

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2016-43**  
**October 24, 2016**

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

## INCOME TAX

### **REG-123600-16, page 523.**

The proposed regulations provide guidance on the requirements that are used to determine whether a corporation qualifies as a regulated investment company (RIC) for federal income tax purposes. The proposed regulations clarify that amounts included in gross income under §951(a)(1)(A)(i) or 1293(a) are treated as dividends only to the extent that there is an actual distribution out of the earnings and profits of the taxable year that are attributable to the amounts so included. The proposed regulations also clarify that inclusions under §§951(a)(1)(A)(i) and 1293(a) do not qualify as "other income" under §851(b)(2). In addition, the proposed regulations refer to Rev. Proc. 2016-50, a companion "no-rule" revenue procedure related to the treatment of a corporation as a RIC that requires a determination whether a financial instrument or position is a security under the 1940 Act.

### **Rev. Proc. 2016-50, page 522.**

Rev. Proc. 2016-50 supplements Rev. Proc. 2016-3, the annual "no-rule" revenue procedure, by adding to the list of areas in which the Service will not ordinarily rule any issue relating to the treatment of a corporation as a regulated investment company (RIC) under section 851 and related provisions that requires a determination whether a financial instrument or position is a security as defined in the Investment Company Act of 1940<sup>1</sup>.

## EXEMPT ORGANIZATIONS

### **Announcement 2016-38, page 523.**

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters  
Also: (Part 1, § 851)

### Rev. Proc. 2016–50

#### SECTION 1. PURPOSE

This revenue procedure supplements Rev. Proc. 2016–3, 2016–1 I.R.B. 126, which sets forth areas of the Internal Revenue Code (Code) on which the Internal Revenue Service (Service) will not issue letter rulings or determination letters (no-rule areas).

#### SECTION 2. BACKGROUND

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Code. See Rev. Proc. 2016–1, 2016–1 I.R.B. 1. There are, however, areas in which the Service will not issue letter rulings or determination letters because the issues are inherently factual

or for other reasons. The Service publishes guidance setting forth these no-rule areas throughout the year and incorporates them annually into the third revenue procedure of the year, currently Rev. Proc. 2016–3.

Section 4 of Rev. Proc. 2016–3 sets forth areas in which the Service ordinarily will not issue letter rulings or determination letters. “Not ordinarily” means that unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling or determination letter. Section 2.01 of Rev. Proc. 2016–3.

#### SECTION 3. PROCEDURE

Rev. Proc. 2016–3 is supplemented by adding a new paragraph (63) to section 4.01 to read as follows:

(63) Section 851.—Definition of Regulated Investment Company.—Any issue relating to the treatment of a corporation as a regulated investment company under section 851 and related provisions that requires a determination whether a financial instrument or position is a security as

defined in the Investment Company Act of 1940.

#### SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all requests for letter rulings, including any requests pending in the national office and any requests submitted on or after September 27, 2016.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016–3 is supplemented.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Matthew P. Howard of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Howard at (202) 317-7053 (not a toll-free number).

## Part IV. Items of General Interest

### Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

#### Announcement 2016-38

##### Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 24, 2016 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Community Progress Committee Inc. – Sherwood Manor	7/1/2013	Lebanon, TN
Community Progress Committee, Inc. – The Pavilion CPC	7/1/2013	Lebanon, TN
Dryhootch of America, Inc.	1/1/2013	Milwaukee, WI
Errict Rhett Foundation	1/1/2011	Plantation, FL
George’s Place Animal Sanctuary and Mobile Animal Care	1/1/2012	Durham, NC
Gospel To The Unreached Millions	1/1/2011	Huffman, TX
Grand View Charter School, Inc.	7/1/2014	Grand View, ID
House of Refuge Mission, Inc.	1/1/2013	Cincinnati, OH
Society For Promoting Elliot’s Welfare	11/5/2013	Richardson, TX
Transitions Charitable Fund, Inc.	1/1/2013	West Hills, CA
Barbara’s Pantry, Inc.	1/1/2014	Hemet, CA

### Notice of Proposed Rulemaking Guidance Under Section 851 Relating to Investments in Stock and Securities

#### REG-123600-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides guidance relating to the income test and the asset diversification requirements that are used to determine whether a corpora-

tion may qualify as a regulated investment company (RIC) for federal income tax purposes. These proposed regulations provide guidance to corporations that intend to qualify as RICs.

DATES: Written or electronic comments and requests for a public hearing must be received by December 27, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-123600-16), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to: CC:PA:LPD:PR (REG-123600-16), Courier’s

Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-123600-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Matthew Howard of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 317-7053; concerning submissions of comments and requests for a public hearing, Regina Johnson (202) 317-6901 (not toll-free numbers).

## SUPPLEMENTARY INFORMATION:

### Background and Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to RICs. Section 851 of the Internal Revenue Code (Code) sets forth requirements for qualifying as a RIC.

Section 851(a) provides that a RIC is any domestic corporation that (1) at all times during the taxable year is registered under the Investment Company Act of 1940, Pub. L. No. 76-768, 54 Stat. 789 (codified as amended at 15 U.S.C. §§80a-1 - 80a-64 (2016)) (the 1940 Act), as a management company or unit investment trust or has in effect an election under the 1940 Act to be treated as a business development company; or (2) is a common trust fund or other similar fund excluded by section 3(c)(3) of the 1940 Act from the definition of “investment company” and is not included in the definition of “common trust fund” by section 584(a).

To be treated as a RIC for a taxable year, a corporation must satisfy the income test set forth in section 851(b). The income test under section 851(b)(2) requires that at least 90 percent of the corporation’s gross income for the taxable year be derived from:

- (A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the [1940 Act]) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and
- (B) net income derived from an interest in a qualified publicly traded partnership (as defined in [section 851(h)]).

Section 851(b)(3) provides that to be treated as a RIC a corporation also must satisfy the following asset diversification requirements at the close of each quarter of the corporation’s taxable year:

- (A) at least 50 percent of the value of its total assets is represented by—
  - (i) cash and cash items (including receivables), Government securities and securities of other [RICs], and

- (ii) other securities for purposes of this calculation limited, except and to the extent provided in [section 851(e)], in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

- (B) not more than 25 percent of the value of its total assets is invested in—
  - (i) the securities (other than Government securities or the securities of other [RICs]) of any one issuer,
  - (ii) the securities (other than the securities of other [RICs]) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or
  - (iii) the securities of one or more qualified publicly traded partnerships (as defined in [section 851(h)]).

These proposed regulations relate to the RIC income test and asset diversification requirements. Section A. of this preamble concerns the meaning of security. Section B. of this preamble addresses inclusions under sections 951(a)(1)(A)(i) and 1293(a). These proposed regulations also revise § 1.851-2(b)(1) of the existing final regulations to merely incorporate changes to section 851(b)(2) since the existing final regulations were published in the **Federal Register** on November 26, 1960, in TD 6500 (25 FR 11910).

#### A. Defining Securities

The income test and asset diversification requirements both use the term “securities.” For purposes of the income test, a security is defined by reference to section 2(a)(36) of the 1940 Act, while section 851(c) provides rules and definitions that apply for purposes of the asset diversification requirements of section 851(b)(3) but does not specifically define “security.” Section 851(c)(6), however, provides that the terms used in section 851(b)(3) and (c) have the same meaning as when used in the 1940 Act. An asset is therefore a security for purposes of the income test and the asset diversification

requirements if it is a security under the 1940 Act.

The Treasury Department and the IRS have in the past addressed whether certain instruments or positions are securities for purposes of section 851. In particular, Rev. Rul. 2006-1 (2006-1 CB 261) concludes that a derivative contract with respect to a commodity index is not a security for purposes of section 851(b)(2). The ruling also holds that income from such a contract is not qualifying other income for purposes of section 851(b)(2) because that income is not derived with respect to the RIC’s business of investing in stocks, securities, or currencies. Rev. Rul. 2006-1 was modified and clarified by Rev. Rul. 2006-31 (2006-1 CB 1133), which states that Rev. Rul. 2006-1 was not intended to preclude a conclusion that income from certain instruments (such as certain structured notes) that create commodity exposure for the holder is qualifying income under section 851(b)(2).

After the issuance of Rev. Rul. 2006-31, the IRS received a number of private letter ruling requests concerning whether certain instruments that provide RICs with commodity exposure were securities for purposes of the income test and the asset diversification requirements. By 2010, the IRS was devoting substantial resources to these private letter ruling requests. Moreover, it is not clear whether Congress intended to allow RICs to invest in securities that provided commodity exposure. Consequently, in July 2011, the IRS notified taxpayers that the IRS would not issue further private letter rulings addressing specific proposed RIC commodity-related investments while the IRS reviewed the issues and considered guidance of broader applicability.

Finally, determining whether certain investments that provide RICs with commodity exposure are securities for purposes of the income test and the asset diversification requirements requires the IRS implicitly to determine what is a security within the meaning of section 2(a)(36) of the 1940 Act. Section 38 of the 1940 Act, however, grants exclusive rule-making authority under the 1940 Act to the Securities and Exchange Commission (SEC), including “defining accounting, technical, and trade terms” used in the 1940 Act. Any future guidance regarding

whether particular financial instruments, including investments that provide RICs with commodity exposure, are securities for purposes of the 1940 Act is therefore within the jurisdiction of the SEC.

Section 2.01 of Rev. Proc. 2016–3 (2016–1 IRB 126) provides that the IRS may decline to issue a letter ruling or a determination letter when appropriate in the interest of sound tax administration (including due to resource constraints) or on other grounds whenever warranted by the facts or circumstances of a particular case. If the IRS determines that it is not in the interest of sound tax administration to issue a letter ruling or determination letter due to resource constraints, the IRS will adopt a consistent approach with respect to taxpayers that request a ruling on the same issue. The IRS will also consider adding the issue to the no rule list at the first opportunity.

The Treasury Department and the IRS have reviewed the issues, considered the concerns expressed, considered resource constraints, and determined that the IRS should no longer issue letter rulings on questions relating to the treatment of a corporation as a RIC that require a determination of whether a financial instrument or position is a security under the 1940 Act. Contemporaneously with the publication of these proposed regulations, the Treasury Department and the IRS are issuing Rev. Proc. 2016–50 (2016–43 IRB 522), which provides that the IRS ordinarily will not issue rulings or determination letters on any issue relating to the treatment of a corporation as a RIC that requires a determination of whether a financial instrument or position is a security under the 1940 Act. Thus, for example, the IRS ordinarily will not issue a ruling on whether income is of a type described in the income test of section 851(b)(2) if that ruling depends on whether an instrument is a security under the 1940 Act.

The Treasury Department and the IRS request comments as to whether Rev. Rul. 2006–1, Rev. Rul. 2006–31, and other previously issued guidance that involves determinations of whether a financial instrument or position held by a RIC is a security under the 1940 Act should be withdrawn effective as of the date of publication in the **Federal Register** of a Treas-

ury decision adopting these proposed regulations as final regulations.

#### *B. Inclusions Under Section 951(a)(1)(A)(i) or 1293(a)*

In certain circumstances, a U.S. person may be required under section 951(a)(1)(A)(i) or 1293(a) to include in taxable income certain earnings of a foreign corporation in which the U.S. person holds an interest, without regard to whether the foreign corporation makes a corresponding distribution of cash or property to the U.S. person. Section 851(b) was amended by the Tax Reduction Act of 1975, Pub. L. No. 94–12, § 602, 89 Stat. 26, 58 (the “1975 Act”) (for inclusions under section 951(a)(1)(A)(i)), and by the Tax Reform Act of 1986, Pub. L. No. 99–514, § 1235, 100 Stat. 2085, 2575 (the “1986 Act”) (for inclusions under section 1293(a)), to specify how a RIC treats amounts included in income under section 951(a)(1)(A)(i) or 1293(a) for purposes of the income test of section 851(b)(2). The language added in those amendments provides:

For purposes of [section 851(b)(2)], there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.

The significance of treating an inclusion as a dividend under section 851 is that a dividend is qualifying income under section 851(b)(2). The amendments to section 851(b) made by the 1975 Act and the 1986 Act unambiguously condition dividend treatment of an inclusion under section 951(a)(1)(A)(i) or 1293(a) on a distribution from the foreign corporation’s earnings and profits attributable to the amount included. Absent a distribution, there is no support in the Code for treating an inclusion under section 951(a)(1)(A)(i) or 1293(a) as a dividend under section 851.

Notwithstanding the distribution required by section 851(b), in certain circumstances the IRS has previously issued letter rulings under section 851(b)(2) that permit an inclusion under section 951(a)(1)

(A)(i) or 1293(a) to qualify as “other income” derived with respect to a RIC’s business of investing in currencies or 1940 Act stock or securities even in the absence of a distribution. Reading section 851(b)(2) in this manner ignores the requirement in section 851(b) that amounts be distributed in order to treat these inclusions as dividends. This distribution requirement is a more specific provision than the other income clause. In addition, it cannot be suggested that the distribution requirement was superseded by the other income clause because the other income clause and the distribution requirement for inclusions under section 1293(a) were both added by the 1986 Act. Therefore, these proposed regulations specify that an inclusion under section 951(a)(1)(A)(i) or 1293(a) is treated as a dividend for purposes of section 851(b)(2) only to the extent that the distribution requirement in section 851(b) is met. These proposed regulations further provide that, for purposes of section 851(b)(2), an inclusion under section 951(a)(1) or 1293(a) does not qualify as other income derived with respect to a RIC’s business of investing in stock, securities, or currencies.

#### **Proposed Effective/Applicability Date**

The rule in § 1.851–2(b)(2)(iii) of the proposed regulations applies to taxable years that begin on or after the date that is 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final 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 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 Internal Revenue Code, this 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 comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be made available for public inspection at *www.regulations.gov* or upon request. A public hearing will 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 public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is Matthew Howard, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

### Statement of Availability of IRS Documents

The IRS revenue rulings and revenue procedure 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 Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov*.

\* \* \* \* \*

### 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 1.851–2 is amended by:

1. Revising paragraphs (b)(1) and (b)(2)(i).

2. Adding paragraph (b)(2)(iii).

The addition and revisions read as follows:

#### § 1.851–2 Limitations.

\* \* \* \* \*

(b) *Gross income requirement*—(1) *General rule*. A corporation will not be a regulated investment company for a taxable year unless 90 percent of its gross income for that year is income described in paragraph (b)(1)(i) of this section or in paragraph (b)(1)(ii) of this section. Any loss from the sale or other disposition of stock or securities is not taken into account in the gross income computation.

(i) *Gross income amounts*. Income is described in this paragraph (b)(1)(i) if it is gross income derived from:

(A) Dividends;

(B) Interest;

(C) Payments with respect to securities loans (as defined in section 512(a)(5));

(D) Gains from the sale or other disposition of stocks or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended);

(E) Gains from the sale or other disposition of foreign currencies; or

(F) Other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to

a regulated investment company’s business of investing in such stock, securities, or currencies.

(ii) *Income from a publicly traded partnership*. Income is described in this paragraph (b)(1)(ii) if it is net income derived from an interest in a qualified publicly traded partnership (as defined in section 851(h)).

(2) *Special rules*—(i) For purposes of section 851(b)(2)(A) and paragraph (b)(1)(i)(A) of this section, amounts included in gross income for the taxable year under section 951(a)(1)(A)(i) or 1293(a) are treated as dividends only to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year that are attributable to the amounts included in gross income for the taxable year under section 951(a)(1)(A)(i) or 1293(a). For allocation of distributions to earnings and profits of foreign corporations, see § 1.959–3.

\* \* \* \* \*

(iii) For purposes of section 851(b)(2)(A) and paragraph (b)(1)(i)(F) of this section, amounts included in gross income under section 951(a)(1) or 1293(a) are not treated as other income derived with respect to a corporation’s business of investing in stock, securities, or currencies. The rule in this paragraph (b)(2)(iii) applies to taxable years that begin on or after the date that is 90 days after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations.

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

(Filed by the Office of the Federal Register on September 27, 2016, 8:45 a.m., and published in the issue of the Federal Register for September 28, 2016, 81 F.R. 66576)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

## Numerical Finding List<sup>1</sup>

Bulletin 2016–27 through 2016–43

### Action on Decision:

2016-01, 2016-16 I.R.B. 580  
2016-02, 2016-31 I.R.B. 193  
2016-03, 2016-40 I.R.B. 424

### Announcements:

2016-21, 2016-27 I.R.B. 8  
2016-23, 2016-27 I.R.B. 10  
2016-24, 2016-30 I.R.B. 170  
2016-25, 2016-31 I.R.B. 205  
2016-26, 2016-38 I.R.B. 389  
2016-27, 2016-33 I.R.B. 238  
2016-28, 2016-34 I.R.B. 272  
2016-29, 2016-34 I.R.B. 272  
2016-30, 2016-37 I.R.B. 355  
2016-31, 2016-38 I.R.B. 392  
2016-32, 2016-40 I.R.B. 434  
2016-33, 2016-39 I.R.B. 422  
2016-34, 2016-39 I.R.B. 422  
2016-35, 2016-39 I.R.B. 423  
2016-36, 2016-39 I.R.B. 423  
2016-37, 2016-39 I.R.B. 423  
2016-38, 2016-43 I.R.B. 523

### Notices:

2016-40, 2016-27 I.R.B. 4  
2016-41, 2016-27 I.R.B. 5  
2016-42, 2016-29 I.R.B. 67  
2016-43, 2016-29 I.R.B. 132  
2016-44, 2016-29 I.R.B. 132  
2016-45, 2016-29 I.R.B. 135  
2016-46, 2016-31 I.R.B. 202  
2016-47, 2016-35 I.R.B. 276  
2016-48, 2016-33 I.R.B. 235  
2016-49, 2016-34 I.R.B. 265  
2016-50, 2016-38 I.R.B. 384  
2016-51, 2016-37 I.R.B. 344  
2016-52, 2016-40 I.R.B. 425  
2016-53, 2016-39 I.R.B. 421  
2016-54, 2016-40 I.R.B. 429  
2016-55, 2016-40 I.R.B. 432  
2016-57, 2016-40 I.R.B. 432  
2016-58, 2016-41 I.R.B. 438  
2016-59, 2016-42 I.R.B. 457  
2016-60, 2016-42 I.R.B. 458

### Proposed Regulations:

REG-163113-02, 2016-36 I.R.B. 329  
REG-147196-07, 2016-29 I.R.B. 32  
REG-123854-12, 2016-28 I.R.B. 15  
REG-131418-14, 2016-33 I.R.B. 248  
REG-102516-15, 2016-32 I.R.B. 231  
REG-109086-15, 2016-30 I.R.B. 171

## Proposed Regulations:—Continued

REG-134016-15, 2016-31 I.R.B. 205  
REG-101689-16, 2016-30 I.R.B. 170  
REG-103058-16, 2016-33 I.R.B. 238  
REG-105005-16, 2016-38 I.R.B. 380  
REG-108792-16, 2016-36 I.R.B. 320  
REG-123600-16, 2016-43 I.R.B. 523

### Revenue Procedures:

2016-37, 2016-29 I.R.B. 136  
2016-39, 2016-30 I.R.B. 164  
2016-40, 2016-32 I.R.B. 228  
2016-41, 2016-30 I.R.B. 165  
2016-42, 2016-34 I.R.B. 269  
2016-43, 2016-36 I.R.B. 316  
2016-44, 2016-36 I.R.B. 316  
2016-45, 2016-37 I.R.B. 344  
2016-46, 2016-37 I.R.B. 345  
2016-47, 2016-37 I.R.B. 346  
2016-48, 2016-37 I.R.B. 348  
2016-49, 2016-42 I.R.B. 462  
2016-50, 2016-43 I.R.B. 522  
2016-51, 2016-42 I.R.B. 465  
2016-52, 2016-42 I.R.B. 520

### Revenue Rulings:

2016-17, 2016-27 I.R.B. 1  
2016-18, 2016-31 I.R.B. 194  
2016-19, 2016-35 I.R.B. 273  
2016-20, 2016-36 I.R.B. 279  
2016-23, 2016-39 I.R.B. 382  
2016-24, 2016-39 I.R.B. 395  
2016-25, 2016-41 I.R.B. 435

### Treasury Decisions:

9773, 2016-29 I.R.B. 56  
9774, 2016-30 I.R.B. 151  
9775, 2016-30 I.R.B. 159  
9776, 2016-32 I.R.B. 222  
9777, 2016-36 I.R.B. 282  
9778, 2016-31 I.R.B. 196  
9779, 2016-33 I.R.B. 233  
9781, 2016-35 I.R.B. 274  
9782, 2016-36 I.R.B. 301  
9783, 2016-39 I.R.B. 396  
9784, 2016-39 I.R.B. 402  
9785, 2016-38 I.R.B. 375  
9786, 2016-42 I.R.B. 442

<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletin 2016–27 through 2016–43

### **Notices:**

#### **2009-89**

Modified by  
Notice 2016-51, 2016-37 I.R.B. 344

#### **2012-54**

Obsoleted by  
Notice 2016-51, 2016-37 I.R.B. 344

#### **2013-1**

Modified by  
Notice 2016-41, 2016-27 I.R.B. 5

#### **2013-1**

Superseded by  
Notice 2016-41, 2016-27 I.R.B. 5

#### **2013-67**

Modified by  
Notice 2016-51, 2016-37 I.R.B. 344

#### **2015-63**

Superseded by  
Notice 2016-58, 2016-41 I.R.B. 438

### **Revenue Procedures:**

#### **2003-16**

Modified by  
Rev. Proc. 2016-47, 2016-37 I.R.B. 346

#### **2007-44**

Clarified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

Modified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

Superseded by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2009-33**

Modified by  
Rev. Proc. 2016-48, 2016-37 I.R.B. 348

#### **2015-36**

Modified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2016-3**

Modified by  
Rev. Proc. 2016-40, 2016-32 I.R.B. 228

## **Revenue Procedures:—Continued**

#### **2016-3**

Modified by  
Rev. Proc. 2016-45, 2016-37 I.R.B. 228

#### **2016-3**

Supplemented by  
Rev. Proc. 2016-50, 2016-43 I.R.B. 542

#### **2016-29**

Modified by  
Rev. Proc. 2016-39, 2016-30 I.R.B. 164

### **Treasury Decisions:**

#### **2013-17**

Obsoleted by  
T.D. 9785 2016-38 I.R.B. 375

#### **2014-12**

Modified by  
T.D. 9776 2016-32 I.R.B. 222

<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

# **Internal Revenue Service**

## **Washington, DC 20224**

---

Official Business  
Penalty for Private Use, \$300

---

## **INTERNAL REVENUE BULLETIN**

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

---

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

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