

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.

SPECIAL ANNOUNCEMENT

Notice 2016–70, page 784.

This notice extends the due dates for certain information reporting requirements for 2016 imposed by the Patient Protection and Affordable Care Act (ACA) under section 6055 and 6056 of the Internal Revenue Code. Specifically, this notice extends the due date for furnishing to individuals the 2016 Form 1095–B, Health Coverage, and the 2016 Form 1095–C, Employer-Provided Health Insurance Offer and Coverage, from January 31, 2017, to March 2, 2017. This notice also provides for transitional good-faith relief from the penalties imposed by sections 6721 and 6722 of the Internal Revenue Code relating to the 2016 information reporting requirements under sections 6055 and 6056.

INCOME TAX

Rev. Rul. 2016–27, page 781.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, 7872, and other sections of the Code, tables set forth the rates for December 2016.

Announcement 2016–42, page 793.

This announcement provides notice that the IRS will not impose penalties under section 6721 or 6722 on eligible educational institutions with respect to Forms 1098–T, Tuition Statement, required to be filed and furnished for the 2017 calendar year under section 6050S if the institution reports the aggregate amount billed for qualified tuition and related expenses on Form 1098–T instead of the aggregate amount of payments received as required by section 212 of the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114–113 (129 Stat. 2242 (2015)))(PATH).

Bulletin No. 2016–49
December 5, 2016

Notice 2016–70, page 784.

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ADMINISTRATIVE

Announcement 2016–40, page 791.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

Rev. Proc. 2016–57, page 786.

This revenue procedure obsoletes Rev. Proc. 2003–41, SB/SE—Appeals Fast Track Mediation Procedure, and creates a fast track mediation program specifically directed at resolving certain collection cases and issues. Fast Track Mediation—Collection (FTMC) provides taxpayers an opportunity to resolve certain offer-in-compromise (OIC) and trust fund recovery penalty (TFRP) disputes on an expedited basis with an Office of

Appeals mediator serving as a neutral party. FTMC is limited to certain OIC and TFRP issues and cases worked by Collection.

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Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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

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

Rev. Rul. 2016-27

This revenue ruling provides various prescribed rates for federal income tax purposes for December 2016 (the current

month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). The rates in Table 2 have been determined in accordance with § 1.1288-1. See T.D. 9763, 81 FR 24482 (April 26, 2016). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appro-

priate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the 2017 interest rate for purposes of sections 846 and 807.

REV. RUL. 2016-27 TABLE 1

Applicable Federal Rates (AFR) for December 2016

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.74%	.74%	.74%	.74%
110% AFR	.81%	.81%	.81%	.81%
120% AFR	.89%	.89%	.89%	.89%
130% AFR	.96%	.96%	.96%	.96%
<i>Mid-term</i>				
AFR	1.47%	1.46%	1.46%	1.46%
110% AFR	1.62%	1.61%	1.61%	1.60%
120% AFR	1.76%	1.75%	1.75%	1.74%
130% AFR	1.91%	1.90%	1.90%	1.89%
150% AFR	2.20%	2.19%	2.18%	2.18%
175% AFR	2.58%	2.56%	2.55%	2.55%
<i>Long-term</i>				
AFR	2.26%	2.25%	2.24%	2.24%
110% AFR	2.50%	2.48%	2.47%	2.47%
120% AFR	2.72%	2.70%	2.69%	2.68%
130% AFR	2.95%	2.93%	2.92%	2.91%

REV. RUL. 2016-27 TABLE 2

Adjusted AFR for December 2016

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.55%	.55%	.55%	.55%
Mid-term adjusted AFR	1.09%	1.09%	1.09%	1.09%
Long-term adjusted AFR	1.68%	1.67%	1.67%	1.66%

REV. RUL. 2016–27 TABLE 3

Rates Under Section 382 for December 2016

Adjusted federal long-term rate for the current month	1.68%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	1.68%

REV. RUL. 2016–27 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for December 2016

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.43%
Appropriate percentage for the 30% present value low-income housing credit	3.18%

REV. RUL. 2016–27 TABLE 5

Rate Under Section 7520 for December 2016

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.8%
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REV. RUL. 2016–27 TABLE 6

Rates Under Sections 846 and 807

Applicable rate of interest for 2017 for purposes of sections 846 and 807	1.46%
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Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

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

The adjusted applicable federal long-term rate is set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the

month of December 2016. See Rev. Rul. 2016–27, page 781.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2016. See Rev. Rul. 2016–27, page 781.

Part III. Administrative, Procedural, and Miscellaneous

EXTENSION OF DUE DATE FOR FURNISHING STATEMENTS AND OF GOOD-FAITH TRANSITION RELIEF UNDER I.R.C. SECTIONS 6721 AND 6722 FOR REPORTING REQUIRED BY I.R.C. SECTIONS 6055 AND 6056 FOR 2016

Notice 2016-70

PURPOSE

This notice extends the due date for certain 2016 information-reporting requirements for insurers, self-insuring employers, and certain other providers of minimum essential coverage under section 6055 of the Internal Revenue Code (Code) and for applicable large employers under section 6056 of the Code. Specifically, this notice extends the due date for furnishing to individuals the 2016 Form 1095-B, *Health Coverage*, and the 2016 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from January 31, 2017, to March 2, 2017. This notice also extends good-faith transition relief from section 6721 and 6722 penalties to the 2016 information-reporting requirements under sections 6055 and 6056.

BACKGROUND

Sections 6055 and 6056 were added to the Code by sections 1502 and 1514 of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, Pub. L. No. 111-148, 124 Stat. 119, 250, 256. Section 6055 requires health insurance issuers, self-insuring employers, government agencies, and other providers of minimum essential coverage to file and furnish annual information returns and statements regarding coverage provided. Section 6056 requires applicable large employers (generally those with 50 or more full-time employees, including full-time equivalent employees, in the previous year) to file and furnish annual information returns and statements relating to the health insurance, if any, that the employer offers to its full-time employees.

Section 6056 was amended by sections 10106(g) and 10108(j) of the ACA and was further amended by section 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, 125 Stat. 38, 169. Section 36B, which was added to the Code by section 1401 of the ACA, provides a premium tax credit for eligible individuals who enroll in coverage through a Health Insurance Marketplace. Section 5000A, which was added to the Code by section 1501(b) of the ACA, generally provides that individuals must have minimum essential coverage, qualify for an exemption from the minimum essential coverage requirement, or make an individual shared responsibility payment when they file their federal income tax return.

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

Final regulations, published on March 10, 2014, relating to the reporting requirements under sections 6055 and 6056, specify the deadlines for information reporting required by those sections. *See* Information Reporting of Minimum Essential Coverage, T.D. 9660, 2014-13 I.R.B. 842; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, T.D. 9661, 2014-13 I.R.B. 855. The regulations under section 6055 provide that every person that provides minimum essential coverage to an individual during a calendar year must file with the Internal Revenue Service (Service) an information return and a transmittal on or before the following February 28 (March 31 if filed electronically) and must furnish to the responsible individual identified on the return a written statement on or before January 31 following the calendar year to which the

statement relates. The Service has designated Form 1094-B, *Transmittal of Health Coverage Information Returns*, and Form 1095-B to meet the requirements of the section 6055 regulations.

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

The regulations under sections 6055 and 6056 allow the Service to grant extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C for good cause shown. Treas. Reg. §§ 1.6055-1(g)(4)(i)(B)(1), 301.6056-1(g)(1)(ii)(A). In addition, filers of Forms 1094-B, 1095-B, 1094-C, and 1095-C may receive an automatic 30-day extension of time to file such forms with the Service by submitting Form 8809, *Application for Extension of Time To File Information Returns*, on or before the due date for filing those forms. Treas. Reg. § 1.6081-1; Temp. Treas. Reg. § 1.6081-8T. Under certain hardship conditions, filers who submit Form 8809 before the automatic 30-day extension period expires and explain in detail why the additional time is needed may also receive an additional 30-day extension of time to file Forms 1094-B, 1095-B, 1094-C, and 1095-C with the Service. *Id.*

The preambles to the section 6055 and 6056 regulations (T.D. 9660, 2014-13 I.R.B. 842; T.D. 9661, 2014-13 I.R.B. 855) provided that, for reporting of 2015 offers and coverage, the Service would not impose penalties under sections 6721 and 6722 on reporting entities that can show that they made good-faith efforts to comply with the information-reporting requirements. This relief applied only to furnishing and filing incorrect or incom-

plete information reported on a statement or return, and not to a failure to timely furnish or file a statement or return. Notice 2015-87, 2015-52 I.R.B. 889, reiterated that relief, and Notice 2015-68, 2015-41 I.R.B. 547, provided additional information about that relief with regard to reporting under section 6055. The preambles also noted the general rule that, under section 6724 and the related regulations, the section 6721 and 6722 penalties may be waived if a failure to timely furnish or file a statement or return is due to reasonable cause. This requires the reporting entity to demonstrate that it acted in a responsible manner, and that the failure was due to significant mitigating factors or events beyond the reporting entity's control. In addition, proposed regulations under section 6055 published on August 2, 2016 proposed additional rules for reporting. 81 Fed. Reg. 50671.

Notice 2016-4, 2016-3 I.R.B. 279, extended the due dates for the 2015 information-reporting requirements under sections 6055 and 6056 (both those for furnishing to individuals and for filing with the Service). In particular, the notice provided that the furnishing deadline for the 2015 Forms 1095-B and 1095-C was extended from February 1, 2016, to March 31, 2016, and that the filing deadline for the 2015 Forms 1094-B, 1095-B, 1094-C, and 1095-C was extended from February 29, 2016, to May 31, 2016, if not filing electronically, and from March 31, 2016, to June 30, 2016, if filing electronically. In addition, the notice provided that the provisions regarding automatic and permissive 30-day extensions of time for filing information returns and permissive extensions of time (of up to 30 days) for furnishing statements would not apply to the extended due dates.

TRANSITION RELIEF

A. Extension of Due Date for Furnishing to Individuals under Sections 6055 and 6056 for 2016

Following consultation with stakeholders, the Department of the Treasury (Treasury) and the Service have determined that a substantial number of employers, insurers, and other providers of minimum essential coverage need additional time beyond the January 31, 2017, due date to gather and

analyze the information and prepare the 2016 Forms 1095-B and 1095-C to be furnished to individuals. Accordingly, this notice extends by 30 days the due date for furnishing the 2016 Form 1095-B and the 2016 Form 1095-C, from January 31, 2017, to March 2, 2017. In view of this automatic extension, the provisions under Treas. Reg. §§ 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A) allowing the Service to grant extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C will not apply to the extended due date. Notwithstanding the extensions provided in this notice, employers and other coverage providers are encouraged to furnish 2016 statements as soon as they are able.

Treasury and the Service have determined that there is no similar need for additional time for employers, insurers, and other providers of minimum essential coverage to file with the Service the 2016 Forms 1094-B, 1095-B, 1094-C, and 1095-C. Therefore, this notice does not extend the due date for filing with the Service the 2016 Forms 1094-B, 1095-B, 1094-C, or 1095-C, which remains February 28, 2017, if not filing electronically, or March 31, 2017, if filing electronically. However, this notice does not affect the provisions regarding automatic extensions of time for filing information returns, which remain available under the normal rules by submitting a Form 8809. *See* Treas. Reg. § 1.6081-1; Temp. Treas. Reg. § 1.6081-8T. It also does not affect the provisions regarding additional extensions of time to file. *Id.*

Employers or other coverage providers that do not comply with the due dates for furnishing Forms 1095-B and 1095-C (as extended under the rules described above) or for filing Forms 1094-B, 1095-B, 1094-C, or 1095-C are subject to penalties under section 6722 or 6721 for failure to timely furnish and file, respectively. However, employers and other coverage providers that do not meet the relevant due dates should still furnish and file. The Service will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause.

The extension of the due date provided by this notice applies only to section 6055 and 6056 information statements for calendar year 2016 furnished in 2017 and does not require the submission of any request or

other documentation to the Service. Because the 30-day extension of the due date to furnish granted in this notice applies automatically and is as generous as the permissive 30-day extensions of time to furnish 2016 information statements under sections 6055 and 6056 that have already been requested by some reporting entities in submissions to the Service, the Service will not formally respond to such requests.

Because of the extension granted under this notice, some individual taxpayers may not receive a Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax return. Taxpayers may rely on other information received from their employer or other coverage provider for purposes of filing their returns, including determining eligibility for the premium tax credit under section 36B and confirming that they had minimum essential coverage for purposes of sections 36B and 5000A. Taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their returns. Individuals need not send the information relied upon to the Service when filing their returns but should keep it with their tax records.

B. Extension of Good Faith Transition Relief from Section 6721 and 6722 Penalties for 2016

In implementing new information-reporting requirements, short-term relief from penalties frequently is provided. This relief recognizes the challenges involved in developing new procedures and systems to accurately collect and report information in compliance with new reporting requirements. The preambles to the section 6055 and 6056 regulations provided transition relief from penalties under sections 6721 and 6722 to reporting entities that can show that they made good-faith efforts to comply with the information-reporting requirements for 2015. This relief applied only to incorrect and incomplete information reported on the statement or return and not to a failure to timely furnish or file a statement or return. Following consultation with stakeholders, Treasury and the Service have determined that this relief is appropriate for the information-reporting requirements under sections 6055 and 6056 for 2016 also.

Specifically, this notice extends transition relief from penalties under sections 6721 and 6722 to reporting entities that

can show that they have made good-faith efforts to comply with the information-reporting requirements under sections 6055 and 6056 for 2016 (both for furnishing to individuals and for filing with the Service) for incorrect or incomplete information reported on the return or statement. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. No relief is provided in the case of reporting entities that do not make a good-faith effort to comply with the regulations or that fail to file an information return or furnish a statement by the due dates (as extended under the rules described above). In determining good faith, the Service will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the Service and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the Service, or testing its ability to transmit information to the Service. In addition, the Service will take into account the extent to which the employer or other coverage provider is taking steps to ensure that it will be able to comply with the reporting requirements for 2017.

C. Future Years

The extension of time for furnishing information statements under sections 6055 and 6056 for 2016 provided in this notice has no effect on these information-reporting provisions for other years or on the effective date or application of other ACA provisions. Treasury and the Service do not anticipate extending this transition relief – either with respect to the due dates or with respect to good faith relief from section 6721 and 6722 penalties – to reporting for 2017.

DRAFTING INFORMATION

The principal author of this notice is Hilary March of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Hilary March at (202) 317-6845 (not a toll-free number).

Rev. Proc. 2016–57

SECTION 1. PURPOSE

This revenue procedure obsoletes Revenue Procedure 2003–41, 2003–1 C.B. 1047, SB/SE—Appeals Fast Track Mediation Procedure, and creates a new fast track mediation program, SB/SE Fast Track Mediation—Collection (FTMC), specifically directed at resolving certain collection cases and issues. FTMC allows taxpayers an opportunity to resolve certain offer-in-compromise (OIC) and trust fund recovery penalty (TFRP) disputes on an expedited basis with an Office of Appeals mediator serving as a neutral party.

SECTION 2. BACKGROUND

Consistent with the Internal Revenue Service's goals of improving service to taxpayers and resolving tax controversies at the earliest opportunity on a fair and impartial basis, in June 2000, the IRS began testing fast track mediation (FTM) procedures for taxpayers who had cases in the Small Business/Self-Employed (SB/SE) Division. Specifically, FTM participants were taxpayers whose cases were being worked in either Examination or Collection, two of SB/SE's operating units. FTM allowed taxpayers the opportunity to expedite resolution of their cases by mediating their disputes with an Appeals mediator acting as a neutral party. FTM was implemented nationwide on June 26, 2002. *See* IR–2002–80. On June 23, 2003, Rev. Proc. 2003–41, 2003–1 C.B. 1047, was published to formally establish the FTM program.

As set forth in this revenue procedure, the IRS is replacing FTM with FTMC. Taxpayer requests for FTM have been infrequent throughout the life of the program, and became increasingly so after Fast Track Settlement (FTS) was implemented nationwide. *See* Ann. 2011–5, 2011–4 IRB 430 and I.R.S. News Release IR–2013–88 (November 6, 2013). FTS, however, is only available to taxpayers in Examination and does not provide an expedited Appeals alternative dispute resolution opportunity for taxpayers in Collection. Rather than eliminate FTM, the IRS determined that it would replace FTM with

FTMC, which will ensure that taxpayers in Collection continue to be afforded an early opportunity for expedited resolution of their cases via mediation, but limited to certain OIC and TFRP issues and cases worked by Collection, as described in section 3 of this revenue procedure. Other alternative dispute resolution programs, such as FTS, remain available to taxpayers whose cases are being worked in Examination. Similar to FTM, FTMC allows taxpayers the opportunity to resolve certain case and issue disputes on an expedited basis with an Appeals mediator acting as a neutral party. Moreover, the Appeals mediator in FTMC, as in FTM, does not have settlement authority and cannot render a decision regarding any issue in dispute.

SECTION 3. CASE ELIGIBILITY AND EXCLUSIONS

.01 *In general.* Collection and Appeals jointly administer FTMC while the case is under consideration by Collection. Although Collection is an operating unit of SB/SE, all collection cases, regardless of type of taxpayer, are handled by Collection. Accordingly, any type of taxpayer may participate in FTMC, provided the taxpayer meets the eligibility requirements set forth in this revenue procedure and the taxpayer's case is being worked in Collection.

FTMC may be used only when all other collection issues are resolved but for the issue(s) for which FTMC is being requested. The issue(s) to be mediated must be fully developed with clearly defined positions by both parties so the unagreed issues can be resolved quickly (usually within 30 or 40 calendar days). Participation in FTMC is optional for both Collection and the taxpayer. *See* Section 4.02 of this revenue procedure.

.02 *No settlement authority.* FTMC does not create any special authority for settlement by Collection. The Appeals mediator does not have settlement authority and cannot render a decision regarding any issue in dispute.

.03 *Applicability.* FTMC is generally appropriate for:

- (1) Legal and factual issues;
- (2) The following OIC cases or issues, provided all relevant facts are known by both parties:
 - a. The value of a taxpayer's assets, including those held by a third party;

- b. The amount of dissipated assets that should be included in the overall determination of reasonable collection potential (RCP) (as described in IRM 5.8.5, Financial Analysis);
 - c. Whether the taxpayer meets the criteria for deviating from national and/or local expense standards;
 - d. Determination of a taxpayer's proportionate interest in jointly held assets;
 - e. Projections of future income based on calculations other than current income;
 - f. The calculation of a taxpayer's future ability to pay when living expenses are shared with a nonliable person;
 - g. Doubt as to liability cases worked by Collection; and
 - h. Other factual determinations, such as whether a taxpayer's contributions into a retirement savings account are discretionary or mandatory as a condition of employment;
- (3) The following TFRP cases or issues, provided all relevant facts are known by both parties:
- a. Whether a person was required to collect, truthfully account for, and pay over income, employment or excise taxes;
 - b. Whether a responsible person willfully failed to collect, truthfully account for, and pay over such tax, or willfully attempted in any manner to evade or defeat payment of such tax;
 - c. Whether a taxpayer properly designated a payment to the trust fund portion of the unpaid tax; and
 - d. Whether the taxpayer provided sufficient corporate payroll records to establish that a corporate tax deposit was in the amount required by Treas. Reg. § 31.6302-1(c) and thus was considered a designated payment to be applied to both the trust fund and non-trust fund portions of the employment taxes associated with that specific payroll.
- .04 *Inapplicability*. FTMC is not appropriate for:
- (1) Issues requiring assessment of the hazards of litigation or use of the Appeals mediator's delegated settlement authority;
 - (2) Cases referred to the Department of Justice;
 - (3) Cases worked at an SB/SE Campus site;
 - (4) Collection Appeals Program (CAP) cases;
 - (5) Collection Due Process (CDP) cases;
 - (6) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2016-2 § 4.04, 2016-1 I.R.B. 102, or any succeeding revenue procedure;
 - (7) Collection cases in which the taxpayer has failed to respond to IRS communications or failed to submit documentation to Collection for consideration;
 - (8) The following OIC cases:
 - a. Cases in which the unadjusted financial information submitted by the taxpayer demonstrates the taxpayer has the ability to pay in full, except where an Effective Tax Administration OIC is based on economic hardship and the assessed liability is less than \$250,000. *See* Delegation Order 5-1, To Accept, Reject, Return, Terminate or Acknowledge Withdrawals of Offers in Compromise;
 - b. Cases in which the taxpayer declines to amend or increase the offer despite having no specific disagreement with the valuations, figures, or methodology used by Collection in determining RCP;
 - c. Cases in which the disputed issue is explicitly addressed by IRS guidance or authority, including but not limited to regulations, published guidance, the Internal Revenue Manual, forms or instructions. For example, the Form 656 Offer in Compromise Booklet explicitly states that the IRS will not consider expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the OIC expense calculation. Therefore, FTMC is not available with re-

- spect to whether any of these expenses will be considered in evaluating the taxpayer's offer; and
 - d. Cases in which Delegation Order 5-1 requires a level of approval higher than that of the Collection Group Manager;
- (9) Issues for which mediation would be inconsistent with sound tax administration; and
 - (10) Issues that have otherwise been identified in subsequent published guidance issued by the IRS as excluded from FTMC.

SECTION 4. APPLICATION PROCESS

.01 *When to request FTMC*. A request for participation in FTMC should be initiated after an issue has been fully developed and before Collection has made a final determination regarding the issue.

.02 *FTMC is optional*. Either the taxpayer or Collection may initiate a request to participate in FTMC. However, Appeals will not accept an issue for FTMC unless both parties agree to participate in the process, as evidenced by a Form 13369, Agreement to Mediate, which is signed by both parties. If the parties are interested in FTMC and need assistance in determining if the issue is appropriate for FTMC, they may contact the appropriate Appeals Team Manager.

.03 *How to request FTMC*.

- (1) *Signed Form 13369*. To request FTMC, a Form 13369 must be signed by both the Collection Group Manager and the taxpayer, or the taxpayer's authorized representative, if applicable. If the Form 13369 is signed by a person pursuant to a power of attorney (Form 2848, Power of Attorney and Declaration of Representative), the power of attorney executed by the taxpayer must be attached to the Form 13369.
- (2) *Completing the FTMC request*. A FTMC request includes the following:
 - a. One Form 13369 for all OIC or TFRP issues in a taxpayer's case that are being submitted for FTMC, signed by both parties.
 - b. The taxpayer's written summary of his or her position with respect

to the disputed issues. This summary is not treated as a formal protest, and a formal protest is not required.

- c. Collection's written summary of its position with respect to the disputed issues, as well as a full RCP computation for an OIC case, which will generally consist of the Income/Expense and Asset/Equity Tables (IET and AET), or a full trust fund computation in a TFRP case.

.04 Submission of the FTMC request.

Collection will send the completed FTMC request (i.e., Form 13369 and all supporting documentation) to the appropriate Appeals office. Collection will also provide a copy of the completed FTMC request to the taxpayer.

.05 Review of the FTMC request. The Appeals Team Manager will review the FTMC request and confer with the Appeals Office of Tax Policy and Procedure regarding whether the FTMC request will be approved.

(1) *Request approved.* If Appeals approves the FTMC request, the Appeals Team Manager will inform the taxpayer and the Collection Group Manager that the case has been accepted for FTMC, and will schedule a pre-mediation conference, which may include a representative from the Appeals Office of Tax Policy and Procedure to discuss the FTMC process.

(2) *Request denied.* If Appeals denies the FTMC request, the Appeals Team Manager will notify the taxpayer and the Collection Group Manager and return all paperwork to the Collection Group Manager. The decision not to approve a FTMC request is final and not subject to administrative appeal or judicial review.

.06 Disclosure. To participate in FTMC, the taxpayer must consent under section 6103(c) to the disclosure by the IRS of the taxpayer's returns and return information incident to the mediation to any participant identified in the initial list of participants and to any participants subsequently identified in writing by the parties. The consent to disclose and the list of participants must be set forth on the Form

13369. If the Form 13369 is signed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to the representative to sign the Form 13369 and to consent to disclose the taxpayer's returns and return information by the IRS to third parties. A copy of that power of attorney must be attached to the Form 13369. Any observer for the taxpayer or the government may require the taxpayer (or the taxpayer's representative) to sign an additional disclosure consent form.

SECTION 5. MEDIATION PROCESS

.01 Jurisdiction. During FTMC, the case remains exclusively under Collection's jurisdiction.

.02 Selection of mediator. After the case is accepted into FTMC, an Appeals Team Manager will assign an Appeals employee, who has been trained in mediation, to be the Appeals mediator for the case. The taxpayer does not have the option to select a mediator.

.03 Role of Appeals mediators. All Appeals mediators must be neutral. Appeals mediators in FTMC serve as facilitators, assist in defining issues, and assist Collection and the taxpayer to reach a mutually satisfactory resolution consistent with applicable law. Appeals mediators will inform and discuss with the parties the rules and procedures pertaining to the mediation process. Appeals mediators in the FTMC process do not have settlement authority and cannot render a decision regarding any issue in dispute. The taxpayer and Collection retain full control over the decisions made for all issues considered under the mediation process.

SECTION 6. MEDIATION SESSION

.01 Starting the session. The Appeals mediator will hold the mediation session at a time and place that is mutually agreeable to the Appeals mediator and the parties. At the beginning of the mediation session, the Appeals mediator will advise the parties and other participants of the procedures and establish ground rules. The Appeals mediator may modify the rules and procedures during the session to adapt to changes in circum-

stances. The mediation session may include joint sessions with both parties, sessions where the mediator meets separately with a party, or any combination of joint and separate sessions, as determined appropriate in the sole judgment of the Appeals mediator.

.02 Presentation of positions. Both the taxpayer and Collection will be given ample opportunity to present their respective positions. The Appeals mediator may also ask either party for additional information if deemed necessary for a full understanding of the issues being mediated. A copy of any submission for the mediation session must be provided to the Appeals mediator, who will provide a copy of the submission to the other party.

.03 Participants. During the mediation session, the taxpayer and Collection participants will meet with the Appeals mediator. Each party must have at least one participant with decision-making authority present during the mediation session. Any person engaged in practice before the IRS, as defined in Publication 216, Conferences and Practice Requirements, and acting in a representative capacity must have a power of attorney from the taxpayer to participate in the mediation session. The parties are encouraged to include, in addition to the required decision-makers, those individuals with information and expertise that may be useful to the decision-makers and the mediator. The Appeals mediator may ask the parties to limit the number of participants (and any other observers) to facilitate the session.

.04 Postponement or termination. If it is determined that meaningful progress toward resolution of the issues has stopped, the Appeals mediator may terminate the mediation session. Further, the Appeals mediator may, but is not required to, terminate or postpone the session if: (a) either party presents new information or new issues during the mediation session; (b) the taxpayer wishes to submit a substantial amount of additional documentary information; (c) the taxpayer wishes to present new witnesses, including experts; or (d) for other good cause. If the mediation session is terminated, the Appeals mediator will notify both parties in writing. Any issue that is the subject of a terminated mediation session is treated as

mediated for purposes of determining post-appeals mediation eligibility. *See* Rev. Proc. 2014–63 § 4.04(9). If the Appeals mediator postpones a mediation session, the Appeals mediator will communicate and coordinate his or her decision with both parties. A decision by the Appeals mediator that postponement is necessary may result in a longer period for completion of the FTMC process.

.05 *Withdrawal*. Either party may withdraw from FTMC at any time before reaching an agreement on the issue(s) by notifying the other party and the Appeals mediator in writing. If either party withdraws from FTMC prior to the start of the mediation session, the taxpayer will not be treated as having participated in FTMC for purposes of determining post-appeals mediation eligibility. *See* Rev. Proc. 2014–63 § 4.04(9).

.06 *Resolution recommendation*. The Appeals mediator may recommend to the parties a possible resolution of one or all of the issues considered in FTMC based on the Appeals mediator’s analysis of the issues. Any recommendation made by the Appeals mediator does not bind the parties and is not a decision regarding any issue in dispute.

.07 *Confidentiality*. Returns and return information are confidential under section 6103 and may not be used or disclosed except as authorized under the Internal Revenue Code. In addition, under 5 U.S.C. § 574, any dispute resolution communication (as defined in 5 U.S.C. § 571(5)) is confidential. Therefore, the mediation process, and any information relating to the mediation, is confidential and may not be used or disclosed by any party, mediator, participant, or observer (including any person under contract to the IRS pursuant to section 6103(n)) except as provided by 5 U.S.C. § 574, relating to confidentiality in federal administrative alternative dispute resolution proceedings, or by section 6103 of the Internal Revenue Code.

.08 *Ex parte communications*.

- (1) *Generally*. The prohibition against ex parte communications between Appeals personnel and other IRS employees provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to

the communications arising in FTMC because Appeals personnel, in facilitating an agreement between the taxpayer and Collection, are not acting in their traditional Appeals settlement role.

- (2) *With mediator*. To ensure that one party is not in a position to exert undue influence on the Appeals mediator, communications with the Appeals mediator outside the mediation session are prohibited. This prohibition against communications with the Appeals mediator is intended to apply only to unsolicited contacts from one of the parties with the Appeals mediator that occur outside the mediation session. The prohibition prevents the Appeals mediator from receiving information or evidence from one party that the other party is unaware of and is unable to respond to or rebut. This provision does not prevent the Appeals mediator from contacting a party outside the mediation session, or a party from answering a question or request posed by the Appeals mediator outside the mediation session. Upon receiving information from one party, the Appeals mediator must make the information available to the other party so that no party is unaware of or unable to respond to or rebut the information.

SECTION 7. POST-SESSION PROCEDURE

.01 *Appeals mediator’s report*. At the conclusion of the mediation session, the Appeals mediator will prepare a brief written report by completing a Form 13370, Fast Track Mediator’s Report. Generally, a copy of the report is provided to the taxpayer and the Collection Group Manager at the end of the mediation session. If a copy of the report is not so provided, the parties will receive copies of the report within a week of the end of the mediation session.

.02 *Closing procedures*.

- (1) *Resolved issues*. If the parties resolve any of the disputed issues during the mediation session, Collection will secure the appropriate closing documents from the taxpayer and close the case

through Collection’s established OIC or TFRP case closing procedures.

(2) *Unresolved issues*.

- a. *Generally*. Collection will close the unagreed case or unresolved issue in accordance with established OIC or TFRP case closing procedures.

- b. *Other Appeals opportunities*. If the parties do not reach an agreement on a mediated issue, FTMC does not eliminate or replace the taxpayer’s opportunity to request a hearing before Appeals through the traditional Appeals process. If the taxpayer does request a hearing before Appeals for an unresolved issue, ex parte restrictions will not be imposed on intra-Appeals communications. *See* Rev. Proc. 2012–18, 2012–10 I.R.B. 455. A taxpayer who participates in an unsuccessful mediation may request that the Appeals mediator not participate in the traditional Appeals hearing. While it is in Appeals’ discretion to agree to such a request, Appeals management will take appropriate steps to ensure these cases are handled impartially. Post-appeals mediation is not available for an issue mediated through FTMC. *See* Rev. Proc. 2014–63 § 4.04(9) and §§ 6.04, 6.05 of this revenue procedure.

.03 *Special closing procedures for certain OIC cases*. Under certain circumstances, the settlement of an OIC case may require a legal opinion from IRS Counsel pursuant to I.R.C. § 7122(b). For an OIC case successfully mediated in FTMC, the case will be forwarded to IRS Counsel for an opinion after the mediation session. Final processing of the OIC case may not occur prior to receipt of the opinion from IRS Counsel.

.04 *No record or recording of mediation session*. The parties to the mediation may not make a stenographic record, audio or video tape recording, or other transcript of the mediation session.

.05 *Use as precedent*. A settlement reached by the parties through FTMC will not be binding on the parties (or be other-

wise controlling) for issues or taxable years not covered by the agreement. Except as provided in the agreement, no party may use such settlement as precedent.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2003–41 is obsolete.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective November 18, 2016.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are Chelsey Pearson of the Office

of Associate Chief Counsel (Procedure & Administration) and John Gonzalez, Office of Appeals (Tax Policy & Procedure). For further information regarding this revenue procedure contact Ms. Pearson at (202) 317-6832 or Mr. Gonzalez at (415) 281-7837 (not toll-free numbers).

Part IV. Items of General Interest

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2016–40

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81–38 and superseding guidance in Revenue Procedure 2014–42, which govern a preparer’s eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer and signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014–42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is not eligible to practice before the IRS as

defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual’s eligibility to practice before the IRS, but OPR may subject the individual’s future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual’s conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81–38 or to comply with Circular 230 as required by Revenue Procedure 2014–42 may be determined ineligible to engage in limited practice as a representative of any taxpayer. Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government’s summary judgment motion or (2) conducted an evidentiary hearing upon OPR’s complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ’s decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR’s complaint was filed, granted OPR’s motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual’s opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or

failed to comply with any of the requirements to act as a representative.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" agreement admitting to one

or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an

unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
San Mateo	Miyabara, Morris	Enrolled Agent	Disbarred by ALJ default decision	July 8, 2016
Corona Del Mar	Cassidy, Carl R.	CPA	Disbarred by decision on appeal by Treasury Appellate Authority	April 20, 2015
Florida				
Boynton Beach	Merl, Eric L.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from August 4, 2016
Illinois				
Homer Glen	Bujan, Jr., Frank M.	CPA		Reinstated to practice before the IRS September 12, 2016
Kentucky				
Lexington	Cushny, Lillian B.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from August 26, 2016
New Jersey				
Morris Plains	Fraser, Carlyle F.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from July 19, 2016
Hasbrouck Heights	Pinto, Steven W.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 24, 2016
Tennessee				
Murfreesboro	Riddle, Mark S.	CPA		Reinstated to practice before the IRS September 27, 2016
Texas				
Plano	O'Laughlin, Frederick J.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from August 8, 2016
Virginia				
Reston	Hartke, Wayne R.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from August 5, 2016

Limited Penalty Relief for Filers of Form 1098-T, Tuition Statement

Announcement 2016-42

This announcement provides notice that the IRS is extending relief from penalties under sections 6721 and 6722, as described in Announcement 2016-17, IRB 2016-20, to 2017 Forms 1098-T, *Tuition Statement*. Accordingly, the IRS will not impose penalties under section 6721 or 6722 on eligible educational institutions with respect to Forms 1098-T required to be filed and furnished for the 2017 calendar year under section 6050S if the eligible educational institution reports the aggregate amount billed for qualified tuition and related expenses on Form 1098-T instead of the aggregate amount of payments received as required by section 212 of the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114-113 (129 Stat. 2242 (2015)))(PATH). Eligible educational institutions, therefore, will continue to have the option of reporting either the amount of payments of qualified tuition and related expenses received in Box 1 of Form 1098-T or the amount of qualified tuition and related expenses billed in Box 2 of Form 1098-T for the 2017 calendar year without being subject to penalties.

The penalty relief in this announcement is limited to 2017 Forms 1098-T required to be filed by eligible educational institutions by February 28, 2018 (or April 2, 2018, if filed electronically), and furnished to recipients by January 31, 2018. This announcement does not provide penalty relief for any other failure that would cause a filer to be subject to penalties under section 6721 or 6722, or any other penalty under any provision of the Code.

Background

Sections 6050S(a)(1) and 6050S(d) generally require eligible educational institutions to file information returns with the IRS and to furnish written statements to individuals relating to qualified tuition and related expenses paid by, or on behalf of, students. Section 6050S(b)(2) specifies the contents of the information return and,

effective for expenses paid after December 31, 2015, requires eligible educational institutions to report the aggregate amount of payments received for qualified tuition and related expenses during the calendar year from, or on behalf of, a student. Previously, section 6050S(b)(2) allowed eligible educational institutions to report either the aggregate amount of payments received for qualified tuition and related expenses or the aggregate amount billed for such tuition and expenses. Section 1.6050S-1(b)(5) provides that information returns required under section 6050S must be filed by February 28 (or March 31 if filed electronically) of the year following the calendar year to which such returns relate. Section 6050S(d) provides that written statements required under that section must be furnished to recipients by January 31 of the year following the calendar year for which such statements are furnished.

Section 212 of PATH amended section 6050S(b)(2) and eliminated the option for eligible educational institutions to report aggregate qualified tuition and related expenses billed for the calendar year. This amendment is effective for qualified tuition and related expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date.

Section 6721 imposes a penalty for failure to file correct or timely information returns with the IRS. Section 6722 imposes a penalty for failure to furnish a correct or timely written statement to the recipient. These penalties do not apply if it is shown under section 6724 that the failure is due to reasonable cause and not due to willful neglect.

Form 1098-T is the information return for purposes of satisfying the reporting obligations described in sections 6050S(a)(1) and 6050S(d). Prior to enactment of section 212 of PATH, eligible educational institutions reported qualified tuition and related expenses on Form 1098-T either as payments received for the calendar year in Box 1 of the form or as amounts billed during a calendar year in Box 2 of the form. In Announcement 2016-17 the IRS provided notice that no penalties under section 6721 or 6722 will be imposed on eligible educational insti-

tutions with respect to Forms 1098-T required to be filed and furnished to individuals for the 2016 calendar year if the institution reports the aggregate amount billed for qualified tuition and related expenses on Form 1098-T instead of the aggregate amount of payments received as required by section 212 of PATH.

Penalty Relief

Representatives of eligible educational institutions have informed the IRS that despite diligent efforts on the part of eligible educational institutions and their software providers, the changes to accounting systems, software, and business practices that eligible educational institutions must make to implement section 212 of PATH cannot be accomplished in time to apply these changes for calendar year 2017. To report the amount of payments received for calendar year 2017, eligible educational institutions must adopt a new payment application methodology beginning January 1, 2017. However, software vendors and service providers in this field do not yet have a solution in place implementing this new methodology.

In light of this, the IRS will extend the relief from penalties under sections 6721 and 6722, as described in Announcement 2016-17, to 2017 Forms 1098-T. Eligible educational institutions, therefore, will continue to have the option of reporting either the amount of payments of qualified tuition and related expenses received in Box 1 of Form 1098-T or the amount of qualified tuition and related expenses billed in Box 2 of Form 1098-T for the 2017 calendar year without being subject to penalties. Institutions should refer to the instructions for the 2017 Form 1098-T for further guidance for reporting these amounts. This penalty relief does not apply to any other failure subject to a penalty under section 6721 or 6722.

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

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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