

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017-30
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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.

ADMINISTRATIVE

Notice 2017-38, page 147.

This Notice describes the Treasury Department's review of significant tax regulations as directed by Executive Order 13789 and the regulations identified for burden reduction. It requests public comments on whether the identified regulations should be rescinded or modified and provides instructions for the submission of comments.

The IRS Mission

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

Introduction

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

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

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

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 Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases.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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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Part III. Administrative, Procedural, and Miscellaneous

Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens)

Notice 2017–38

I. INTRODUCTION

On April 21, 2017, President Donald J. Trump issued Executive Order 13789, a directive designed to reduce tax regulatory burdens. The order instructed the Secretary of the Treasury to review all “significant tax regulations” issued on or after January 1, 2016, and submit two reports, followed promptly by concrete action to alleviate the burdens of regulations that meet criteria outlined in the order. Specifically, the President directed the Secretary, in consultation with the Administrator of the Office of Information and Regulatory Affairs, to submit a 60-day interim report identifying regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service (IRS).¹ The order further instructs the Secretary to submit a final report to the President by September 18, 2017, recommending “specific actions to mitigate the burden imposed by regulations identified in the interim report.”²

II. SCOPE OF THE TREASURY DEPARTMENT’S REVIEW

From January 1, 2016, through April 21, 2017, Treasury and the IRS issued 105 temporary, proposed, and final regulations.³ During this time period, Treasury and the IRS issued one regulation—under Section 385 of the Internal Revenue Code—that the Office of Management

and Budget designated as significant pursuant to Executive Order 12866. Executive Order 13789 provides, however, that in determining whether a regulation is significant for the purpose of this review, past determinations made pursuant to Executive Order 12866 are not controlling.

Fifty three of the 105 regulations issued during the relevant review period are minor or technical in nature and generated minimal public comment. To ensure a comprehensive review, Treasury treated the remaining 52 regulations as potentially significant and reexamined all of them for the purpose of formulating the interim report.⁴

Based on that reexamination, Treasury has identified regulations that meet the criteria of the President’s order and qualify as significant in view of the Presidential priorities for tax regulation outlined in Executive Order 13789.⁵

III. REGULATIONS IDENTIFIED FOR BURDEN REDUCTION

Treasury has concluded that the following eight regulations meet at least one of the first two criteria specified by Section 2 of Executive Order 13789. Consistent with the order, Treasury intends to propose reforms—potentially ranging from streamlining problematic rule provisions to full repeal—to mitigate the burdens of these regulations in a final report submitted to the President.

1. Proposed Regulations under Section 103 on Definition of Political Subdivision (REG–129067–15; 81 F.R. 8870)

These proposed regulations define a “political subdivision” of a State (e.g., a city or county) that is eligible to issue tax-exempt bonds for governmental purposes under Section 103 of

the Internal Revenue Code. The proposed regulations require a political subdivision to possess three attributes: (i) sovereign powers; (ii) a governmental purpose; and (iii) governmental control. Commenters stated that the longstanding “sovereign powers” standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary. Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations.

2. Temporary Regulations under Section 337(d) on Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) (T.D. 9770; 81 F.R. 36793)

These temporary regulations amend existing rules on transfers of property by C corporations to REITs and RICs generally. In addition, the regulations provide additional guidance relating to certain newly-enacted provisions of the Protecting Americans from Tax Hikes Act of 2015, which were intended to prevent certain spinoff transactions involving transfers of property by C corporations to REITs from qualifying for nonrecognition treatment. Commenters expressed concern that the REIT spinoff rules could result in over-inclusion of gain in some cases, particularly where a large corporation acquires a small corporation that engaged in a Section 355 spinoff and the large corporation subsequently makes a REIT election.

¹Executive Order 13789 § 2(a) (2017).

²*Id.* § 2(b).

³This number excludes the following Federal Register documents: (1) corrections to proposed, temporary, or final regulations; (2) notices of proposed rulemaking cross-referencing temporary regulations required pursuant to 26 U.S.C. § 7805(e)(1); (3) notices of proposed rulemaking issued on or after January 1, 2016, for which a subsequent final rule was issued on or before April 21, 2017; (4) notices relating to public hearings; (5) notices withdrawing prior notices of proposed rulemaking; and (6) non-tax regulations jointly issued by the IRS and other Departments of the Federal Government.

⁴See <https://www.treasury.gov/resource-center/tax-policy/Pages/Executive-Orders.aspx> for a list of the regulations that were reviewed.

⁵See Executive Order 12866 § 3(f) (1993) (defining “significant regulatory action” to include, *inter alia*, “any regulatory action that is likely to result in a rule that may . . . [r]aise novel . . . policy issues arising out of . . . the President’s priorities”). To assess “undue financial burden,” Treasury considered the degree to which the regulation at issue imposed compliance costs or resulted in tax liabilities that exceed the minimum required to achieve the relevant statutory objectives. To assess “undue complexity,” Treasury considered the extent to which the regulation at issue imposed new substantive, computational, or other requirements not required to achieve the relevant statutory objectives, or introduced rules that added uncertainty for taxpayers.

3. Final Regulations under Section 7602 on the Participation of a Person Described in Section 6103(n) in a Summons Interview (T.D. 9778; 81 F.R. 45409)

These final regulations provide that persons described in Section 6103(n) of the Internal Revenue Code and Treas. Reg. § 301.6103(n)-1(a) with whom the IRS contracts for services—such as outside economists, engineers, consultants, or attorneys—may receive books, papers, records, or other data summoned by the IRS and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath. Commenters objected to the IRS's ability to contract with outside attorneys and permit them to question witnesses under oath, and the U.S. Senate Finance Committee approved legislation in 2016 that would prohibit the IRS from delegating to third-party contractors the authority under Section 7602. Treasury will review these regulations as they concern the outside attorneys under contract with the IRS to participate in the taking of compulsory testimony under oath.

4. Proposed Regulations under Section 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes (REG-163113-02; 81 F.R. 51413)

Section 2704(b) of the Internal Revenue Code provides that certain non-commercial restrictions on the ability to dispose of or liquidate family-controlled entities should be disregarded in determining the fair market value of an interest in that entity for estate and gift tax purposes. These proposed regulations would create an additional category of restrictions that also would be disregarded in assessing the fair market value of an interest. Commenters expressed concern that the proposed regulations would eliminate or restrict common discounts, such as minority discounts and discounts for lack of marketability, which would

result in increased valuations and transfer tax liability that would increase financial burdens. Commenters were also concerned that the proposed regulations would make valuations more difficult and that the proposed narrowing of existing regulatory exceptions was arbitrary and capricious.

5. Temporary Regulations under Section 752 on Liabilities Recognized as Recourse Partnership Liabilities (T.D. 9788; 81 F.R. 69282)

These temporary regulations generally provide: (i) rules for how liabilities are allocated under Section 752 solely for purposes of disguised sales under Section 707 of the Internal Revenue Code; and (ii) rules for determining whether “bottom-dollar payment obligations” provide the necessary “economic risk of loss” to be taken into account as a recourse liability. Commenters stated that the first rule was novel and would unduly limit the amount of partners' bases in their partnership interests for disguised sale purposes, which would negatively impact ordinary partnership transactions. Commenters were concerned that the bottom-dollar payment obligation rules would prevent many business transactions compared to the prior regulations and suggested their removal or the development of more permissive rules.

6. Final and Temporary Regulations under Section 385 on the Treatment of Certain Interests in Corporations as Stock or Indebtedness (T.D. 9790; 81 F.R. 72858)

These final and temporary regulations address the classification of related-party debt as debt or equity for federal tax purposes. The regulations are primarily comprised of (i) rules establishing minimum documentation requirements that ordinarily must be satisfied in order for purported debt among related parties to be treated as debt for federal tax purposes; and (ii) transaction rules that treat as stock certain debt that is issued by a corporation to a controlling shareholder in a distribution or in another related-party transaction that achieves an economically similar result. Commenters to the doc-

umentation rules criticized the financial burdens of compliance, particularly with respect to more ordinary course transactions. Commenters also requested a longer delay in the effective date of the documentation rules. Commenters to the final transaction rules criticized the complexity associated with tracking multiple transactions through a group of companies and the increased tax burden imposed on inbound investments.

7. Final Regulations under Section 987 on Income and Currency Gain or Loss With Respect to a Section 987 Qualified Business Unit (T.D. 9794; 81 F.R. 88806)

These final regulations provide rules for (i) translating income from branch operations conducted in a currency different from the branch owner's functional currency into the owner's functional currency, (ii) calculating foreign currency gain or loss with respect to the branch's financial assets and liabilities, and (iii) recognizing such foreign currency gain or loss when the branch makes a transfer of any property to its owner. Commenters on the regulations stated that the transition rule in the final regulations imposes an undue financial burden on taxpayers because it disregards losses calculated by the taxpayer for years prior to the transition but not previously recognized. Commenters also stated that the method prescribed by the final regulations for calculating foreign currency gain or loss was unduly complex and costly to comply with, particularly where the final regulations differ from financial accounting rules.

8. Final Regulations under Section 367 on the Treatment of Certain Transfers of Property to Foreign Corporations (T.D. 9803; 81 F.R. 91012)

Section 367 of the Internal Revenue Code generally imposes immediate or future U.S. tax on transfers of property (tangible and intangible) to foreign corporations, subject to certain exceptions. These final regulations eliminate the ability of

taxpayers under prior regulations to transfer foreign goodwill and going concern value to a foreign corporation without immediate or future U.S. income tax. Some commenters stated that the final regulations would increase burdens by taxing transactions that were previously exempt, noting in particular that the legislative history to Section 367 contemplated an exception for outbound transfers of foreign goodwill and going concern value. Commenters also stated that an exception should be provided for transfers of foreign goodwill and going concern value in circumstances that would not lead to an abuse of the exception.

IV. REQUEST FOR COMMENTS

Treasury is requesting comments on whether the regulations described in this

notice should be rescinded or modified, and in the latter case, how the regulations should be modified in order to reduce burdens and complexity. Comments from the public are due by August 7, 2017. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2017-38), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2017-38), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include Notice 2017-38 in the subject line of any electronic submissions. Comments will be available for public inspection and copying.

Pursuant to Executive Order 13777, *Presidential Executive Order on Enforc-*

ing the Regulatory Reform Agenda, Treasury is responsible for conducting a broader review of existing regulations, including tax regulations beyond those addressed in this notice. In a Request for Information published on June 14, 2017 (82 F.R. 27217), Treasury invited public comment concerning regulations that should be modified or eliminated in order to reduce unnecessary burdens. Comments in response to the Request for Information are due by July 31, 2017. In addition, in Notice 2017-28, Treasury and the IRS invited public comment on recommendations for the 2017-2018 Priority Guidance Plan for tax guidance, including recommendations relating to Executive Order 13777. Taxpayers may submit recommendations for tax guidance at any time during the year.

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 List¹

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

Finding List of Current Actions on Previously Published Items¹

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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

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.