, B enters into an installment agreement as a collection alternative. The costs that B incurred in connection with the CDP hearing were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, B may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

Par. 6. Section 301.7430-4 is amended by:

1. Removing the language "such" the second time it appears in the second sentence and in the fifth sentence of paragraph (b)(2)(ii) and adding the language "that" in its place.

2. Revising paragraphs (b)(3)(i) and (b)(3)(iii)(B).

3. Revising the first sentence in paragraph (b)(3)(iii)(C) and adding a new second sentence following the first sentence.

4. Redesignating paragraph (b)(3)(iii)(D) as paragraph (b)(3)(iii)(F), adding new paragraphs (b)(3)(iii)(D) and

(b)(3)(iii)(E), and revising newly redesignated paragraph (b)(3)(iii)(F).

5. Revising paragraph (c)(4).

6. Adding paragraph (d).

The additions and revisions read as follows:

§ 301.7430-4 Reasonable administrative costs.

* * * * *

(b) * * *

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees incurred after January 18, 1999, and described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed \$125 per hour (as adjusted for an increase in the cost of living and, if appropriate, a special factor adjustment).

* * * * *

(iii) * * *

(B) *Special factor.* A *special factor* is a factor, other than an increase in the cost of living, that justifies an increase in the \$125 per hour limitation of section 7430(c)(1)(B)(iii). The undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purpose of increasing the \$125 per hour limitation. By contrast, the limited availability of a specially qualified representative for the proceeding, the limited local availability of tax expertise, and the difficulty of the issues are special factors justifying an increase in the \$125 per hour limitation.

(C) *Limited availability.* Limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the \$125 per hour rate (as adjusted for an increase in the cost of living). The representative's special qualification must be based on nontax expertise. * * *

(D) *Limited local availability of tax expertise.* Limited local availability of tax expertise is established by demonstrating that a representative possessing tax expertise is not available in the taxpayer's geo-

graphical area. Initially, this showing may be made by submission of an affidavit signed by the taxpayer, or by the taxpayer's counsel, that no representative possessing tax expertise practices within a reasonable distance from the taxpayer's principal residence or principal office. The hourly rate charged by representatives in the geographical area is not relevant in determining whether tax expertise is locally available. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited local availability of a representative possessing tax expertise.

(E) *Difficulty of the issues.* In determining whether the difficulty of the issues justifies an increase in the \$125 per hour limitation on the applicable hourly rate, the Internal Revenue Service will consider the following factors:

(1) The number of different provisions of law involved in each issue.

(2) The complexity of the particular provision or provisions of law involved in each issue.

(3) The number of factual issues present in the proceeding.

(4) The complexity of the factual issues present in the proceeding.

(F) *Example.* The provisions of this section are illustrated by the following example:

Example. Taxpayer A is represented by B, a CPA and attorney with a LL.M. Degree in Taxation with Highest Honors who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues that is subject to the provisions of this section. Assuming A qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the \$125 per hour limitation (as adjusted for an increase in the cost of living), absent a special factor. B is not a specially qualified representative because extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor. A higher rate may be justified by another special factor, that is, the limited local availability of tax expertise or the difficulty of the issues.

* * * * *

(c) * * *

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. After incurring fees for representation during the Internal Revenue Service's examination of A's income tax return, A receives a notice of

proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred before the date of the mailing of the 30-day letter are not reasonable administrative costs because they were incurred before the administrative proceeding date. Similarly, A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs.

Example 2. Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, in addition to petitioning the Tax Court, A recontacts Appeals and A convinces Appeals that the information previously submitted during the review by Appeals is sufficient and, therefore, the notice of deficiency is incorrect and A owes no additional tax. The Internal Revenue Service and A agree to a stipulated decision in the Tax Court case to reflect Appeals' decision. The Tax Court enters the decision. If A seeks administrative costs, A may recover costs incurred after the date of the mailing of the 30-day letter, costs incurred in recontacting Appeals after the issuance of the notice of deficiency, and costs incurred up to the time the Tax Court petition was filed, as reasonable administrative costs, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. The costs incurred before the date of the mailing of the 30-day letter are not reasonable administrative costs because they were incurred before the administrative proceeding date, as set forth in § 301.7430-3(c)(1)(iii). A's costs incurred in connection with the filing of a petition with the Tax Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as they are litigation costs.

(d) *Pro bono representation*—(1) *In general.* Fees recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may exceed the attorneys' fees paid or incurred by the prevailing party if such fees are less than the reasonable attorneys' fees because an individual is representing the prevailing party on a pro bono basis. In addition to attorneys' fees, reasonable costs incurred or paid by the individual providing the pro bono representation that are normally billed separately also may be recovered under this section. The Treasury Department and the Internal Revenue Service may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, provide for additional rules that apply for awards of costs for pro bono representation for purposes of this paragraph (d).

(2) *Requirements.* Pro bono representation is established by demonstrating—

(i) Representation was provided for no fee or for a fee that (taking into account all the facts and circumstances) constitutes a nominal fee;

(ii) The representative intended to provide representation for no fee or for a nominal fee from the commencement of the representation. Intent to provide representation for no fee or for a nominal fee may be demonstrated through documentation such as a retainer agreement. An individual will not be considered to have represented a client on a pro bono basis if the facts demonstrate that the individual anticipated a fee greater than a nominal fee or provided representation on a contingency fee basis. The fact that the representative intended to seek recovery of fees under section 7430 will not prevent the representative from satisfying this requirement.

(3) *Nominal fee.* A nominal fee is defined as a fee that is insignificantly small or minimal. A nominal fee is a trivial payment, bearing no relation to the value of the representation provided, taking into account all the facts and circumstances.

(4) *Payment when representation provided at no charge or for a nominal fee.* A prevailing party who receives representation at no charge or for a nominal fee and who satisfies the requirements under this section is eligible to receive reasonable fees in excess of the fees actually paid or incurred. Payment will be made to the representative or the representative's employer.

(5) *Recordkeeping.* Contemporaneous records must be maintained, demonstrating the work performed and the time allocated to each task. These records should contain similar information to billing records.

(6) *Examples.* The provisions of this section are illustrated by the following example:

Example 1. Taxpayer A, an attorney, files a petition with the Tax Court and pays a \$60 filing fee. A appears pro se in the court proceeding. If A prevails, he will not be entitled to an award of reasonable litigation costs for his services. A is rendering services on his own behalf, not providing pro bono representation. His lost opportunity costs are not compensable under section 7430. A may recover the filing fee as a litigation cost, but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

Par. 7. Section 301.7430–5 is revised to read as follows:

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430 in the case of administrative proceedings commenced after July 30, 1996, a taxpayer is a prevailing party (other than by reason of section 7430(c)(4)(E)) only if—

(1) At least one issue (other than recovery of administrative costs) remains in dispute as of the date that the Internal Revenue Service takes a position in the administrative proceeding, as described in paragraph (b) of this section;

(2) The position of the Internal Revenue Service was not substantially justified;

(3) The taxpayer substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(4) The taxpayer satisfies the net worth and size limitations referenced in paragraph (f) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the earlier of—

(1) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(2) The date of the notice of deficiency or any date thereafter.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A pays the amount of the proposed deficiency and files a claim for refund. A's claim is considered and a notice of proposed claim disallowance is issued by the Area Director. A does not request an Appeals office conference and the Area Director issues a notice of claim disallowance. A then files suit in a United States District Court. A cannot recover reasonable administrative costs because the notice of claim disallowance is not a notice of the decision of the Internal Revenue Service Office of Appeals or a notice of deficiency. Accordingly, the Internal Revenue Service has not taken a position in the administrative proceeding pursuant to section 7430(c)(7)(B).

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B disputes the

proposed adjustments and requests an Appeals office conference. The Appeals office determines that B has no additional tax liability. B requests administrative costs from the date of the 30-day letter. B is not the prevailing party and may not recover administrative costs because all of the proposed adjustments in the case were resolved as of the date that the Internal Revenue Service took a position in the administrative proceeding.

(d) *Substantially justified—(1) In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Position in courts of appeal.* Whether the United States has won or lost an issue substantially similar to the one in the taxpayer's case in courts of appeal for circuits other than the one to which the taxpayer's case would be appealable should be taken into consideration in determining whether the Internal Revenue Service's position was substantially justified.

(3) *Example.* The provisions of this section (d) are illustrated by the following example:

Example. The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Internal Revenue Service issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a tax compliance officer that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time the costs were incurred.

(4) *Included costs.* (i) An award of reasonable administrative costs shall only include costs incurred on or after the administrative proceeding date as defined in section 301.7430–3(c) of this chapter.

(ii) If the Internal Revenue Service takes a position in an administrative proceeding, as defined in paragraph (b) of this section, and the position is not substantially justified, the taxpayer may be permitted to recover costs incurred before the position was taken, but not before the dates set forth in this paragraph (d)(4).

(5) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Pursuant to section 6672, taxpayer D receives from the Area Director Collection Operations (Collection) a proposed assessment of trust fund taxes (Trust Fund Recovery Penalty). D requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies D of this decision in writing. Collection then assesses the tax and notice and demand is made. D timely pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection disallows the claim, but Appeals, on reconsideration, reverses its original position, thus upholding D's position. If Appeals' initial determination was not substantially justified, D may recover administrative costs incurred on or after the mailing of the proposed assessment of trust fund taxes, because the proposed assessment is the first determination letter that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

Example 2. Taxpayer E receives a notice of proposed deficiency (30-day letter). E pays the amount of the proposed deficiency and files a claim for refund. E's claim is considered and a notice of proposed disallowance is issued by the Area Director. E requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. E does not file suit in a United States District Court but instead contacts the Appeals office to attempt to reverse the decision. E convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. E may recover reasonable administrative costs if the position taken in the notice of claim disallowance issued by the Office of Appeals was not substantially justified and the other requirements of section 7430 and the regulations thereunder are satisfied. If so, E may recover administrative costs incurred from the mailing date of the 30-day letter because the requirements of paragraph (c)(2) of this section are met. E cannot recover the costs incurred prior to the mailing of the 30-day letter because they were incurred before the administrative proceeding date.

(6) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues

in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(7) *Presumption.* If the Internal Revenue Service did not follow any applicable published guidance in an administrative proceeding commenced after July 30, 1996, the position of the Internal Revenue Service, on those issues to which the guidance applies and for all periods during which the guidance was not followed, will be presumed not to be substantially justified. This presumption may be rebutted. For purposes of this paragraph (d)(7), the term *applicable published guidance* means final or temporary regulations, revenue rulings, revenue procedures, information releases, notices, and announcements published in the Internal Revenue Bulletin and, if issued to or with respect to the taxpayer, private letter rulings, technical advice memoranda, and determination letters (§ 601.601(d)(2) of this chapter). Also, for purposes of this paragraph (d)(7), the term administrative proceeding includes only those administrative proceedings or portions of administrative proceedings occurring on or after the administrative proceeding date as defined in § 301.7430-3(c).

(e) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding

date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(f) *Most significant issue or set of issues presented.* (1) *In general.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitutes the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, it objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(2) *Example.* The provisions of this section may be illustrated by the following example:

Example. In the purchase of an ongoing business, Taxpayer F obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of F's individual income tax return for the year in which the business was acquired, the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by F. Both parties agree that the covenant not to compete is amortizable over a period of five years; however, the Internal Revenue Service asserts that the proper basis of the covenant is \$25,000, while F asserts the basis is \$50,000 and claims a deduction of \$10,000 in the year in which the business was acquired. F deducted \$12,000 for the seminar. The Internal Revenue Service determines that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service adjusts the amortization deduction to reflect the change to the basis of the covenant not to compete, and disallows the seminar expense. Thus, of the two adjustments determined for the year under audit, the adjustment attributable to the disallowance of the seminar is larger than that attributable

to the covenant not to compete. Due to the impact on the next succeeding four years, however, the covenant not to compete adjustment is the most significant issue to both F and the Internal Revenue Service.

(g) *Net worth and size limitations—(1) Individuals.* A taxpayer who is a natural person meets the net worth and size limitations of this paragraph if the taxpayer's net worth does not exceed two million dollars. For purposes of determining net worth, individuals filing a joint return, and jointly incurring administrative or litigation costs shall have their net worth determined jointly, with all assets and liabilities treated as joint for purposes of the net worth evaluation, and applying a joint cap of four million dollars. Individuals who file a joint return, but incur separate administrative or litigation costs, by retaining separate representation, and/or seeking individual administrative review or petitioning the court individually, such as under section 6015, shall have their net worth determined separately, with only those assets and liabilities reasonably attributable to each spouse considered against separate caps of two million dollars per spouse.

(2) *Estates and trusts.* An estate or a trust meets the net worth and size limitations of this paragraph if the estate or trust's net worth does not exceed two million dollars. The net worth of an estate shall be determined as of the date of the decedent's death provided the date of death is prior to the date the court proceeding is commenced. The net worth of a trust shall be determined as of the last day of the last taxable year involved in the proceeding.

(3) *Others.* (i) A taxpayer that is a partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (g)(4) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date:

(A) The taxpayer's net worth does not exceed seven million dollars; and

(B) The taxpayer does not have more than 500 employees.

(ii) A taxpayer who is a natural person and owns an unincorporated business is subject to the net worth and size limitations contained in paragraph (g)(3)(i) of this section if the tax at issue (or any

interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) relates directly to the business activities of the unincorporated business.

(4) *Special rule for charitable organizations and certain cooperatives.* An organization described in section 501(c)(3) exempt from taxation under section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(5) *Special rule for TEFRA partnership proceedings.* (i) In cases involving partnerships subject to the unified audit and litigation procedures of subchapter C of chapter 63 of the Internal Revenue Code (TEFRA partnership cases), the TEFRA partnership meets the net worth and size limitations requirements of this paragraph (g) if, on the administrative proceeding date—

(A) The partnership's net worth does not exceed seven million dollars; and

(B) The partnership does not have more than 500 employees.

(ii) In addition, each partner requesting fees pursuant to section 7430 must meet the appropriate net worth and size limitations set forth in paragraph (g)(1), (g)(2), or (g)(3) of this section. For example, if a partner is an individual, his or her net worth must not exceed two million dollars as of the administrative proceeding date. If the partner is a corporation, its net worth must not exceed seven million dollars and it must not have more than 500 employees.

(6) *Determining net worth.* For purposes of determining net worth under this paragraph (g), assets are valued based on the cost of their acquisition.

(h) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent an agreement, by the Internal Revenue Service. See § 301.7430-2(c)(7) regarding the right to appeal the decision of the Internal Revenue Service

denying (in whole or in part) a request for reasonable administrative costs to the Tax Court.

Par. 8. Section 301.7430-6 is revised to read as follows:

§ 301.7430-6 Effective/applicability dates.

Sections 301.7430-2 through 301.7430-6, other than §§ 301.7430-2(b)(2), (c)(3)(i)(B), (c)(3)(i)(E), (c)(3)(ii)(C), (c)(3)(iii)(C), (c)(5), (c)(7), and (e); §§ 301.7430-3(c)(1), (c)(3), (c)(4), and (d); §§ 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(iii)(E), (b)(3)(iii)(F), (c)(2)(ii), (c)(4), and (d); and §§ 301.7430-5(a), (b), (c)(3), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), (f)(2), (g)(1), (g)(2), (g)(3), (g)(5), and (g)(6) apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is applicable to costs incurred and services performed in cases in which the petition was filed on or after March 1, 2016, except for the last two sentences, which are applicable March 23, 1993. Sections 301.7430-2(b)(2), and (c)(3)(i)(B) (except the last sentence); 301.7430-4(b)(3)(ii), (b)(3)(iii)(C) (except the first two sentences), and (c)(2)(ii) (except for references to the statutory cap as \$125); and 301.7430-5(a) (except the parenthetical of 5(a) and all of 5(a)(1)), and the first and last sentence of (d)(7) are applicable for administrative proceedings commenced after July 30, 1996. Sections 301.7430-1(e), 301.7430-2(c)(2), 7430-3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998. The last sentence of § 301.7430-2(c)(3)(i)(B), the first two sentences of § 301.7430-2(b)(3)(iii)(C), §§ 301.7430-2(c)(3)(i)(E), (c)(3)(ii)(C), (c)(3)(iii)(C), (c)(7), (e); 301.7430-3(c)(1), (c)(3), (c)(4), (d); 301.7430-4(b)(3)(i), (b)(3)(iii)(B), (b)(3)(iii)(E), (b)(3)(iii)(F), (c)(2)(ii) (to the extent it references the statutory cap as \$125), (c)(4), (d); the parenthetical of § 301.7430-5(a) and §§ 301.7430-5(a)(1), (b), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), except the first and last sentences, (f)(2), (g)(1), (g)(2), (g)(3), (g)(5), and

(g)(6) apply to costs incurred and services performed in cases in which the petition was filed on or after March 1, 2016.

Par. 9. Section 301.7430-7 is amended by:

1. Adding paragraph (c)(8).
2. Amending paragraph (e) by adding *Examples 16 and 17.*
3. Revising paragraph (f).

The additions and revisions read as follows:

§ 301.7430-7 Qualified offers.

* * * * *

(8) *Interest as a contested issue.* To constitute a qualified offer, an offer must specify the offered amount of the taxpayer's liability (determined without regard to interest, unless interest is a contested issue in the proceeding), as provided in paragraphs (c)(1)(ii) and (c)(3) of this section. Therefore, a qualified offer generally may only include an offer to compromise tax, penalties, additions to the tax, and additional amounts. Interest may only be included in a qualified offer if interest is a contested issue in the proceeding. For purposes of this section, interest is a contested issue in the proceeding only if the court in which the proceeding could be brought would have jurisdiction to determine the amount of interest due on the underlying tax, penalties, additions to the tax, and additional amounts. Examples of proceedings in which interest might be a contested issue include proceedings in which the increased interest rate for large corporate underpayments under section 6621(c) is imposed by the Internal Revenue Service and interest abatement proceedings brought under section 6404. Interest is not a contested issue in the proceeding if the court that would have jurisdiction over the proceeding would not have jurisdiction to determine the amount or rate of interest, regardless of whether the taxpayer attempts to raise interest as an issue in the proceeding. Consequently, interest will not be a contested issue in the vast majority of tax cases because they merely involve the straightforward application of statutory interest under section 6601. Accordingly, in those cases, interest may not be included in the offer.

* * * * *

(e) * * *

Example 16. Qualified offer may not compromise interest unless it is a contested issue. Taxpayer J receives a notice of deficiency making an adjustment resulting in a deficiency in tax of \$6,500 plus a penalty of \$500. Interest is not a contested issue in the proceeding. Within the qualified offer period, J submits a written offer to settle the case for a deficiency of \$1,000, including all taxes, penalties, and interest. The offer states that it is a qualified offer for purposes of section 7430(g) and that it will remain open for acceptance by the Internal Revenue Service for a period of 90 days. Section 7430(g)(2)(B) and paragraph (c)(3) of this section state that the amount of a qualified offer must be without regard to interest unless interest is at issue in the proceeding. Since J's offer attempts to compromise interest, which is not a contested issue in the proceeding, it is not a qualified offer.

Example 17. Qualified offer based on new defense or legal theory. Taxpayers K and L received a statutory notice of deficiency for tax year 2005, a tax year when they were married and filed a joint income tax return. Taxpayer K files a separate petition claiming innocent spouse relief and simultaneously submits an offer purporting to be a qualified offer. The offer states that K is entitled to innocent spouse relief and offers to settle the 2005 deficiency as to K. K's innocent spouse claim was not raised during K and L's audit, nor was it raised during their appeals conference. Additionally, at no time prior to or contemporaneously with submitting the offer did K file with the Internal Revenue Service a Form 8857, Request for Innocent Spouse Relief, or otherwise provide the information specified in § 1.6015-5(a) of this chapter. K's offer is not a qualified offer because K did not file a Form 8857 or otherwise provide substantiation or legal and factual arguments necessary to allow for informed consideration of the merits of the innocent spouse claim as required by para-

graph (c)(4) of this section, contemporaneously with the offer or prior to making the offer.

(f) *Effective/applicability date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003, except that paragraph (c)(8) is effective as of March 1, 2016.

§§ 301.7430-1, 301.7430-2, 301.7430-4, and 301.7430-5 [Amended]

Par. 10. For each section listed in the table, remove the language in the "Remove" column and add in its place the language in the "Add" column as set forth below:

<i>Section</i>	<i>Remove</i>	<i>Add</i>
§ 301.7430-1(f)(2)(i)	district director	Internal Revenue Service office
§ 301.7430-1(f)(3)(ii)	district director	Internal Revenue Service office
§ 301.7430-1(f)(3)(iii)	district director	Internal Revenue Service office
§ 301.7430-1(f)(4)(i)	district director	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 6</i> third and fourth sentences	district director	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 7</i> third and fourth sentences	district director	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 8</i> second and fourth sentences	district director	Internal Revenue Service office
§ 301.7430-1(g) <i>Example 9</i> second sentence	such	these
§ 301.7430-2(b)(2) fourth and fifth sentences	such	these
§ 301.7430-2(c)(4) first sentence	which	that
§ 301.7430-2(c)(6) second sentence	such	the
§ 301.7430-4(b)(3)(ii) first and second sentences	\$110	\$125
§ 301.7430-4(c)(2)(i) third sentence	Such	These
§ 301.7430-4(c)(2)(i) fourth sentence	which	that
§ 301.7430-4(c)(2)(ii) second and third sentences	\$110	\$125
§ 301.7430-5(h) first sentence	such	an

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

Approved: January 19, 2016.

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

(Filed by the Office of the Federal Register on February 29, 2016, 8:45 a.m., and published in the issue of the Federal Register for March 1, 2016, 81 F.R. 10479)

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

T.D. 9757

**Consistent Basis Reporting
Between Estate and Person
Acquiring Property From
Decedent**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide transition rules providing that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016. These temporary regulations are applicable to executors and other persons who file after July 31, 2015, returns required by section 6018(a) or (b).

DATES: *Effective Date.* These regulations are effective on March 4, 2016.

Applicability Dates: For date of applicability, see § 1.6035-2T(b).

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

Background

On July 31, 2015, the President of the United States signed into law *H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, Public Law 114-41, 129 Stat. 443 (Act). Section 2004 of the Act added new section 6035.

Section 6035 imposes reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes. Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must furnish, both to the Secretary and to the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

Section 6035(a)(2) provides that each other person required to file a return under section 6018(b) must furnish, both to the Secretary and to each person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the same information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be furnished under section 6035 (a)(1) or (2) is to be furnished at such time as the Secretary may prescribe, but in no case at a time later than the earlier of (i) the date which is 30 days after the date on which the return under section 6018 was required to be filed (including extensions, if any) or (ii) the date which is 30 days after the date such return is filed.

On August 21, 2015, the Treasury Department and the IRS issued Notice 2015-57, 2015-36 IRB 294. Notice 2015-57 delays until February 29, 2016, the due date for any statements required by section 6035 that are due before that same date.

On February 11, 2016, the Treasury Department and the IRS issued Notice 2016-19, 2016-09 IRB page 362. That notice provides that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016.

Explanation of Provisions

These temporary regulations reiterate that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016. The text of these temporary regulations also serves as the text of the proposed regulations under § 1.6035-2 in the related notice of proposed rulemaking (REG-127923-15) in the Proposed Rules section of this issue of the Federal Register. These temporary regulations are issued within 18 months of the date of the enactment of the statutory provisions to which the temporary regulations relate and, as authorized by section 7805(b)(2), are effective/applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

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. In addition, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations because they are exempted from the notice and comment requirements of section 553(b) and (c) of the Administrative Procedure Act under the interpretative rule and good cause ex-

ceptions provided by section 553(b)(3)(A) and (B) of that Act. The Act included an immediate effective date, thus making the first required statements due 30 days after enactment. It is necessary to provide more time to provide the statements required by section 6035(a) to allow the Treasury Department and the IRS sufficient time to issue both substantive and procedural guidance on how to comply with the section 6035(a) requirement and to provide executors and other affected persons the opportunity to review this guidance before preparing the required statements. These regulations reiterate the relief in Notice 2016-19 and, because of the immediate need to provide relief, notice and public comment pursuant to 5 U.S.C. 553(b) and (c) is impracticable, unnecessary, and contrary to the public interest. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the Federal Register. Pursuant to section 7805(f) of the Internal Revenue Code (Code), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Temporary Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6035-2T also issued under 26 U.S.C. section 6035.

* * * * *

Par. 2. Section 1.6035-2T is added to read as follows:

§ 1.6035-2T *Transitional relief.*

(a) *Statements due before March 31, 2016.* Executors and other persons required to file or furnish a statement under section

6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016.

(b) *Effective/Applicability Date.* This section is effective/applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

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

Approved: January 22, 2016.

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

(Filed by the Office of the Federal Register on March 2, 2016, 4:15 a.m., and published in the issue of the Federal Register for March 4, 2016, 81 F.R. 11431)

Part III. Administrative, Procedural, and Miscellaneous

Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2016

Notice 2016-21

SECTION 1. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code for specific locations for 2016. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

SECTION 2. BACKGROUND

Section 911(a) allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. Section 911(c)(1) defines the term “housing cost amount” as an amount equal to the excess of (A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under section 911(c)(2), over (B) 16 percent of the exclusion amount (computed on a daily basis) in effect under section 911(b)(2)(D) for the calendar year in which such taxable year begins (\$276.78 per day

for 2016, or \$101,300 for the full year), multiplied by the number of days of that taxable year within the applicable period described in section 911(d)(1). The applicable period is the period during which the individual meets the tax home requirement of section 911(d)(1) and either the bona fide residence requirement of section 911(d)(1)(A) or the physical presence requirement of section 911(d)(1)(B). Assuming that the entire taxable year of a qualified individual is within the applicable period, the section 911(c)(1)(B) amount for 2016 is \$16,208 (\$101,300 x .16).

Section 911(c)(2)(A) limits the housing expenses taken into account in section 911(c)(1)(A) to an amount equal to (i) 30 percent (adjusted as may be provided under the Secretary’s authority under section 911(c)(2)(B)) of the amount in effect under section 911(b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by (ii) the number of days of that taxable year within the applicable period described in section 911(d)(1). Thus, under this general limitation, a qualified individual whose entire taxable year is within the applicable period is limited to maximum housing expenses of \$30,390 (\$101,300 x .30) in 2016.

Section 911(c)(2)(B) authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) based on geo-

graphic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Internal Revenue Service (IRS) and the Treasury Department published Notice 2006-87, 2006-2 C.B. 766, and Notice 2007-25, 2007-1 C.B. 760, for 2006; Notice 2007-77, 2007-2 C.B. 735, for 2007; Notice 2008-107, 2008-2 C.B. 1266, for 2008 and 2009; Notice 2010-27, 2010-15 I.R.B. 531, for 2009 and 2010; Notice 2011-8, 2011-8 I.R.B. 503, for 2010 and 2011; Notice 2012-19, 2012-10 I.R.B. 440 for 2011 and 2012; Notice 2013-31, 2013-21 I.R.B. 1099, for 2012 and 2013; Notice 2014-29, 2014-18 I.R.B. 991 for 2013 and 2014; and Notice 2015-33, 2015-18 I.R.B. 934 for 2014 and 2015 to provide adjustments to the limitation on housing expenses for qualified individuals incurring housing expenses in countries with high housing costs relative to housing costs in the United States.

SECTION 3. TABLE OF ADJUSTED LIMITATIONS FOR 2016

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of \$30,390) for 2016.

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Angola	Luanda	84,000	229.51
Argentina	Buenos Aires	56,500	154.37
Australia	Melbourne	30,500	83.33
Australia	Perth	32,600	89.07
Australia	Sydney	61,400	167.76
Austria	Vienna	35,400	96.72
Bahamas, The	Grand Bahama Island	30,900	84.43
Bahamas, The	Nassau	49,700	135.79
Bahrain	Bahrain	44,000	120.22
Barbados	Barbados	37,700	103.01
Belgium	Brussels	40,000	109.29
Belgium	Gosselies	34,900	95.36
Belgium	Mons	34,900	95.36
Belgium	SHAPE/Chievres	34,900	95.36
Bermuda	Bermuda	90,000	245.90

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Brazil	Rio de Janeiro	35,100	95.90
Brazil	Sao Paulo	56,600	154.64
Canada	Calgary	36,800	100.55
Canada	Montreal	43,900	119.95
Canada	Ottawa	41,300	112.84
Canada	Quebec	33,300	90.98
Canada	Toronto	41,400	113.11
Canada	Vancouver	40,200	109.84
Cayman Islands	Grand Cayman	48,000	131.15
Chile	Santiago	37,500	102.46
China	Beijing	71,200	194.54
China	Hong Kong	114,300	312.30
China	Shanghai	57,001	155.74
Colombia	Bogota	58,700	160.38
Colombia	All cities other than Bogota	49,400	134.97
Costa Rica	San Jose	32,000	87.43
Democratic Republic of the Congo	Kinshasa	42,000	114.75
Denmark	Copenhagen	43,704	119.41
Dominican Republic	Santo Domingo	45,500	124.32
Ecuador	Guayaquil	30,800	84.15
Ecuador	Quito	38,200	104.37
El Salvador	San Salvador	32,000	87.43
Estonia	Tallinn	46,600	127.32
France	Garches	68,600	187.43
France	Lyon	38,000	103.83
France	Marseille	37,000	101.09
France	Montpellier	30,600	83.61
France	Paris	68,600	187.43
France	Sevres	68,600	187.43
France	Suresnes	68,600	187.43
France	Versailles	68,600	187.43
France	All cities other than Garches, Le Havre, Lyon, Marseille, Paris, Sevres, Suresnes and Versailles	31,900	87.16
Germany	Babenhausen	33,700	92.08
Germany	Baumholder	32,600	89.07
Germany	Berlin	41,100	112.30
Germany	Birkenfeld	32,600	89.07
Germany	Boeblingen	40,800	111.48
Germany	Bonn	42,000	114.75
Germany	Butzbach	30,390	83.03
Germany	Cologne	56,200	153.55
Germany	Darmstadt	33,700	92.08
Germany	Frankfurt am Main	35,100	95.90
Germany	Garmisch-Partenkirchen	31,600	86.34
Germany	Gelnhausen	42,400	115.85

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Germany	Giessen	36,000	98.36
Germany	Grafenwoehr	34,000	92.90
Germany	Hanau	42,400	115.85
Germany	Heidelberg	31,400	85.79
Germany	Idar-Oberstein	32,600	89.07
Germany	Ingolstadt	48,100	131.42
Germany	Kaiserslautern, Landkreis	41,200	112.57
Germany	Karlsruhe	32,400	88.52
Germany	Koblenz	33,000	90.16
Germany	Leimen	31,400	85.79
Germany	Ludwigsburg	40,800	111.48
Germany	Mainz	44,800	122.40
Germany	Mannheim	31,400	85.79
Germany	Munich	48,100	131.42
Germany	Nellingen	40,800	111.48
Germany	Neubruecke	32,600	89.07
Germany	Ober Ramstadt	33,700	92.08
Germany	Oberammergau	31,600	86.34
Germany	Pfullendorf	33,000	90.16
Germany	Pirmasens	41,200	112.57
Germany	Rheinau	31,400	85.79
Germany	Schwetzingen	31,400	85.79
Germany	Seckenheim	31,400	85.79
Germany	Sembach	41,200	112.57
Germany	Stuttgart	40,800	111.48
Germany	Vilseck	34,000	92.90
Germany	Wahn	42,000	114.75
Germany	Wiesbaden	44,800	122.40
Germany	Zweibrueken	41,200	112.57
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Gernersheim, Giebelstadt, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Vilseck, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zirndorf and Zweibrueken	33,000	90.16

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Ghana	Accra	36,000	98.36
Greece	Athens	33,600	91.80
Greece	Elefsis	33,600	91.80
Greece	Ellinikon	33,600	91.80
Greece	Mt. Parnis	33,600	91.80
Greece	Mt. Pateras	33,600	91.80
Greece	Nea Makri	33,600	91.80
Greece	Piraeus	33,600	91.80
Greece	Tanagra	33,600	91.80
Guatemala	Guatemala City	41,800	114.21
Guinea	Conakry	51,300	140.16
Guyana	Georgetown	35,000	95.63
Holy See, The	Holy See, The	45,700	124.86
Hungary	Budapest	32,500	88.80
Hungary	Papá	44,500	121.58
India	Mumbai	67,920	185.57
India	New Delhi	56,124	153.34
Indonesia	Jakarta	37,776	103.21
Ireland	Dublin	39,700	108.47
Ireland	Shannon Area	31,400	85.79
Israel	Tel Aviv	50,800	138.80
Italy	Genoa	41,800	114.21
Italy	Gioia Tauro	31,200	85.25
Italy	La Spezia	40,400	110.38
Italy	Milan	68,300	186.61
Italy	Naples	43,400	118.58
Italy	Parma	34,700	94.81
Italy	Pordenone-Aviano	39,600	108.20
Italy	Rome	52,100	142.35
Italy	Turin	34,200	93.44
Italy	Vicenza	35,900	98.09
Jamaica	Kingston	41,200	112.57
Japan	Atsugi	36,300	99.18
Japan	Camp Zama	36,300	99.18
Japan	Chiba-Ken	36,300	99.18
Japan	Fussa	36,300	99.18
Japan	Gifu	74,300	203.01
Japan	Haneda	36,300	99.18
Japan	Kanagawa-Ken	36,300	99.18
Japan	Komaki	74,300	203.01
Japan	Machidi-Shi	36,300	99.18
Japan	Nagoya	74,300	203.01
Japan	Okinawa Prefecture	50,400	137.70
Japan	Osaka-Kobe	90,664	247.72
Japan	Sagamihara	36,300	99.18

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Japan	Saitama-Ken	36,300	99.18
Japan	Sasebo	30,400	83.06
Japan	Tachikawa	36,300	99.18
Japan	Tokyo	81,300	222.13
Japan	Tokyo-to	36,300	99.18
Japan	Yokohama	44,600	121.86
Japan	Yokosuka	41,700	113.93
Japan	Yokota	34,600	94.54
Kazakhstan	Almaty	48,000	131.15
Korea	Camp Colbern	54,200	148.09
Korea	Camp Market	54,200	148.09
Korea	Camp Mercer	54,200	148.09
Korea	K-16	54,200	148.09
Korea	Kimpo Airfield	54,200	148.09
Korea	Munsan	31,300	85.52
Korea	Osan AB	33,800	92.35
Korea	Pyongtaek	38,500	105.19
Korea	Seoul	54,200	148.09
Korea	Suwon	54,200	148.09
Korea	Taegu	31,400	85.79
Korea	Tongduchon	35,200	96.17
Kuwait	Kuwait City	64,400	175.96
Kuwait	All cities other than Kuwait City	57,700	157.65
Luxembourg	Luxembourg	37,400	102.19
Macedonia	Skopje	35,400	96.72
Malaysia	Kuala Lumpur	46,200	126.23
Malaysia	All cities other than Kuala Lumpur	33,700	92.08
Malta	Malta	55,100	150.55
Mexico	Mazatlan	31,000	84.70
Mexico	Merida	37,900	103.55
Mexico	Mexico City	47,900	130.87
Mexico	Monterrey	33,200	90.71
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Reynosa, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz	39,400	107.65
Mozambique	Maputo	39,500	107.92
Namibia	Windhoek	32,100	87.70
Netherlands	Amsterdam	52,900	144.54
Netherlands	Aruba	36,000	98.36
Netherlands	Brunssum	32,700	89.34
Netherlands	Eygelshoven	32,700	89.34
Netherlands	Hague, The	62,200	169.95
Netherlands	Heerlen	32,700	89.34
Netherlands	Hoensbroek	32,700	89.34

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Netherlands	Hulsberg	32,700	89.34
Netherlands	Kerkrade	32,700	89.34
Netherlands	Landgraaf	32,700	89.34
Netherlands	Maastricht	32,700	89.34
Netherlands	Papendrecht	32,800	89.62
Netherlands	Rotterdam	32,800	89.62
Netherlands	Schaesburg	32,700	89.34
Netherlands	Schinnen	32,700	89.34
Netherlands	Schiphol	52,900	144.54
Netherlands	Ypenburg	54,500	148.91
Netherlands	All cities other than Amsterdam, Aruba, Brunssum, Coevorden, Eindhoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg.	32,400	88.52
Netherlands Antilles	Curacao	45,800	125.14
New Zealand	Auckland	35,700	97.54
New Zealand	Christchurch	32,100	87.70
New Zealand	Wellington	33,800	92.35
Nicaragua	Managua	31,800	86.89
Nigeria	Abuja	36,000	98.36
Norway	Oslo	34,400	93.99
Oman	Muscat	41,300	112.84
Panama	Panama City	35,500	96.99
Paraguay	Asuncion	31,100	84.97
Peru	Lima	39,100	106.83
Philippines	Cavite	35,700	97.54
Philippines	Manila	35,700	97.54
Portugal	Alverca	41,800	114.21
Portugal	Lisbon	41,800	114.21
Qatar	Doha	42,744	116.79
Qatar	All cities other than Doha	32,400	88.52
Russia	Moscow	108,000	295.08
Russia	Saint Petersburg	60,000	163.93
Russia	Sakhalin Island	77,500	211.75
Russia	Vladivostok	77,500	211.75
Russia	Yekaterinburg	47,400	129.51
Rwanda	Kigali	31,500	86.07
Saudi Arabia	Jeddah	30,667	83.79
Saudi Arabia	Riyadh	40,000	109.29
Singapore	Singapore	77,100	210.66
Slovenia	Ljubljana	48,000	131.15
South Africa	Pretoria	39,300	107.38
Spain	Barcelona	40,600	110.93
Spain	Madrid	55,700	152.19

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Spain	Rota	34,000	92.90
Spain	Valencia	32,000	87.43
Suriname	Paramaribo	33,000	90.16
Switzerland	Bern	64,900	177.32
Switzerland	Geneva	93,300	254.92
Switzerland	Zurich	39,219	107.16
Switzerland	All cities other than Bern, Geneva and Zurich	32,900	89.89
Taiwan	Taipei	46,188	126.20
Tanzania	Dar Es Salaam	44,000	120.22
Thailand	Bangkok	59,000	161.20
Trinidad and Tobago	Port of Spain	54,500	148.91
Turkey	Izmir-Cigli	31,600	86.34
Turkey	Yamanlar	31,600	86.34
Ukraine	Kiev	72,000	196.72
United Arab Emirates	Abu Dhabi	49,687	135.76
United Arab Emirates	Dubai	57,174	156.21
United Kingdom	Basingstoke	41,099	112.29
United Kingdom	Bath	41,000	112.02
United Kingdom	Bracknell	62,100	169.67
United Kingdom	Bristol	37,400	102.19
United Kingdom	Brookwood	40,900	111.75
United Kingdom	Cambridge	40,700	111.20
United Kingdom	Caversham	73,800	201.64
United Kingdom	Cheltenham	49,600	135.52
United Kingdom	Croughton	41,700	113.93
United Kingdom	Fairford	40,500	110.66
United Kingdom	Farnborough	54,700	149.45
United Kingdom	Felixstowe	39,300	107.38
United Kingdom	Gibraltar	44,616	121.90
United Kingdom	Harrogate	43,900	119.95
United Kingdom	High Wycombe	62,100	169.67
United Kingdom	Huntingdon	40,900	111.75
United Kingdom	Kemble	40,500	110.66
United Kingdom	Lakenheath	52,400	143.17
United Kingdom	Liverpool	36,800	100.55
United Kingdom	London	82,000	224.04
United Kingdom	Loudwater	64,600	176.50
United Kingdom	Menwith Hill	43,900	119.95
United Kingdom	Mildenhall	52,400	143.17
United Kingdom	Oxfordshire	41,200	112.57
United Kingdom	Plymouth	41,200	112.57
United Kingdom	Portsmouth	41,200	112.57
United Kingdom	Reading	62,100	169.67
United Kingdom	Rochester	42,300	115.57
United Kingdom	Samlesbury	40,900	111.75

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
United Kingdom	Southampton	44,200	120.77
United Kingdom	Surrey	48,402	132.25
United Kingdom	Waterbeach	42,100	115.03
United Kingdom	Wiltshire	39,100	106.83
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brookwood, Brough, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Huntingdon, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Samlesbury, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire.	40,900	111.75
Venezuela	Caracas	57,000	155.74
Vietnam	Hanoi	46,800	127.87
Vietnam	Ho Chi Minh City	42,000	114.75

SECTION 4. ELECTION TO APPLY 2016 ADJUSTED LIMITATIONS TO 2015 TAXABLE YEAR

For some locations, the limitation on housing expenses provided in section 3 of this notice may be higher than the limitation on housing expenses provided in the “Table of Adjusted Limitations for 2015” in Notice 2015–33. A qualified individual incurring housing expenses in such a location during 2015 may apply the adjusted limitation on housing expenses provided in section 3 of this notice for 2015 in lieu of the amounts provided in the “Table of Adjusted Limitations for 2015” in Notice 2015–33 (and as set forth in the Instructions to Form 2555 (2015)).

The Treasury Department and the IRS anticipate that future annual notices pro-

viding adjustments to housing expense limitations will make a similar election available to qualified individuals that incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations for 2017 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2016 taxable year.

EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2006–87, 2006–2 C.B. 766; Notice 2007–25, 2007–1 C.B. 760; Notice 2007–77, 2007–2 C.B. 735; Notice 2008–107, 2008–2 C.B. 1266; Notice 2010–27, 2010–15 I.R.B. 531; Notice 2011–8, 2011–8 I.R.B. 503; Notice 2012–19, 2012–10 I.R.B. 440; Notice 2013–31, 2013–21 I.R.B. 1099; Notice 2014–29,

2014–18 I.R.B. 991; and Notice 2015–33, 2015–18 I.R.B. 934.

EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2016. However, as provided in section 4, a taxpayer may elect to apply the 2016 adjusted housing limitations contained in section 3 of this notice to his or her taxable year beginning in 2015.

DRAFTING INFORMATION

The principal author of this notice is Joseph W. Vetting of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Vetting at (202) 317-4960 (not a toll-free number).

Part IV. Items of General Interest

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent

REG-127923-15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes. In addition, these proposed regulations provide guidance on the reporting requirements for executors or other persons required to file Federal estate tax returns. Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** provide transition relief to executors and other persons required to file or furnish certain statements. The text of those temporary regulations (TD 9757) published in the Rules and Regulations section of this issue of the **Bulletin** also serves as the text of the proposed regulations regarding the transition relief. These proposed regulations as well as TD 9757 published elsewhere in the Rules and Regulations section of this issue of this **Bulletin** affect executors or other persons who file estate tax returns after July 31, 2015. The proposed regulations also affect beneficiaries who acquire certain property from these estates, and subsequent transferees to whom beneficiaries transfer the property in transactions that do not result in the recognition of gain or loss for Federal income tax purposes.

DATES: Written or electronic comments and requests for a public hearing must be received by June 2, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-127923-15), Internal Revenue Service, Room 5203, PO Box

7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127923-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-127923-15).

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 317-6859; concerning submissions of comments or, to request a hearing, Regina Johnson, at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 3, 2016.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service (IRS), including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the ap-

plication of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The reporting requirements in these proposed regulations are in § 1.6035-1(a) and (d) and require executors and other persons required to file a return under section 6018 to furnish a statement to the IRS and to each beneficiary providing information regarding the value of the property the beneficiary acquires from the decedent. The IRS will use this information to determine whether the beneficiary (or transferee) reports a basis for that property that is consistent with the value of that property as finally determined for Federal estate tax purposes when the beneficiary (or transferee) depreciates the property, or sells, exchanges, or otherwise disposes of some or all of that property in transactions that result in the recognition of gain or loss for Federal income tax purposes.

The collection of information may vary depending on the property includible in the gross estate and the number of beneficiaries receiving the property. The following estimates are based on the information that is available to the IRS. A respondent may require more or less time, depending on the circumstances.

Estimated total annual reporting burden. The estimated total annual reporting burden per respondent is 5.31 hours.

Estimated annual number of respondents. The estimated annual number of respondents is 10,000.

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

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

Background

1. Overview.

On July 31, 2015, the President of the United States signed into law H.R. 3236, the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, Public Law 114–41, 129 Stat. 443 (Act). Section 2004 of the Act enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Internal Revenue Code (Code). This document contains proposed regulations that amend 26 CFR parts 1 and 301 under those Code provisions to achieve consistency between a recipient's basis in certain property acquired from a decedent and the value of the property as finally determined for Federal estate tax purposes. This notice of proposed rulemaking also cross-references to temporary regulations (TD 9757) published in the Rules and Regulations section of this issue of the **Bulletin**, which provide transition relief to certain persons required to file or furnish statements under section 6035. This document also proposes to remove from 26 CFR part 1 regulations under former section 6035 as a result of the repeal of that Code provision in 2004.

2. Summary of new statutory framework.

A. Section 1014(f).

Section 1014(f) imposes an obligation of consistency between the basis of certain inherited property and the value of that property for Federal estate tax purposes.

Section 1014(f)(1) provides that the basis of property acquired from a decedent cannot exceed that property's final value for purposes of the Federal estate tax imposed on the estate of the decedent, or, if the final value has not been determined, the value reported on a statement required by section 6035(a).

Section 1014(f)(2) provides that section 1014(f)(1) only applies to property the inclusion of which in the decedent's gross estate increased the estate's liability for the Federal estate tax (reduced by credits allowable against the tax).

Section 1014(f)(3) provides that, for purposes of section 1014(f)(1), the basis

of property has been determined for Federal estate tax purposes if (A) the value of the property is shown on a return under section 6018 and that value is not contested by the Secretary before the expiration of the time for assessing the estate tax; (B) in a case not described in (A), the value is specified by the Secretary and that value is not timely contested by the executor of the estate; or (C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

B. Section 6035.

Section 6035 requires the reporting, both to the IRS and the beneficiary, of the value of property included on a required Federal estate tax return.

Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must furnish, both to the Secretary and to the person acquiring any interest in property included in the estate, a statement identifying the value of each interest in the property as reported on the return and any other information as the Secretary may prescribe.

Section 6035(a)(2) provides that each person required to file a return under section 6018(b) must furnish to the Secretary and to each other person who holds a legal or beneficial interest in the property to which the return relates a statement identifying the information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that this statement is due no later than the earlier of (i) 30 days after the due date of the return under section 6018 (including extensions, if any) or (ii) 30 days after the date the return is filed. If there is an adjustment to the information required to be included on this statement, section 6035(a)(3)(B) requires the executor (or other person required to file the statement) to provide a supplemental statement to the Secretary and to each affected beneficiary no later than 30 days after the adjustment is made.

Section 6035(b) authorizes the Secretary to prescribe regulations to carry out section 6035, including regulations relating to (1) the application of this section to property to which no Federal estate tax return is required to be filed, and (2) situations in which the surviving joint tenant

or other recipient may have better information than the executor regarding the basis or fair market value of the property.

C. Penalties under sections 6662, 6721, and 6722.

Section 2004(c) of the Act added a new accuracy-related penalty for underpayments attributable to an inconsistent estate basis. See section 6662(b)(8).

Section 6662(k) provides that there is an inconsistent estate basis if the basis of property claimed on a return exceeds the basis as determined under section 1014(f).

Section 2004(c) of the Act adds statements under section 6035 to the list of information returns and payee statements subject to the penalties under section 6721 and section 6722, respectively. Specifically, the Act adds new paragraph (D) to section 6724(d)(1) to provide that the term *information return* means any statement required to be filed with the Secretary under section 6035. The Act also adds new paragraph (II) to section 6724(d)(2) to provide that the term *payee statement* means any statement required to be furnished under section 6035 (other than a statement described in section 6724(d)(1)(D)).

3. Notice 2015–57.

On August 21, 2015, the Treasury Department and the IRS issued Notice 2015–57, 2015–36 IRB 294. That notice delayed until February 29, 2016, the due date for any statements required under section 6035(a)(3)(A) to be provided before February 29, 2016. The notice also stated that the Treasury Department and the IRS expect to issue additional guidance to assist taxpayers in complying with sections 1014(f) and 6035 and invited comments. The Treasury Department and the IRS received numerous comments in response to the notice and considered all comments in the drafting of the proposed regulations. The comments are discussed in more detail in this preamble.

4. Notice 2016–19.

On February 11, 2016, the Treasury Department and the IRS issued Notice 2016–19, 2016–09 IRB 362. That notice

provides that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (a)(2) before March 31, 2016, need not do so until March 31, 2016.

Summary of Comments on Notice 2015-57 and Explanation of Provisions

1. Section 1014(f)(1) – Consistency of basis with estate tax return.

The general rule of section 1014 is that the basis of property received from a decedent (or as a result of a decedent's death) is that property's fair market value on the decedent's date of death (or the alternate valuation date, if elected). Newly enacted section 1014(f)(1) provides that the basis of certain property acquired from a decedent cannot exceed that property's final value as determined for Federal estate tax purposes. If no final value has been determined when the taxpayer's basis in the property becomes relevant for Federal tax purposes, for example, to calculate depreciation or amortization, or to calculate gain or loss on the sale, exchange or disposition of the property, the taxpayer uses the value reported on the statement required by section 6035(a) (the fair market value reported on the Federal estate tax return) to determine the taxpayer's basis for Federal tax purposes.

Proposed § 1.1014-10(a)(1) provides that a taxpayer's initial basis in certain property acquired from a decedent may not exceed the *final value* of the property as that term is defined in § 1.1014-10(c). This limitation applies to the property whenever the taxpayer reports to the IRS a taxable event with respect to the property (for example, depreciation or amortization) and continues to apply until the property is sold, exchanged, or otherwise disposed of in one or more transactions that result in the recognition of gain or loss for Federal income tax purposes. The property for this purpose includes any other property the basis of which is determined in whole or in part by reference to the basis of the property acquired from the estate or as a result of the death of the decedent (for example as the result of a like-kind exchange or involuntary conversion).

2. Effect of other provisions of the Code that govern basis.

Section 6662(b)(8) imposes an accuracy-related penalty on the portion of any underpayment of tax required to be shown on a return that is attributable to an *inconsistent estate basis*. Under newly enacted section 6662(k), an inconsistent estate basis arises if the basis of property claimed on a return exceeds its final value as determined under section 1014(f).

Commenters have expressed concern that section 1014(f) and section 6662(k) appear to prohibit otherwise permissible adjustments to the basis of property as a result of post-death events. In response, proposed §§ 1.1014-10(a)(2) and 1.6662-8(b) clarify that sections 1014(f) and 6662(k) do not prohibit adjustments to the basis of property as a result of post-death events that are allowed under other sections of the Code, and provide that such basis adjustments will not cause a taxpayer to violate the provisions of section 1014(f) or section 6662(k) on the date of sale, exchange, or disposition. The proposed regulations interpret sections 1014(f) and 6662(k) to require only that the beneficiary's initial basis of the inherited property cannot exceed the final value of the property for Federal estate tax purposes. Adjustments to the basis of the inherited property permitted by other sections of the Code as a result of post-death events (for example, depreciation or amortization, or a sale, exchange, or disposition of the property) will not cause the taxpayer's basis in the property on the date of a taxable event with respect to the property to be treated as exceeding the final value of the property. As a result, there cannot be an underpayment attributable to an inconsistent estate basis arising from these basis adjustments, and the accuracy-related penalty under section 6662(b)(8) cannot apply solely as a result of these basis adjustments.

3. Section 1014(f)(2) – Property that increases estate tax liability.

The consistent basis requirement of section 1014(f)(1) applies only to property the inclusion of which in the decedent's gross estate for Federal estate tax purposes increases the Federal estate tax lia-

bility payable by the decedent's estate. Proposed § 1.1014-10(b) defines this property as property includible in the gross estate under section 2031, as well as property subject to tax under section 2106, that generates a Federal estate tax liability in excess of allowable credits. The proposed regulations specifically exclude all property reported on a Federal estate tax return required to be filed by section 6018 if no Federal estate tax is imposed upon the estate due to allowable credits (other than a credit for a prepayment of that tax). In cases where Federal estate tax is imposed on the estate, the proposed regulations exclude property that qualifies for a charitable or marital deduction under section 2055, 2056, or 2056A because this property does not increase the Federal estate tax liability. In addition, the proposed regulations exclude any tangible personal property for which an appraisal is not required under § 20.2031-6(b) (relating to the valuation of certain household and personal effects) because of its value. Thus, if any Federal estate tax liability is incurred, all of the property in the gross estate (other than that described in the preceding two sentences) is deemed to increase the Federal estate tax liability and is subject to the consistency requirement of section 1014(f).

4. Section 1014(f)(3) – Final value of property acquired from a decedent.

Section 1014(f)(3) provides that, for purposes of section 1014(f)(1), the *final value* of property has been determined for Federal estate tax purposes if: (A) the value is reported on a Federal estate tax return filed with the IRS and is not contested by the IRS before the period of limitation on assessment expires; (B) the value is specified by the IRS and is not timely contested by the executor of the estate; or (C) the value is determined by a court or pursuant to a settlement agreement with the IRS.

Proposed § 1.1014-10(c)(1) defines the *final value* of property that is reported on a Federal estate tax return filed with the IRS. That value is the value reported on the Federal estate tax return once the period of limitations on assessment for adjusting or contesting that value has expired. The IRS may specify a value for the

property by determining a value in the course of carrying out its responsibilities under section 7803(a)(2). If the IRS determines a value different from the value reported, the final value is the value determined by the IRS once that value can no longer be contested by the estate. If the value determined or specified by the IRS is timely contested by the estate, the final value is the value determined in an agreement that is binding on all parties, or the value determined by a court once the court's determination is final.

Proposed § 1.1014-10(c)(2) provides that the recipient of property to which the consistency requirement applies may not claim a basis in excess of the value reported on the statement required to be furnished under section 6035(a) (the value shown on the Federal estate tax return) if the taxpayer's basis in the property is relevant for any purpose under the Internal Revenue Code before the final value of that property has been determined under proposed § 1.1014-10(c)(1). However, under section 1014(f)(1), basis cannot exceed the property's final value. Therefore, proposed § 1.1014-10(c)(2) provides that, if the final value is determined before the period of limitation on assessment expires for any Federal income tax return of the recipient on which the taxpayer's basis is relevant and the final value differs from the initial basis claimed with respect to that return, a deficiency and an underpayment may result.

5. After-discovered or omitted property.

Commenters requested that the regulations clarify how the consistent basis requirement applies to property that is discovered after the filing of the Federal estate tax return or is otherwise omitted from that return. If this property would have generated a Federal estate tax liability if it had been reported on the Federal estate tax return that was filed with IRS, proposed § 1.1014-10(c)(3)(i) provides two different results based upon whether the period of limitation on assessment has expired for the Federal estate tax imposed on the estate. Proposed § 1.1014-10(c)(3)(i)(A) provides that, if the executor reports the after-discovered or omitted property on an estate tax return filed before the expiration of the period of

limitation on assessment of the estate tax, the final value of the property is determined under proposed § 1.1014-10(c)(1) or (2). Alternatively, proposed § 1.1014-10(c)(3)(i)(B) provides that, if the after-discovered or omitted property is not reported before the period of limitation on assessment expires, the final value of the after-discovered or omitted property is zero.

Finally, to address situations in which no Federal estate tax return was filed, proposed § 1.1014-10(c)(3)(ii) provides that the final value of all property includible in the gross estate subject to the consistent basis requirement is zero until the final value is determined under proposed § 1.1014-10(c)(1) or (2).

6. Definition of executor for purposes of sections 1014(f) and 6035.

The proposed regulations adopt the definition of the term *executor* found in section 2203 applicable for Federal estate tax purposes and expand it to include a person required to file a return under section 6018(b).

7. Requirement to provide Information Return and Statement(s) under section 6035.

The proposed regulations define the term *Information Return* as the Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, which includes a copy of a Schedule A (Statement) for each person who has received or will receive property from the estate or by reason of the decedent's death.

Proposed § 1.6035-1(a)(1) provides that an executor who is required to file a Federal estate tax return also is required to file an Information Return with the IRS to report the final value of certain property, the recipient of that property, and other information prescribed by the Information Return and the related instructions. The executor also is required to furnish a Statement to each beneficiary who has acquired (or will acquire) property from the decedent or by reason of the death of the decedent to report the property the beneficiary has acquired (or will acquire) and the final value of that property.

8. Circumstances under which no Information Return or Statement(s) is required under section 6035.

Commenters expressed concern that the section 6035 filing requirements might extend to a return filed by an estate solely to make the portability election under section 2010(c)(5), or a generation-skipping transfer tax election or exemption allocation. The proposed regulations provide that the filing requirements of section 6035 do not apply to such returns because these returns are not required by section 6018.

9. Property to be reported on an Information Return and Statement(s).

Commenters requested that the regulations clarify the types of property to be reported on the Information Return and one or more Statements. In response, proposed § 1.6035-1(b) defines the property to be reported on an Information Return and Statement(s) as all property included in the gross estate for Federal estate tax purposes with four exceptions: cash (other than coins or paper bills with numismatic value); income in respect of a decedent; those items of tangible personal property for which an appraisal is not required under § 20.2031-6(b); and property that is sold or otherwise disposed of by the estate (and therefore not distributed to a beneficiary) in a transaction in which capital gain or loss is recognized.

10. Beneficiaries.

Proposed § 1.6035-1(c)(1) provides that each beneficiary (including a beneficiary who is also the executor of the estate) who receives property to be reported on the estate's Information Return must receive a copy of the Statement reporting the property distributable to that beneficiary. Proposed § 1.6035-1(c)(2) provides that, if the beneficiary is a trust, estate, or business entity instead of an individual, the executor is to furnish the entity's Statement to the trustee, executor, or to the business entity itself, and not to the beneficiaries of the trust or estate or to the owners of the business entity.

Commenters requested guidance on how to comply with the section 6035 reporting requirements when the executor

cannot determine the exact distribution of the estate's property and thus the beneficiary of each property by the due date of the Information Return and the related Statements. This situation can arise, for example, when tangible personal property defined in § 20.2031-6 is to be distributed among a group of beneficiaries as that group determines, the residuary estate is distributable to multiple beneficiaries, or when multiple residuary trusts are to be funded. In response, proposed § 1.6035-1(c)(3) provides that, if by the due date the executor does not yet know what property will be used to satisfy the interest of each beneficiary, the executor is required to report on the Statement for each beneficiary all of the property that could be used to satisfy that beneficiary's interest. This results in the duplicate reporting of those assets on multiple Statements, but each beneficiary will have been advised of the final value of each property that may be received by that beneficiary and therefore will be able to comply with the basis consistency requirement, if applicable.

Proposed § 1.6035-1(c)(4) provides that, if the executor is unable to locate a beneficiary by the due date of the Information Return, the executor is required to report that on that Information Return and explain the efforts taken to locate the beneficiary. If the executor subsequently locates the beneficiary, the executor is required to furnish the beneficiary with a Statement and file a supplemental Information Return with the IRS within 30 days of locating the beneficiary. If the executor is unable to locate a beneficiary and distributes the property to a different beneficiary who was not identified in the Information Return as the recipient of that property, the executor is required to file a supplemental Information Return with the IRS and furnish the successor beneficiary with a Statement within 30 days after distributing the property.

11. *Due date for Information Return and Statements.*

Proposed § 1.6035-1(d)(1) provides that the executor is required to file the Information Return with the IRS, and is required to furnish each beneficiary with that beneficiary's Statement, on or before the earlier of the date that is 30 days after

the due date of the Federal estate tax return (including extensions actually granted, if any), or the date that is 30 days after the date on which that return is filed with the IRS. In response to comments, proposed § 1.6035-1(d)(2) provides a transition rule for any Federal estate tax return that was due on or before July 31, 2015, but that is filed after July 31, 2015. In this case, the due date of the Information Return and all Statements is 30 days after the date on which the return is filed. Otherwise, as commenters noted, the due date for the Information Return and Statement(s) may be prior to the effective date of section 6035.

12. *Supplemental Information Return and Statement(s).*

Proposed § 1.6035-1(e)(1) and (2) generally requires a supplemental Information Return and corresponding supplemental Statement(s) upon a change to the information required to be reported on the Information Return or a Statement that causes the information as reported to be incorrect or incomplete. Such changes include, for example, the discovery of property that should have been, but was not, reported on the Federal estate tax return, a change in the value of property pursuant to an examination or litigation, or (except as provided by proposed § 1.6035-1(e)(3)(B)) a change in the identity of the beneficiary to whom the property is to be distributed (for example, pursuant to a death, disclaimer, bankruptcy, or otherwise).

Proposed § 1.6035-1(e)(3) provides that a supplemental Information Return and Statement(s) may be filed, but they are not required, to correct an inconsequential error or omission within the meaning of § 301.6722-1(b) or to specify the actual distribution of assets previously reported as being available to satisfy the interests of multiple beneficiaries in the situation described in proposed § 1.6035-1(c)(3).

Proposed § 1.6035-1(e)(4) provides that the due date for the supplemental Information Return and each supplemental Statement is 30 days after: (i) the final value (within the meaning of proposed § 1.1014-10(c)(1)) of property is determined; (ii) the executor discovers that the

information reported on the Information Return or Statement is otherwise incorrect or incomplete; or (iii) a supplemental Federal estate tax return is filed. However, at the suggestion of a commenter, if these events occur prior to the distribution to the beneficiary of probate property or of the property of a revocable trust, a supplemental Information Return or Statement is not due until 30 days after the property is distributed. This is likely to be approximately the same time when the executor would provide the beneficiary with information as to changes, if any, to the basis of the property that have occurred since the decedent's death and prior to the distribution. Because that basis adjustment information is not part of what is required to be reported under section 6035, however, if the executor chooses to provide that basis adjustment information on the Schedule A provided to the beneficiary, the basis adjustment information must be shown separately from the final value required to be reported on the beneficiary's Statement.

13. *Subsequent transfers.*

As discussed earlier in this preamble, section 6035(a)(2) imposes a reporting requirement on the executor of the decedent's estate and on any other person required to file a return under section 6018. The purpose of this reporting is to enable the IRS to monitor whether the basis claimed by an owner of the property is properly based on the final value of that property for estate tax purposes. The Treasury Department and the IRS are concerned, however, that opportunities may exist in some circumstances for the recipient of such reporting to circumvent the purpose of the statute (for example, by making a gift of the property to a complex trust for the benefit of the transferor's family).

Accordingly, pursuant to the regulatory authority granted in section 6035(b)(2), the proposed regulations require additional information reporting by certain subsequent transferees in limited circumstances. Specifically, proposed § 1.6035-1(f) provides that, with regard to property that previously was reported or is required to be reported on a Statement furnished to a recipient, when the recipient distributes or

transfers (by gift or otherwise) all or any portion of that property to a related transferee, whether directly or indirectly, in a transaction in which the transferee's basis for Federal income tax purposes is determined in whole or in part with reference to the transferor's basis, the transferor is required to file and furnish with the IRS and the transferee, respectively, a supplemental Statement documenting the new ownership of this property. This proposed reporting requirement is imposed on each such recipient of the property. For purposes of this provision, a related transferee means any member of the transferor's family as defined in section 2704(c)(2), any controlled entity (a corporation or any other entity in which the transferor and members of the transferor's family, whether directly or indirectly, have control within the meaning of section 2701(b)(2)(A) or (B)), and any trust of which the transferor is a deemed owner for income tax purposes.

In the event such transfer occurs before a final value is determined within the meaning of proposed § 1.1014-10(c), the transferor must provide the executor with a copy of the supplemental Statement filed with the IRS and furnished to the transferee reporting the new ownership of the property. When a final value is determined, the executor will then provide a supplemental Statement to the new transferee instead of to the transferor. The supplemental Statements are due no later than 30 days after the transferor distributes or transfers all or a portion of the property to the transferee.

14. *Surviving joint tenants or other recipients under section 6035(b)(2).*

Section 6035(b)(2) authorizes the IRS to prescribe regulations relating to situations in which the surviving joint tenant or other recipient may have better information than the executor regarding the basis or fair market value of the property received by reason of the decedent's death. Section 6018(b) addresses these situations. Section 6018(b) generally requires that, if the executor is unable to make a complete return as to any part of the gross estate of the decedent, the executor must include on the return a description of that part of the gross estate and the name of

every person holding a legal or beneficial interest in it. Upon notice from the Secretary, any such person must in like manner make a return as to this part of the gross estate. Section 6035(a)(2) and these proposed regulations require a person required to file a return under section 6018(b) to file an Information Return with the IRS and to furnish the Statement(s) to each beneficiary of that property. Therefore, the Treasury Department and the IRS have determined that no additional regulations applicable only to surviving joint tenants or other recipients are necessary for this purpose.

15. *Removal of regulations under former Section 6035*

The *American Jobs Creation Act of 2004* (Public Law 108-357, 118 Stat. 1418) (Jobs Act) repealed former section 6035, effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which the tax years of foreign corporations end. Prior to repeal, former section 6035 set forth information reporting requirements for certain United States persons that were officers, directors, or 10-percent shareholders of a foreign personal holding company. Section 1.6035-1 (TD 8573), § 301.6035-1 (TD 6498), § 1.6035-2 (TD 8028), and § 1.6035-3 (TD 8028) (collectively, the FPHC regulations) provide guidance on the information reporting required under former section 6035, as in effect prior to amendment by the *Tax Equity and Fiscal Responsibility Act of 1982* (Public Law 97-248, 96 Stat. 328), and prior to its repeal by the Jobs Act.

This document proposes to withdraw the FPHC regulations. However, the FPHC regulations referenced above contained in 26 CFR parts 1 and 301, revised as of April 1, 2015, continue to apply for taxable years of foreign corporations beginning on or before December 31, 2004, and for taxable years of United States shareholders in which former section 6035 applies with or within which the tax years of foreign corporations end.

16. *Request for new process.*

One commenter requested the creation of a process to allow an estate beneficiary to challenge the value reported by the executor. There is no such process under the Federal law regarding returns described in section 6018. The beneficiary's rights with regard to the estate tax valuation of property are governed by applicable state law. Accordingly, the proposed regulations do not create a new Federal process for challenging the value reported by the executor.

Proposed Effective/Applicability Date

Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, these proposed regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule primarily affects individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there

may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Theresa M. Melchiorre, Office of Associate Chief Counsel (Pass-throughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1 – INCOME TAXES

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

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

Section 1.1014–10 also issued under 26 U.S.C. 1014(f).

Section 1.6035–1 also issued under 26 U.S.C. 6035(a).

Section 1.6035–2 also issued under 26 U.S.C. 6035(a).

Par. 2. Section 1.1014–10 is added to read as follows:

§ 1.1014–10 Basis of property acquired from a decedent must be consistent with Federal estate tax return.

(a) *Consistent basis requirement—(1) In general.* The taxpayer's initial basis in property described in paragraph (b) of this section may not exceed the property's final value within the meaning of paragraph (c) of this section. This requirement applies whenever the taxpayer reports a taxable event with respect to the property to the Internal Revenue Service (IRS) (for example depreciation or amortization) and continues to apply until the property is sold, exchanged, or otherwise disposed of in one or more transactions that result in the recognition of gain or loss for Federal income tax purposes, regardless of whether the owner on the date of the sale, exchange, or disposition is the same taxpayer who acquired the property from the decedent or as a result of the decedent's death.

(2) *Subsequent basis adjustments.* The final value within the meaning of paragraph (c) of this section is the taxpayer's initial basis in the property. In computing at any time after the decedent's date of death the taxpayer's basis in property acquired from the decedent or as a result of the decedent's death, the taxpayer's initial basis in that property may be adjusted due to the operation of other provisions of the Internal Revenue Code (Code) governing basis without violating paragraph (a)(1) of this section. Such adjustments may include, for example, gain recognized by the decedent's estate or trust upon distribution of the property, post-death capital improvements and depreciation, and post-death adjustments to the basis of an interest in a partnership or S corporation. The existence of recourse or non-recourse debt secured by property at the time of the decedent's death does not affect the property's basis, whether the gross value of the property and the outstanding debt are reported separately on the estate tax return or the net value of the property is reported.

Therefore, post-death payments on such debt do not result in an adjustment to the property's basis.

(b) *Property subject to consistency requirement—(1) In general.* Property subject to the consistency requirement in paragraph (a)(1) of this section is any property that is includable in the decedent's gross estate under section 2031, any property subject to tax under section 2106, and any other property the basis of which is determined in whole or in part by reference to the basis of such property (for example as the result of a like-kind exchange or involuntary conversion) that generates a tax liability under chapter 11 of subtitle B of the Code (chapter 11) on the decedent's estate in excess of allowable credits, except the credit for prepayment of tax under chapter 11.

(2) *Exclusions.* For purposes of paragraph (b)(1) of this section, property that qualifies for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A, respectively, does not generate a tax liability under chapter 11 and therefore is excluded from the property subject to the consistency requirement in paragraph (a)(1) of this section. For purposes of paragraph (b)(1) of this section, tangible personal property for which an appraisal is not required under § 20.2031–6(b) is deemed not to generate a tax liability under chapter 11 and therefore also is excluded from the property subject to the consistency requirement in paragraph (a)(1) of this section.

(3) *Application.* For purposes of paragraph (b)(1) of this section, if a liability under chapter 11 is payable after the application of all available credits (other than a credit for a prepayment of estate tax), the consistency requirement in paragraph (a)(1) of this section applies to the entire gross estate (other than property excluded under paragraph (b)(2) of this section) because all such property contributes to the liability under chapter 11 and therefore is treated as generating a tax liability under chapter 11. If, however, after the application of all such available credits, no tax under chapter 11 is payable, the entire gross estate is excluded from the application of the consistency requirement.

(c) *Final value—(1) Finality of estate tax value.* The *final value* of property re-

ported on a return filed pursuant to section 6018 is its value as finally determined for purposes of the tax imposed by chapter 11. That value is —

(i) The value reported on a return filed with the Internal Revenue Service (IRS) pursuant to section 6018 once the period of limitations for assessment of the tax under chapter 11 has expired without that value having been timely adjusted or contested by the IRS,

(ii) If paragraph (c)(1)(i) of this section does not apply, the value determined or specified by the IRS once the periods of limitations for assessment and for claim for refund or credit of the tax under chapter 11 have expired without that value having been timely contested;

(iii) If paragraphs (c)(1)(i) and (ii) of this section do not apply, the value determined in an agreement, once that agreement is final and binding on all parties; or

(iv) If paragraphs (c)(1)(i), (ii), and (iii) of this section do not apply, the value determined by a court, once the court's determination is final.

(2) *No finality of estate tax value.* Prior to the determination, in accordance with paragraph (c)(1) of this section, of the final value of property described in paragraph (b) of this section, the recipient of that property may not claim an initial basis in that property in excess of the value reported on the statement required to be furnished under section 6035(a). If the final value of the property subsequently is determined under paragraph (c)(1) of this section and that value differs from the value reported on the statement required to be furnished under section 6035(a), then the taxpayer may not rely on the statement initially furnished under section 6035(a) for the value of the property and the taxpayer may have a deficiency and underpayment resulting from this difference.

(3) *After-discovered or omitted property*—(i) *Return under section 6018 filed.* In the event property described in paragraph (b)(1) of this section is discovered after the estate tax return under section 6018 has been filed or otherwise is omitted from that return (after-discovered or omitted property), the final value of that property is determined under section (c)(3)(i)(A) or (B) of this section.

(A) *Reporting prior to expiration of period of limitation on assessment.* The final value of the after-discovered or omitted property is determined in accordance with paragraph (c)(1) or (2) of this section if the executor, prior to the expiration of the period of limitation on assessment of the tax imposed on the estate by chapter 11, files with the IRS an initial or supplemental estate tax return under section 6018 reporting the property.

(B) *No reporting prior to expiration of period of limitation on assessment.* If the executor does not report the after-discovered or omitted property on an initial or supplemental Federal estate tax return filed prior to the expiration of the period of limitation on assessment of the tax imposed on the estate by chapter 11, the final value of that unreported property is zero. See *Example 3* of paragraph (e) of this section.

(ii) *No return under section 6018 filed.* If no return described in section 6018 has been filed, and if the inclusion in the decedent's gross estate of the after-discovered or omitted property would have generated or increased the estate's tax liability under chapter 11, the final value, for purposes of section 1014(f), of all property described in paragraph (b) of this section is zero until the final value is determined under paragraph (c)(1) or (2) of this section. Specifically, if the executor files a return pursuant to section 6018(a) or (b) that includes this property or the IRS determines a value for the property, the final value of all property described in paragraph (b) of this section includible in the gross estate then is determined under paragraph (c)(1) or (2) of this section.

(d) *Executor.* For purposes of this section, *executor* has the same meaning as in section 2203 and includes any other person required under section 6018(b) to file a return.

(e) *Examples.* The following examples illustrate the application of this section.

Example 1. (i) At D's death, D owned 50% of Partnership P, which owned a rental building with a fair market value of \$10 million subject to nonrecourse debt of \$2 million. D's sole beneficiary is C, D's child. P is valued at \$8 million. D's interest in P is reported on the return required by section 6018(a) at \$4 million. The IRS accepts the return as filed and the time for assessing the tax under chapter 11 expires. C sells the interest for \$6 million in cash shortly thereafter.

(ii) Under these facts, the final value of D's interest is \$4 million under paragraph (c)(1)(i) of this

section. Under section 742 and § 1.742-1, C's basis in the interest in P at the time of its sale is \$5 million (the final value of D's interest (\$4 million) plus 50% of the \$2 million nonrecourse debt). Following the sale of the interest, C reports taxable gain of \$1 million. C has complied with the consistency requirement of paragraph (a)(1) of this section.

(iii) Assume instead that the IRS adjusts the value of the interest in P to \$4.5 million, and that value is not contested before the expiration of the time for assessing the tax under chapter 11. The final value of D's interest in P is \$4.5 million under paragraph (c)(1)(ii) of this section. Under section 742 and § 1.742-1, C claims a basis of \$5.5 million at the time of sale and reports gain on the sale of \$500,000. C has complied with the consistency requirement of paragraph (a)(1) of this section.

Example 2. (i) At D's death, D owned (among other assets) a private residence that was not encumbered. D's sole beneficiary is C. D's executor reports the value of the residence on the return required by section 6018(a) as \$600,000 and pays the tax liability under chapter 11. The IRS timely contests the reported value and determines that the value of the residence is \$725,000. The parties enter into a settlement agreement that provides that the value of the residence for purposes of the tax imposed by chapter 11 is \$650,000. Pursuant to paragraph (c)(1)(iii) of this section, the final value of the residence is \$650,000.

(ii) Several years later, C adds a master suite to the residence at a cost of \$45,000. Pursuant to section 1016(a), C's basis in the residence is increased by \$45,000 to \$695,000. Subsequently, C sells the residence to an unrelated third party for \$900,000. C claims a basis in the residence of \$695,000 and reports a gain of \$205,000 (\$900,000 – \$695,000). C has complied with the consistency requirement of paragraph (a)(1) of this section.

Example 3. (i) The facts are the same as in *Example 2* but, after the expiration of the period for assessing the tax imposed by chapter 11, the executor discovers property that had not been reported on the return required by section 6018(a) but which, if reported, would have generated additional chapter 11 tax on the entire value of the newly discovered property. Pursuant to paragraph (c)(3)(i)(B) of this section, C's basis in the residence of \$695,000 does not change, but the final value of the additional unreported property is zero.

(ii) Alternatively, assume that no return was required to be filed under section 6018 before discovering the additional property (and none in fact was filed) but, after the application of the applicable credit amount, D's taxable estate including the unreported property would have been \$200,000. Pursuant to paragraph (c)(3)(ii) of this section, the final value of all property included in D's gross estate that is described in paragraph (b) of this section is zero until the executor files an estate tax return with the IRS pursuant to section 6018 or the IRS determines a value for the property. In either of those events, the final value of property described in paragraph (b) of this section reported on the return is determined in accordance with paragraph (c)(1) or (c)(2) of this section.

Example 4. (i) At D's death, D's gross estate includes a residence valued at \$300,000 encumbered by nonrecourse debt in the amount of \$100,000. Title

to the residence is held jointly by D and C (D's daughter) with rights of survivorship. D provided all the consideration for the residence and the entire value of the residence was included in D's gross estate. The executor reports the value of the residence as \$200,000 on the return required by section 6018 filed with the IRS for D's estate and claims no other deduction for the debt. The statement required by section 6035 reports the value of the residence as \$300,000. C sells the residence before the final value is determined under paragraph (c)(1) of this section for \$375,000 and claims a gain of \$75,000 on C's Federal income tax return.

(ii) A court subsequently determines that the value of the residence was \$290,000 and the time for contesting this value in any court expires before the expiration of the period for assessing C's income tax for the year of C's sale of the property. The final value of the residence is \$290,000 pursuant to paragraphs (c)(1)(iv) and (c)(2) of this section. Because C claimed a basis in the residence that exceeds the final value, C may have a deficiency and underpayment.

(f) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

Par. 3. Section 1.6035-1 is revised to read as follows:

§ 1.6035-1 Basis information to persons acquiring property from decedent.

(a) *Required Information Return and Statement(s)*—(1) *In general.* An executor (defined in paragraph (g)(1) of this section) required to file a return under section 6018 for an estate must file an Information Return (defined in paragraph (g)(2) of this section) with the Internal Revenue Service (IRS) to report the value of certain property (described in paragraph (b)(1) of this section) included in the decedent's gross estate for purposes of the tax imposed by chapter 11 of subtitle B of the Internal Revenue Code (chapter 11) and other information prescribed by the Information Return and the instructions thereto. The value to be reported is the final value of the property as described in § 1.1014-10(c). This executor also must furnish a Statement (defined in paragraph (g)(3) of this section) to each beneficiary who has (or will) acquire, whether from the decedent or by reason of the death of the decedent,

property reported on the Information Return to identify the property the beneficiary is to receive and to report the value of that property and other information prescribed by the Statement and instructions thereto. The Information Return and each Statement are required to be filed and furnished by the date provided in paragraph (d) of this section. If, after the Information Return and Statement are filed and furnished, there are certain changes in the final value and/or the recipient of property as described in paragraph (e) or (f) of this section, the executor must file a supplemental Information Return with the IRS and furnish a supplemental Statement to the beneficiary. Subsequent transfers of all or a portion of property previously reported (or required to be reported) on the Information Return required by paragraph (a) of this section, in transactions in which the transferee acquires the property with the transferor's basis, require additional reporting as described in paragraph (f) of this section.

(2) *Exception.* Paragraph (a)(1) of this section applies only to the executor of an estate required by section 6018 to file an estate tax return. Accordingly, notwithstanding § 20.2010-2(a)(1), the executor does not have to file or furnish the Information Return or Statement(s) referred to in paragraph (a)(1) of this section if the executor is not required by section 6018 to file an estate tax return for the estate, even if the executor does file such a return for other purposes, e.g., to make a generation-skipping transfer tax exemption allocation or election, to make the portability election under section 2010(c)(5), or to make a protective filing to avoid any penalty if an asset value is later determined to cause a return to be required or otherwise.

(b) *Property for which reporting is required*—(1) *In general.* The property to which the reporting requirement under paragraph (a)(1) of this section applies is all property reported or required to be reported on a return under section 6018. This includes, for example, any other property whose basis is determined in whole or in part by reference to that property (for example as the result of a like-kind exchange or involuntary conversion). Of the property of a deceased nonresident non-citizen, this includes only the property that is subject to U.S. estate tax; similarly, this includes only the decedent's

one-half of community property. Nevertheless, the following property is excepted from the reporting requirements—

(i) Cash (other than a coin collection or other coins or bills with numismatic value);

(ii) Income in respect of a decedent (as defined in section 691);

(iii) Tangible personal property for which an appraisal is not required under § 20.2031-6(b); and

(iv) Property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section.

Example 1. Included in D's gross estate are the contents of his residence. Pursuant to § 20.2031-6(a), the executor attaches to the return required by section 6018 filed for D's estate a room by room itemization of household and personal effects. All articles are named specifically. In each room a number of articles, none of which has a value in excess of \$100, are grouped. A value is provided for each named article. Included in the household and personal effects are a painting, a rug, and a clock, each of which has a value in excess of \$3,000. Pursuant to § 20.2031-6(b), the executor obtains an appraisal from a disinterested, competent appraiser(s) of recognized standing and ability, or a disinterested dealer(s) in the class of personality involved for the painting, rug, and clock. The executor attaches these appraisals to the estate tax return for D's estate. Pursuant to paragraph (b)(1)(iii) of this section, the reporting requirements of paragraph (a)(1) of this section apply only to the painting, rug, and clock.

Example 2. Included in D's estate are shares in C, a publicly traded company. Shortly after D's death but prior to the filing of the estate tax return for D's estate, C is acquired by T, also a publicly traded company. For the shares in C includible in D's estate, the estate receives new shares in T and cash in a fully taxable transaction. Pursuant to paragraph (b)(1)(iv) of this section, the reporting requirements of paragraph (a)(1) of this section do not apply to the new shares in T or the cash.

(c) *Beneficiaries*—(1) *In general.* As provided in paragraph (a)(1) of this section, the executor must furnish to each beneficiary (including a beneficiary who is also an executor) receiving property that must be reported on the Information Return filed with the IRS, the Statement containing the required information regarding that beneficiary's property. For purposes of this provision, the beneficiary of a life estate is the life tenant, the beneficiary of a remainder interest is the remainderman(men) identified as if the life

tenant were to die immediately after the decedent, and the beneficiary of a contingent interest is a beneficiary, unless the contingency has occurred prior to the filing of the Form 8971. If the contingency subsequently negates the inheritance of the beneficiary, the executor must do supplemental reporting in accordance with paragraph (e) of this section to report the change of beneficiary.

(2) *Beneficiary not an individual.* If the beneficiary is a trust or another estate, the executor must furnish the beneficiary's Statement to the trustee or executor of the trust or estate, rather than to the beneficiaries of that trust or estate. If the beneficiary is a business entity, the executor must furnish the Statement to the entity. However, see paragraph (f) of this section for additional reporting requirements in the event the trust, estate, or entity transfers all or a portion of the property in a transaction in which the transferee acquires the basis of the trust, estate, or entity.

(3) *Beneficiary not determined.* If, by the due date provided in paragraph (d) of this section, the executor has not determined what property will be used to satisfy the interest of each beneficiary, the executor must report on the Statement for each such beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Once the exact distribution has been determined, the executor may, but is not required to, file and furnish a supplemental Information Return and Statement as provided in paragraph (e)(3) of this section.

(4) *Beneficiary not located.* An executor must use reasonable due diligence to identify and locate all beneficiaries. If the executor is unable to locate a beneficiary by the due date of the Information Return provided in paragraph (d) of this section, the executor must so report on that Information Return and explain the efforts the executor has taken to locate the beneficiary and to satisfy the obligation of reasonable due diligence. If the executor subsequently locates the beneficiary, the executor must furnish the beneficiary with that beneficiary's Statement and file a supplemental Information Return with the IRS within 30 days of locating the beneficiary. A copy of the beneficiary's Statement must be attached to the supplemental Information Return. If the executor is un-

able to locate a beneficiary and distributes the property to a different beneficiary who was not identified in the Information Return as the recipient of that property, the executor must file a supplemental Information Return with the IRS and furnish the substitute beneficiary with that beneficiary's Statement within 30 days after the property is distributed. See paragraph (e)(1) of this section. A copy of the substitute beneficiary's Statement must be attached to the supplemental Information Return.

(d) *Due dates*—(1) *In general.* Except as provided in § 1.6035-2T, the executor must file the Information Return with the IRS, and must furnish to each beneficiary the Statement with regard to the property to be received by that beneficiary, on or before the earlier of—

(i) The date that is 30 days after the due date of the estate tax return required by section 6018 (including extensions, if any), or

(ii) The date that is 30 days after the date on which that return is filed with the IRS.

(2) *Transition rule.* If the due date of an estate tax return required to be filed by section 6018 is on or before July 31, 2015, but the executor does not file the return with the IRS until after July 31, 2015, then the Information Return and Statement(s) are due on or before the date that is 30 days after the date on which the estate tax return is filed, except as provided in § 1.6035-2T.

(e) *Duty to supplement.*—(1) *In general.* In the event of any adjustment to the information required to be reported on the Information Return or any Statement as described in paragraph (e)(2) of this section, the executor must file a supplemental Information Return with the IRS including all supplemental Statements and furnish a corresponding supplemental Statement to each affected beneficiary by the due date described in paragraph (e)(4) of this section.

(2) *Adjustments requiring supplement.* Except as provided in paragraph (e)(3) of this section, an adjustment to which the duty to supplement applies is any change to the information required to be reported on the Information Return or Statement that causes the information as reported to be incorrect or incomplete. Such changes include, for example, the discovery of property that should have been (but was not) reported on an estate tax return de-

scribed in section 6018, a change in the value of property pursuant to an examination or litigation, or a change in the identity of the beneficiary to whom the property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise). Such changes also include the executor's disposition of property acquired from the decedent or as a result of the death of the decedent in a transaction in which the basis of new property received by the estate is determined in whole or in part by reference to the property acquired from the decedent or as a result of the death of the decedent (for example as the result of a like-kind exchange or involuntary conversion). Changes requiring supplement pursuant to this paragraph (e)(2) are not inconsequential errors or omissions within the meaning of § 301.6722-1(b) of this chapter.

(3) *Adjustments not requiring supplement*—(i) *In general.* A supplemental Information Return and Statement may but they are not required to be filed or furnished—

(A) To correct an inconsequential error or omission within the meaning of § 301.6722-1(b) of this chapter, or

(B) To specify the actual distribution of property previously reported as being available to satisfy the interests of multiple beneficiaries in the situation described in paragraph (c)(3) of this section.

(ii) *Example.* Paragraph (e)(3)(i)(B) of this section is illustrated by the following example.

Example 1. D's Will provided for D's residuary estate to be distributed to D's three children (E, F, and G). D's residuary estate included stock in a publicly traded company (X), a personal residence, and three paintings. On the due date of the Information Return and Statement required by paragraph (a)(1) of this section, D's executor had not yet determined which property each child would receive from D's residuary estate in satisfaction of that child's bequest. In accordance with paragraph (c)(3) of this section, D's executor reported on the Information Return filed with the IRS and on each child's own Statement that E, F, and G each might receive an interest in the stock in X, the personal residence, and the three paintings. Several months later, the executor determined that E would receive the stock in X, F would receive the residence, and G would receive the paintings. Paragraph (e)(3)(i)(B) of this section provides that the executor may but is not required to file a supplemental Information Return with the IRS and furnish supplemental Statements to E, F, and G to accurately report which beneficiary received what property.

Example 2. D's Will provided that D's jewelry and household effects (personalty) are to be distrib-

uted among D's three children (E, F, and G) as determined by E, F, and G. In accordance with paragraph (c)(3) of this section, D's executor reports on the Information Return filed with the IRS and on each child's own Statement each item of personalty other than items described in paragraph (b)(1)(iii) of this section. Several months later, E, F, and G determine who is to receive each item of personalty. Paragraph (e)(3)(i)(B) of this section provides that the executor may but is not required to file a supplemental Information Return with the IRS and furnish supplemental Statements to E, F, and G to accurately report which beneficiary received which item(s) of personalty.

(4) *Due date of supplemental reporting*—(i) *In general.* Except as provided in paragraph (e)(4)(ii) of this section, the supplemental Information Return must be filed and each supplemental Statement must be furnished on or before 30 days after—

(A) The final value within the meaning of § 1.1014-10(c)(1) is determined;

(B) The executor discovers that the information reported on the Information Return or Statement is otherwise incorrect or incomplete, except to the extent described in paragraph (e)(3)(i) of this section; or

(C) A supplemental estate tax return under section 6018 is filed reporting property not reported on a previously filed estate tax return pursuant to § 1.1014-10(c)(3)(i). In this case, a copy of the supplemental Statement provided to each beneficiary of an interest in this property must be attached to the supplemental Information Return.

(ii) *Probate property or property from decedent's revocable trust.* With respect to property in the probate estate or held by a revocable trust at the decedent's death, if an event described in paragraph (e)(4)(i)(A), (B), or (C) of this section occurs after the decedent's date of death but before or on the date the property is distributed to the beneficiary, the due date for the supplemental Information Return and corresponding supplemental Statement is the date that is 30 days after the date the property is distributed to the beneficiary. If the executor chooses to furnish to the beneficiary on the Statement information regarding any changes to the basis of the reported property as described in § 1.1014-10(a)(2) that occurred after the date of death but before or on the date of distribution, that basis adjustment information (which is not part of the requirement under section 6035) must be shown separately from the final value required to be reported on that Statement.

(f) *Subsequent transfers.* If all or any portion of property that previously was reported or is required to be reported on an Information Return (and thus on the recipient's Statement or supplemental Statement) is distributed or transferred (by gift or otherwise) by the recipient in a transaction in which a related transferee determines its basis, in whole or in part, by reference to the recipient/transferor's basis, the recipient/transferor must, no later than 30 days after the date of the distribution or other transfer, file with the IRS a supplemental Statement and furnish a copy of the same supplemental Statement to the transferee. The requirement to file a supplemental Statement and furnish a copy to the transferee similarly applies to the distribution or transfer of any other property the basis of which is determined in whole or in part by reference to that property (for example as the result of a like-kind exchange or involuntary conversion). In the case of a supplemental Statement filed by the recipient/transferor before the recipient/transferor's receipt of the Statement described in paragraph (a) of this section, the supplemental Statement will report the change in the ownership of the property and need not provide the value information that would otherwise be required on the supplemental Statement. In the event the transfer occurs before the final value is determined within the meaning of proposed § 1.1014-10(c), the transferor must provide the executor with a copy of the supplemental Statement filed with the IRS and furnished to the transferee in order to notify the executor of the change in ownership of the property. When the executor subsequently files any Return and issues any Statement required by paragraphs (a) or (e) of this section, the executor must provide the Statement (or supplemental Statement) to the new transferee instead of to the transferor. For purposes of this provision, a related transferee means any member of the transferor's family as defined in section 2704(c)(2), any controlled entity (a corporation or any other entity in which the transferor and members of the transferor's family (as defined in section 2704(c)(2)), whether directly or indirectly, have control within the meaning of section 2701(b)(2)(A) or (B)), and any trust of which the transferor is a deemed

owner for income tax purposes. If the transferor chooses to include on the supplemental Statement provided to the transferee information regarding any changes to the basis of the reported property as described in § 1.1014-10(a)(2) that occurred during the transferor's ownership of the property, that basis adjustment information (which is not part of the requirement under section 6035) must be shown separately from the final value required to be reported on that Statement.

(g) *Definitions.* For purposes of this section, the following terms are defined as follows—

(1) *Executor* has the same meaning as in section 2203 and includes any other person required under section 6018(b) to file a return.

(2) *Information Return* means the Form 8971, including each beneficiary's Statement as defined in paragraph (g)(3) of this section required to be furnished, or any successor form issued by the IRS for this purpose.

(3) *Statement* means the payee statement described as Schedule A of the Information Return furnished to a beneficiary or any successor form or schedule issued by the IRS for this purpose.

(h) *Penalties*—(1) *Failure to timely file complete and correct Information Return.* For provisions relating to the penalty provided for failure to file an Information Return required by section 6035(a)(1) on or before the required filing date, failure to include all of the required information on an Information Return, or the filing of an Information Return that includes incorrect information, see section 6721 and the regulations thereunder. See section 6724 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to timely furnish correct Statements.* For provisions relating to the penalty provided for failure to furnish a Statement required by section 6035(a)(2) on or before the prescribed date, failure to include all of the required information on a Statement, or the filing of a Statement that includes incorrect information, see section 6722 and the regulations thereunder. See section 6724 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

(i) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property acquired from a decedent or by reason of the death of a decedent whose return required by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

Par. 4. Section 1.6035-2 is added to read as follows:

§ 1.6035-2 *Transition relief.*

[The text of proposed § 1.6035-2 is the same as the text of § 1.6035-2T published elsewhere in this issue of the **Bulletin**].

§ 1.6035-3 [REMOVED]

Par. 5. Section 1.6035-3 is removed.

Par. 6. Section 1.6662-8 is added to read as follows:

§ 1.6662-8 *Inconsistent estate basis reporting.*

(a) *In general.* Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax required to be shown on a return that is attributable to an inconsistent estate basis.

(b) *Inconsistent estate basis.* In accordance with section 6662(k), there is an *inconsistent estate basis* to the extent that a taxpayer claims a basis, without regard to the adjustments described in § 1.1014-10(a)(2), in property described in paragraph (c) of this section that exceeds that property's final value as determined under § 1.1014-10(c).

(c) *Applicable property.* The property to which this section applies is property described in § 1.1014-10(b) that is reported or required to be reported on a return required by section 6018 filed after July 31, 2015.

(d) *Effective/applicability date.* Upon the publication of the Treasury Decision adopting these rules as final in the **Federal Register**, this section will apply to property described in § 1.1014-10(b) acquired from a decedent or by reason of the death of a decedent whose return required

by section 6018 is filed after July 31, 2015. Persons may rely upon these rules before the date of publication of the Treasury Decision adopting these rules as final in the **Federal Register**.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority citation for part 301 continues to read in part as follows:

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

Par. 8. Section 301.6721-1 is amended by removing the word “or” at the end of paragraph (g)(2)(x), removing the period and adding “; or” at the end of paragraph (g)(2)(xi), and adding paragraph (g)(2)(xii).

The addition reads as follows:

§ 301.6721-1 *Failure to file correct information returns.*

* * * * *

(g) * * *

(2) * * *

(xii) Section 6035 (relating to basis of property acquired from decedents).

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Par. 9. Section 301.6722-1 is amended by removing the word “or” at the end of paragraph (d)(2)(xxxiii), removing the period and adding a semi-colon in its place followed by the word “or” at the end of paragraph (d)(2)(xxxiv), and adding paragraph (d)(2)(xxxv).

The addition reads as follows:

§ 301.6722-1 *Failure to furnish correct payee statements.*

* * * * *

(d) * * *

(2) * * *

(xxxv) Section 6035 (relating to basis of property acquired from decedents).

* * * * *

John Dalrymple,
Deputy Commissioner
for Services and Enforcement.

(Filed by the Office of the Federal Register on March 2, 2016, 4:15 p.m., and published in the issue of the Federal Register for March 4, 2016, 81 F.R. 11486)

Utility Allowances Submetering

REG-123867-14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that amend the utility allowance regulations concerning the low-income housing credit. The proposed regulations relate to the circumstances in which utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company. The proposed regulations extend those rules to situations in which a building owner sells to tenants energy that is produced from a renewable source and that is not delivered by a local utility company. The proposed regulations affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit. In the Rules and Regulations section of this issue of the **Bulletin**, the IRS is issuing temporary regulations concerning utility allowance regulations when the utility is generated from renewable sources and is not delivered by the local utility company. The text of those regulations also serves as the text of these proposed regulations. This document also contains a notice of a public hearing on these proposed regulations.

DATES: Comments and requests for a public hearing must be received by May 2, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-123867-14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-123867-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Fed-

eral eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-123867-14).

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, James Rider at (202) 317-4137; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Bulletin** amend 26 CFR part 1. The temporary regulations provide a special rule for a renewable-source utility arrangement in which the building owner does not pay a local utility company for the utility consumed by the tenant. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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 assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this

notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the “**ADDRESSES**” heading. The IRS and the Treasury Department request comments on all aspects of the proposed regulations. All comments that are submitted by the public will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.42-10(e)(1)(i)(B) and (C), and (e)(1)(iv)(B) are revised to read as follows:

§ 1.42-10 Utility allowances.

* * * * *

(e) * * * (1) * * *

(i) * * *

(B) [The text of the proposed amendments to § 1.42-10(e)(1)(i)(B) is the same as the text of § 1.42-10T(e)(1)(i)(B) published elsewhere in this issue of the **Bulletin**].

(C) [The text of the proposed amendments to § 1.42-10(e)(1)(i)(C) is the same as the text of § 1.42-10T(e)(1)(i)(C) published elsewhere in this issue of the **Bulletin**].

* * * * *

(iv) * * *

(B) [The text of the proposed amendments to § 1.42-10(e)(1)(iv)(B) is the same as the text of § 1.42-10T(e)(1)(iv)(B) published elsewhere in this issue of the **Bulletin**].

* * * * *

John Dalrymple
*Deputy Commissioner
for Services and Enforcement.*

(Filed by the Office of the Federal Register on March 2, 2016, 8:45 a.m., and published in the issue of the Federal Register for March 3, 2016, 81 F.R. 11160)

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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¹A 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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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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