

# 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.

**Bulletin No. 2017-41**  
**October 10, 2017**

## INCOME TAX

### **Rev. Rul. 2017-20, page 273.**

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for October 2017.

### **Notice 2017-46, page 275.**

Notice 2017-46 provides guidance for certain foreign financial institutions (FFIs) required to report U.S. taxpayer identification numbers (U.S. TINs) for certain accounts under a Model 1 Intergovernmental Agreement (IGA). If such FFIs comply with the procedures described in this Notice, then the IRS will not consider there is significant noncompliance with the obligations under a Model 1 IGA solely as a result of a failure to report U.S. TINs associated with the FFI's U.S. reportable accounts maintained as of the determination date specified in the applicable Model 1 IGA. Notice 2017-46 also announces that the Department of the Treasury and the IRS intend to amend certain provisions of the temporary regulations under Chapter 3. The amendments would provide limitations on, and a phase-in of, the requirement for certain withholding agents to obtain and report the taxpayer identification number issued by an account holder's jurisdiction of tax residence (Foreign TIN) and, for an account holder that is an individual, the account holder's date of birth. Taxpayers may rely on the provisions of this notice prior to the issuance of the amendments to the temporary Chapter 3 regulations reflecting the notice.

### **Rev. Proc. 2017-52, page 283.**

This revenue procedure: (1) introduces an 18-month pilot program expanding the scope of private letter rulings available from the Internal Revenue Service to include rulings on the tax consequences of a distribution of stock, or stock and securities, of a controlled corporation under § 355 of the Internal Revenue Code, (2) provides procedures for taxpayers requesting these letter rulings, and (3) clarifies procedures for taxpay-

ers requesting letter rulings on significant issues relating to these transactions.

### **REG-105004-16, page 295.**

The proposed regulation allows the truncation of taxpayer identification numbers on copies of Forms W-2, Wage and Tax Statement, that are furnished to employees. The proposed regulation would amend the existing regulations to specifically allow for truncation on those copies, consistent with the rules regarding truncation in Treas. Reg. section 301.6109-4.

### **REG-125374-16, page 300.**

Several provisions of the Code condition tax benefits and impose sanctions on issuers and holders of registration-required obligations that are not issued in registered form. This project defines a registration-required obligation and describes when an obligation is in registered form for purposes of these provisions. The proposed rules update longstanding regulations to account for changes in the operation of debt markets and to account for the repeal of a statutory exception to the definition of registration-required obligation.

## EMPLOYEE PLANS

### **Notice 2017-50, page 280.**

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for September 2017 used under § 417(e)(3)(D), the 24-month average segment rates applicable for September 2017, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 (MAP-21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

## **EMPLOYMENT TAX**

### **REG-105004-16, page 295.**

The proposed regulation allows the truncation of taxpayer identification numbers on copies of Forms W-2, Wage and Tax Statement, that are furnished to employees. The proposed regulation would amend the existing regulations to specifically allow for truncation on those copies, consistent with the rules regarding truncation in Treas. Reg. section 301.6109-4.

# 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, 467, 468, 482, 483, 1288, 7520.)

### Rev. Rul. 2017-20

This revenue ruling provides various prescribed rates for federal income tax

purposes for October 2017 (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). 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 appropriate percentages for de-

termining 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%. Finally, 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.

REV. RUL. 2017-20 TABLE 1  
Applicable Federal Rates (AFR) for October 2017  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	1.27%	1.27%	1.27%	1.27%
110% AFR	1.40%	1.40%	1.40%	1.40%
120% AFR	1.53%	1.52%	1.52%	1.52%
130% AFR	1.66%	1.65%	1.65%	1.64%
<i>Mid-term</i>				
AFR	1.85%	1.84%	1.84%	1.83%
110% AFR	2.03%	2.02%	2.01%	2.01%
120% AFR	2.22%	2.21%	2.20%	2.20%
130% AFR	2.40%	2.39%	2.38%	2.38%
150% AFR	2.78%	2.76%	2.75%	2.74%
175% AFR	3.25%	3.22%	3.21%	3.20%
<i>Long-term</i>				
AFR	2.50%	2.48%	2.47%	2.47%
110% AFR	2.75%	2.73%	2.72%	2.71%
120% AFR	3.00%	2.98%	2.97%	2.96%
130% AFR	3.25%	3.22%	3.21%	3.20%

REV. RUL. 2017-20 TABLE 2  
Adjusted AFR for October 2017  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.94%	.94%	.94%	.94%
Mid-term adjusted AFR	1.37%	1.37%	1.37%	1.37%
Long-term adjusted AFR	1.85%	1.84%	1.84%	1.83%

REV. RUL. 2017-20 TABLE 3  
Rates Under Section 382 for October 2017

Adjusted federal long-term rate for the current month	1.85%
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REV. RUL. 2017-20 TABLE 3

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)

1.93%

REV. RUL. 2017-20 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for October 2017

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

7.50%

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

3.21%

REV. RUL. 2017-20 TABLE 5

Rate Under Section 7520 for October 2017

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

2.2%

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### Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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### Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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### Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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### 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 October 2017. See Rev. Rul. 2017-20, page 273.

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### 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 October 2017. See Rev. Rul. 2017-20, page 273.

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### Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

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### Section 7520.—Valuation Tables

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2017. See Rev. Rul. 2017-20, page 273.

# Part III. Administrative, Procedural, and Miscellaneous

## Revised Guidance Related to Obtaining and Reporting Taxpayer Identification Numbers and Dates of Birth by Financial Institutions

### Notice 2017-46

#### I. PURPOSE

This Notice provides procedures for certain foreign financial institutions (FFIs) required to report U.S. taxpayer identification numbers (U.S. TINs) for certain accounts under a Model 1 intergovernmental agreement (IGA). If such FFIs comply with the procedures described in this Notice, then the Internal Revenue Service (IRS) will not determine that there is significant non-compliance with the obligations under a Model 1 IGA solely as a result of a failure to report U.S. TINs associated with the FFI's U.S. reportable accounts maintained as of the determination date specified in the applicable Model 1 IGA.

This Notice also announces that the Department of the Treasury (Treasury Department) and the IRS intend to amend certain provisions of the temporary regulations under chapter 3 of the Internal Revenue Code (Code). The amendments would provide limitations on, and a phase-in of, the requirement for certain withholding agents to obtain and report the taxpayer identification number issued by an account holder's jurisdiction of tax residence (Foreign TIN) and, for an account holder that is an individual, the account holder's date of birth. The changes described in this Notice are intended to facilitate an orderly implementation of the obligation to obtain and report taxpayer identification numbers.

#### II. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147, 124 Stat. 71 (2010) (HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. Chapter 4 (commonly known as the Foreign Ac-

count Tax Compliance Act, or FATCA) addresses non-compliance by U.S. taxpayers holding foreign financial accounts or assets. FATCA requires certain FFIs to report to the IRS information about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold certain ownership interests. In order to facilitate the exchange of information on financial accounts held by U.S. taxpayers, the Treasury Department collaborated with foreign governments to develop two alternative model IGAs (Model 1 IGA and Model 2 IGA) that are intended to provide an effective and efficient means for complying with FATCA while reducing the burden FATCA compliance imposes on financial institutions. The Model 1 IGA provides that a reporting Model 1 FFI will report certain information on U.S. reportable accounts maintained by the FFI to the partner jurisdiction tax authority, which will automatically exchange such information with the U.S. Competent Authority.

On January 17, 2013, the Treasury Department and the IRS published final regulations under chapter 4 (T.D. 9610, 78 F.R. 5873) (2013 final chapter 4 regulations). On March 6, 2014, the Treasury Department and the IRS published temporary regulations under chapter 4 (T.D. 9657, 79 F.R. 12812) (2014 temporary chapter 4 regulations). On March 6, 2014, the Treasury Department and the IRS also published temporary regulations under chapters 3 and 61 and section 3406 (T.D. 9658, 79 F.R. 12726) (temporary coordination regulations) to coordinate the regulations under those provisions with the 2013 final chapter 4 regulations and the 2014 temporary chapter 4 regulations. On January 6, 2017, the Treasury Department and the IRS published final regulations under chapter 3 (T.D. 9808, 82 F.R. 2046) (final chapter 3 regulations) and chapter 4 (T.D. 9809, 82 F.R. 2124) (final chapter 4 regulations), which generally incorporated the 2014 temporary chapter 4 regulations and the temporary coordination regulations. At the same time, the Treasury Department and the IRS published temporary regulations under chapter 3 (temporary chapter 3 regulations) and chapter 4 to supplement certain provisions

of the final chapter 3 regulations and the final chapter 4 regulations.

### III. REQUIREMENT FOR REPORTING MODEL 1 FFIS TO REPORT U.S. TINs

#### A. Background

Each Model 1 IGA provides that a reporting Model 1 FFI shall be treated as complying with, and not subject to withholding under, section 1471 of the Code if the partner jurisdiction complies with its obligations under the IGA with respect to such financial institution and such financial institution complies with its reporting and registration obligations in accordance with the IGA. Each Model 1 IGA also provides that the United States shall not require a reporting Model 1 FFI to withhold tax under section 1471 or 1472 of the Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the Code) or to close such account if the U.S. Competent Authority receives certain information specified in the Model 1 IGA with respect to such account.

The information required to be reported by a reporting Model 1 FFI includes the U.S. TIN of each specified U.S. person that is an account holder and, in the case of a non-U.S. entity with one or more specified U.S. persons who are controlling persons, the U.S. TIN of each controlling person (required U.S. TINs). Notwithstanding this reporting requirement, before 2017, a reporting Model 1 FFI was not required to report a required U.S. TIN for an account maintained as of the determination date specified in the applicable Model 1 IGA (preexisting account) that is a U.S. reportable account if the U.S. TIN was not in the reporting Model 1 FFI's records. Similarly, a reporting Model 1 FFI was required to report the date of birth only if the date of birth was in the reporting Model 1 FFI's records. Partner jurisdictions have committed to establish rules for 2017 and subsequent years requiring reporting Model 1 FFIs to obtain and report the required U.S. TINs for such accounts.

Each Model 1 IGA requires that the partner jurisdiction obtain and exchange the information specified in the Model 1

IGA (including each required U.S. TIN) with respect to each U.S. reportable account. The suspension of withholding under sections 1471 and 1472 of the Code pursuant to each Model 1 IGA is conditioned on adequate reporting and exchange of information. If a reporting Model 1 FFI fails to report required U.S. TINs for U.S. reportable accounts, the U.S. Competent Authority may notify the partner jurisdiction competent authority that there is significant non-compliance with respect to the reporting Model 1 FFI, in accordance with the Model 1 IGA. If the reporting Model 1 FFI remains non-compliant for 18 months after such notification, under the relevant Model 1 IGA, the United States may treat the reporting Model 1 FFI as a nonparticipating financial institution that is subject to withholding under section 1471 of the Code.

#### B. U.S. TIN Reporting by Reporting Model 1 FFIs

The Treasury Department and the IRS understand that some reporting Model 1 FFIs need additional time to implement practices and procedures to obtain and report required U.S. TINs for preexisting accounts that are U.S. reportable accounts. Accordingly, with respect to reporting on preexisting accounts that are U.S. reportable accounts, for calendar years 2017, 2018, and 2019, the U.S. Competent Authority will not determine that there is significant non-compliance with the obligations under an applicable Model 1 IGA with respect to a reporting Model 1 FFI solely because of a failure to obtain and report each required U.S. TIN, provided that the reporting Model 1 FFI: (1) obtains and reports the date of birth of each account holder and controlling person whose U.S. TIN is not reported; (2) requests annually from each account holder any missing required U.S. TIN; and (3) before reporting information that relates to calendar year 2017 to the partner jurisdiction, searches electronically searchable data maintained by the reporting Model 1 FFI for any missing required U.S. TINs. The IRS expects to provide further instructions regarding appropriate reporting for the TIN data element for preexisting accounts that are U.S. reportable accounts with missing required U.S. TINs.

Reporting Model 1 FFIs should implement practices and procedures promptly to ensure that financial accounts are documented in accordance with the applicable Model 1 IGA and that U.S. reportable accounts are adequately and timely reported in future years. Nothing in this Notice affects a reporting Model 1 FFI's obligations under chapter 3 or 61 with respect to a reportable amount or reportable payment.

### IV. REQUIREMENT TO OBTAIN AND REPORT FOREIGN TINs AND DATES OF BIRTH

#### A. Background

Before the temporary chapter 3 regulations were published, the instructions for Forms W-8BEN and W-8BEN-E and the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY outlined circumstances under which the person providing the form was required to provide a Foreign TIN and, for an individual, a date of birth. The instructions for Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," for calendar years 2014, 2015, and 2016 described circumstances under which certain withholding agents were required to report these additional items of information on Form 1042-S.

The temporary chapter 3 regulations provide additional changes to the temporary coordination regulations that modified the due diligence and reporting obligations of withholding agents. In particular, the temporary chapter 3 regulations generally incorporate the requirement from the aforementioned form instructions for certain withholding agents to obtain and report the Foreign TINs of their account holders and, in the case of an individual account holder, a date of birth. These revisions were made to ensure, in part, that the IRS would have adequate information about foreign account holders to facilitate the exchange of foreign account holder information pursuant to an agreement authorizing or requiring the exchange of such information. Section 1.1441-1T(e)(2)(ii)(B) provides that, beginning January 1, 2017, a beneficial owner withholding certificate provided to document an account maintained at a

U.S. branch or office of a withholding agent that is a financial institution is required to contain the account holder's Foreign TIN and, in the case of an individual account holder, the account holder's date of birth in order for the withholding agent to treat the withholding certificate as valid. For withholding certificates associated with payments made on or after January 1, 2018, an account holder that does not provide a Foreign TIN must provide a reasonable explanation for its absence in order for the withholding certificate not to be considered invalid under § 1.1441-1T(e)(2)(ii)(B). The temporary chapter 3 regulations also provide that if the withholding certificate does not contain the account holder's date of birth and the withholding agent has the date of birth in its files, the withholding certificate will not be considered invalid.

For calendar year 2017, the instructions for Form 1042-S provide that a withholding agent that is a U.S. office or branch of a financial institution is required to report on Form 1042-S a recipient's Foreign TIN when the recipient has furnished documentation that provides a Foreign TIN. The instructions provide that, beginning for the 2017 calendar year, the withholding agent is also required to report on Form 1042-S an individual recipient's date of birth when the recipient has furnished documentation that provides a date of birth or the recipient's date of birth is identified in any of the withholding agent's files.

#### B. Revised Scope and Phased-In Timeline of Requirements for Certain Withholding Agents to Obtain and Report the Foreign TIN and Date of Birth of Account Holders

After the publication of the temporary chapter 3 regulations, the Treasury Department and the IRS received comments from withholding agents regarding the difficulty in obtaining and reporting Foreign TINs and dates of birth from account holders in the time provided. In response to these comments, the Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to narrow the circumstances in which a Foreign TIN and date of birth are required, as described in sections IV.B.1 and IV.B.2 of this

Notice; to provide exceptions from the Foreign TIN requirement for certain account holders, as described in section IV.B.3 of this Notice; and to provide a phase-in of the rules for obtaining a Foreign TIN, as described in section IV.B.4 of this Notice. In addition, the Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide relief from obtaining a date of birth with respect to certain withholding certificates signed before January 1, 2018, as described in section IV.B.5 of this Notice.

For purposes of this section IV, the term “withholding certificate” means Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and, with respect to a qualified intermediary acting as a qualified derivatives dealer (QDD) claiming treaty benefits for dividends, Form W-8IMY. The term “withholding agent” when used in this section IV refers to a withholding agent that is a U.S. branch or office of a financial institution (as defined in section IV.B.1 of this Notice).

1. Accounts and Financial Institutions to Which § 1.1441-1T(e)(2)(ii)(B) Applies

The Treasury Department and the IRS intend to amend § 1.1441-1T(e)(2)(ii)(B) to clarify that the term “account holder” has the meaning described in § 1.1471-5(a)(3) and that the term “account” means a financial account, as defined in § 1.1471-5(b) (substituting “U.S. office or branch of a financial institution” for “FFI”). In addition, the Treasury Department and the IRS intend to amend § 1.1441-1T(e)(2)(ii)(B) to clarify that the term “financial institution” means an entity that is a depository institution, custodial institution, investment entity, or a specified insurance company, each as defined in § 1.1471-5(e).

2. Payments to Which § 1.1441-1T(e)(2)(ii)(B) Applies

Section 1.1441-1T(e)(2)(ii)(B) provides that a Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) and a date of birth (for an individual) are required for withholding certificates associated with “payments,” which includes any payments under sections 1441 through 1446, chapter 4, and chapter 61 (due to references in those sections and chapters to beneficial owner withholding certificates used to establish foreign status). The

Treasury Department and the IRS believe that it is not necessary for a withholding agent to obtain a Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) or (for an individual) a date of birth on a withholding certificate that the withholding agent obtains solely to avoid Form 1099 reporting and backup withholding or in other cases where a payment associated with a withholding certificate is not otherwise subject to reporting on Form 1042-S. Therefore, the Treasury Department and the IRS intend to amend § 1.1441-1T(e)(2)(ii)(B) to limit its scope for this purpose such that a withholding certificate is required to be treated as invalid under § 1.1441-1T(e)(2)(ii)(B) only for payments of U.S. source income reportable on Form 1042-S (before the application of § 1.1441-1T(e)(2)(ii)(B)). Due to this limitation, a withholding agent will not, for example, be required to withhold under section 3406 on gross proceeds paid to an individual account holder as a result of the application of the section 1441 presumption rules when the account holder provides a withholding certificate that is valid but for the absence of a Foreign TIN and the account holder’s date of birth.

3. Exceptions from Foreign TIN Requirement for Certain Accounts

i. Accounts Held by Residents in Jurisdictions With Which the United States Does Not Have an Agreement Relating to the Exchange of Tax Information in Force

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that a withholding agent is not required to obtain a Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) for an account held by a resident in a jurisdiction that does not have in effect with the United States an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of section 6103(k)(4) of the Code pursuant to which the United States agrees to provide, as well as receive, tax information. This limitation is consistent with the limitation on the information reporting requirement in § 1.6049-8(a) on U.S. source deposit interest paid to nonresident alien individ-

uals. A list of jurisdictions that a withholding agent is required to reference for purposes of the limitation on reporting under §§ 1.6049-8(a) and 1.1441-1T(e)(2)(ii)(B) (as revised in accordance with this Notice) is published in section 3 of Revenue Procedure 2014-64, 2014-53 I.R.B. 1022, as supplemented by Revenue Procedure 2016-56, 2016-52 I.R.B. 920, and which may be further updated in future published guidance. If the Treasury Department and the IRS further supplement the list of jurisdictions in section 3 of Revenue Procedure 2014-64, subject to the limitations described in this Notice, a withholding agent must obtain the Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) of each account holder resident in any such jurisdiction before the time for filing Form 1042-S (with any applicable extension) for the calendar year following the calendar year in which the jurisdiction is added to the list.

ii. Accounts Held by Residents in Jurisdictions That Do Not Issue Foreign TINs

The Treasury Department and the IRS intend to amend § 1.1441-1T(e)(2)(ii)(B) to provide that a withholding agent is not required to obtain a Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) for an account held by a resident of a jurisdiction that has been identified by the IRS on a list of jurisdictions that do not issue Foreign TINs to their residents. A list of such jurisdictions (when made available) may be viewed at [www.irs.gov/FATCA](http://www.irs.gov/FATCA). As of the date of this Notice, the following jurisdictions have been identified as ones that do not issue Foreign TINs to residents and that will be included on the list:

Bermuda  
British Virgin Islands  
Cayman Islands

Taxpayers may rely on the jurisdictions identified above for purposes of this Notice. The IRS intends to update this list to add jurisdictions that do not issue Foreign TINs (after consultation with the competent authority of any such additional jurisdiction), including in response to taxpayer comments that identify additional jurisdictions that do not issue Foreign TINs. The list maintained by the IRS

of jurisdictions that do not issue Foreign TINs to residents will also be updated if a jurisdiction included on the list begins to issue Foreign TINs to its residents.

- iii. Accounts Held by a Government, International Organization, Foreign Central Bank of Issue, or Resident of a U.S. Territory

The Treasury Department and the IRS intend to amend § 1.1441-1T(e)(2)(ii)(B) to provide that a withholding agent is not required to obtain an account holder's Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) if the withholding agent has obtained an otherwise valid withholding certificate on which it can rely under the section 1441 regulations to treat the account holder as a government, an international organization, a foreign central bank of issue, or a resident of a U.S. territory.

- 4. Phase-In of Requirement to Obtain a Foreign TIN Under § 1.1441-1T(e)(2)(ii)(B)

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide additional time for a withholding agent to comply with the requirement to obtain a Foreign TIN. As described in more detail below, this section IV.B.4 describes how the requirement to obtain a Foreign TIN under the temporary chapter 3 regulations will be phased in over a period ending on December 31, 2019.

Section IV.B.4.i of this Notice provides rules that will apply to withholding certificates signed on or after January 1, 2018, including rules for determining whether a withholding agent may rely on a Foreign TIN provided on a withholding certificate. Sections IV.B.4.ii, iii, and iv of this Notice generally provide rules for determining the validity of a withholding certificate without a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) signed before January 1, 2018, during the phase-in period. Section IV.B.4.v of this Notice provides an alternative procedure for obtaining a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) for a withholding certificate signed before January 1, 2018. If a withholding agent obtains the account holder's Foreign

TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) in accordance with the alternative procedure (rather than obtaining a new withholding certificate), an otherwise valid withholding certificate will remain valid after the end of the phase-in period until the earlier of when its validity period ends or it otherwise becomes invalid.

- i. Withholding Certificates Signed On or After January 1, 2018

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that a withholding certificate signed on or after January 1, 2018, by an account holder (other than an account holder excepted under section IV.B.3 of this Notice) to document an account maintained at a U.S. branch or office of a withholding agent must contain a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN).

The Treasury Department and the IRS also intend to amend the temporary chapter 3 regulations to provide that a withholding agent may rely on the account holder's Foreign TIN unless the withholding agent has actual knowledge or reason to know (as described in § 1.1441-7(b)(2)) that the Foreign TIN is incorrect. Therefore, a withholding agent will not be required to validate the format or other specifications of the Foreign TIN against the applicable jurisdiction's TIN system. For purposes of § 1.1441-1(e)(4)(ii)(D) (prescribing the requirements for a change in circumstances), a withholding agent's reason to know that a Foreign TIN is incorrect will include a notification from the account holder of a new residence address outside the jurisdiction provided on the withholding certificate.

The temporary chapter 3 regulations provide that if an account holder does not have a Foreign TIN, the account holder is required to provide a reasonable explanation for its absence (for example, that the jurisdiction of residence does not issue TINs). This requirement will be clarified in the regulations to specify that the reasonable explanation must address why the account holder was not issued a Foreign TIN to the extent provided in the instructions for, as applicable, Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and, for a QDD claiming treaty benefits for

dividends, Form W-8IMY. Those instructions have each been amended (with revision dates of June or July 2017) to provide that a reasonable explanation for why an account holder was not issued a Foreign TIN is a statement that the account holder is not legally required to obtain a Foreign TIN. If an account holder provides an explanation other than the one described in those instructions, the withholding agent must determine whether the explanation is reasonable. A withholding agent will be permitted to rely on a reasonable explanation unless it has actual knowledge that the account holder has a Foreign TIN.

In addition, if a withholding agent maintains an account on December 31, 2017, that is documented with a valid withholding certificate as of that date, the withholding agent's reason to know that a Foreign TIN is incorrect, or actual knowledge that an account holder has a Foreign TIN despite providing an explanation, is limited to electronically searchable information (as defined in § 1.1471-1(b)(38)) that is in the withholding agent's files.

- ii. Withholding Certificates for Payments Made Before January 1, 2018

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate will not be treated as invalid for payments made to the account holder before January 1, 2018, solely because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN).

- iii. Withholding Certificates Signed Before January 1, 2018, That Have a Three-Year Validity Period

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate signed before January 1, 2018, that has a three-year validity period under §§ 1.1441-1(e)(4)(ii)(A) and 1.1471-3(c)(6)(ii)(A) will not be treated as invalid for payments made on or after January 1, 2018, solely because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN), until the time provided in this section IV.B.4.iii. Such a

withholding certificate will be treated as invalid for purposes of this section IV.B.4.iii for payments made after the earlier of (1) December 31, 2019; (2) the expiration date of the validity period of the withholding certificate; or (3) if applicable, the date when a change in circumstances requiring a revised withholding certificate occurs. However, for payments made after December 31, 2019, a withholding agent may rely on the alternative procedure described in section IV.B.4.v of this Notice to obtain a Foreign TIN (or reasonable explanation).

iv. Withholding Certificates Signed Before January 1, 2018, That Have an Indefinite Validity Period

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate signed before January 1, 2018, that is indefinitely valid under §§ 1.1441-1(e)(4)(ii)(B) and 1.1471-3(c)(6)(ii)(B) will not be treated as invalid for payments made on or after January 1, 2018, solely because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN), until the time provided in this section IV.B.4.iv. Such a withholding certificate will be treated as invalid for purposes of this section IV.B.4.iv for payments made after the earlier of (1) December 31, 2019, or (2) if applicable, the date when a change in circumstances requiring a revised withholding certificate occurs. However, for payments made after December 31, 2019, a withholding agent may rely on the alternative procedure described in section IV.B.4.v of this Notice to obtain a Foreign TIN (or reasonable explanation).

v. Alternative Procedure for Obtaining and Associating Foreign TINs with Withholding Certificates Signed Before January 1, 2018

An otherwise valid withholding certificate that does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) signed before January 1, 2018, will continue to remain valid for payments made after December 31, 2019, if the withholding agent (1) obtains from the account holder its Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) on a written statement (includ-

ing a written statement transmitted by email) that the withholding agent associates with the account holder's withholding certificate; or (2) otherwise has the account holder's Foreign TIN in the withholding agent's files and the withholding agent associates the account holder's Foreign TIN with the account holder's withholding certificate. Notwithstanding the preceding sentence, an otherwise valid withholding certificate signed before January 1, 2018, that does not include the account holder's Foreign TIN (or reasonable explanation) ceases to be valid for payments made after the earlier of the expiration date of the validity period of such withholding certificate (in the case of a withholding certificate with a three-year validity period) or the date when a withholding agent determines that a revised withholding certificate is otherwise required (if applicable), and the withholding agent must obtain on a new withholding certificate the account holder's Foreign TIN (or reasonable explanation). A withholding agent's reliance on a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) obtained pursuant to the alternative procedure is subject to the standards of knowledge described in section IV.B.4.i of this Notice for a withholding certificate.

5. Requirement to Obtain Date of Birth

The temporary chapter 3 regulations provide that an otherwise valid withholding certificate that does not contain the account holder's date of birth will not be considered invalid if the withholding agent has the account holder's date of birth in its files. The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide an exception to this requirement such that an otherwise valid withholding certificate signed before January 1, 2018, will not be treated as invalid for payments made before January 1, 2019, to an account holder that is an individual, solely because the withholding certificate does not include the account holder's date of birth and the date of birth is not in the withholding agent's files. This allowance is provided to give withholding agents additional time to comply with the date of birth requirement for withholding certificates signed before January 1, 2018. In addition, the Treasury Department and the IRS intend

to amend the temporary chapter 3 regulations to clarify that a withholding agent will be considered to have the account holder's date of birth in its files if it obtains the date of birth on a written statement (including a written statement transmitted by email) from the account holder.

C. Form 1042-S Reporting

The IRS intends to revise the instructions for Form 1042-S to provide that, beginning with reporting for calendar year 2018, a withholding agent must report on each Form 1042-S required to be filed with respect to a financial account maintained at a U.S. branch or office of the withholding agent the account holder's Foreign TIN in any of the following cases: (1) the account holder has furnished to the withholding agent a withholding certificate that includes its Foreign TIN; (2) the withholding agent has obtained the Foreign TIN under the alternative procedure described in section IV.B.4.v of this Notice; or (3) the withholding agent has identified the account holder's Foreign TIN in any of the withholding agent's electronically searchable information (as defined in § 1.1471-1(b)(38)).

The instructions for Form 1042-S for calendar year 2017 will be revised with respect to withholding certificates furnished on or after January 1, 2017, to require the reporting of an individual account holder's date of birth if the date of birth is on the withholding certificate or is available in the withholding agent's electronically searchable information (as defined in § 1.1471-1(b)(38)). Furthermore, beginning with reporting for calendar year 2018, the instructions for Form 1042-S will require the reporting of an individual account holder's date of birth if the date of birth is on the withholding certificate or is identified in any of the withholding agent's files.

Penalties for failure to comply with reporting obligations may apply to a failure to report an account holder's Foreign TIN or an individual account holder's date of birth on Form 1042-S to the extent the instructions for Form 1042-S require such information to be reported.

V. TAXPAYER RELIANCE

Before the issuance of the amendments to the temporary chapter 3 regulations described in section IV of this Notice, taxpayers may rely on the provisions of this Notice regarding the content of the amendments.

VI. DRAFTING INFORMATION

The principal author of this Notice is Kamela Nelan of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Ms. Nelan at (202) 317-6942 (not a toll-free number).

**Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates**

**Notice 2017-50**

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and

the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

**YIELD CURVE AND SEGMENT RATES**

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code specifies the minimum funding requirements that apply to single-employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan’s target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates (“segment rates”), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.<sup>1</sup> However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in

Notice 2007-81, the monthly corporate bond yield curve derived from August 2017 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2017 are, respectively, 1.93, 3.57, and 4.36.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2016 and 2017 were published in Notice 2015-61, 2015-39 I.R.B. 408 and Notice 2016-54, 2016-40 I.R.B. 429, respectively. For plan years beginning in 2018, based on the segment rates applicable for October 1992 to September 2017, the 25-year averages for the period ending September 30, 2017, of the first, second, and third segment rates are 4.35, 6.13, and 6.99 percent, respectively.

**24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES**

The three 24-month average corporate bond segment rates applicable for September 2017 without adjustment for the 25-year average segment rate limits are as follows:

<i>Applicable Month</i>	<i>First Segment</i>	<i>Second Segment</i>	<i>Third Segment</i>
September 2017	1.75	3.76	4.66

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for September 2017 adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month	Adjusted 24-Month Average Segment Rates			
		First Segment	Second Segment	Third Segment	
2016	September	2017	4.43	5.91	6.65
2017	September	2017	4.16	5.72	6.48
2018	September	2017	3.92	5.52	6.29

<sup>1</sup>Pursuant to § 433(h)(3)(A), the 3<sup>rd</sup> segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

**30-YEAR TREASURY SECURITIES INTEREST RATES**

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan’s current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate

used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for August 2017 is 2.80 percent. The Service deter-

mined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in May 2047 determined each day through August 9, 2017 and the yield on the 30-year Treasury bond maturing in August 2047 determined each day for the balance of the month. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

<i>For Plan Years Beginning in</i>		<i>30-Year Treasury Weighted Average</i>		<i>Permissible Range</i>
<i>Month</i>	<i>Year</i>			<i>90% to 105%</i>
September	2017	2.88	2.59	3.03

**MINIMUM PRESENT VALUE SEGMENT RATES**

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates

computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value seg-

ment rates determined for August 2017 are as follows:

<i>First Segment</i>	<i>Second Segment</i>	<i>Third Segment</i>
1.93	3.57	4.36

**DRAFTING INFORMATION**

The principal author of this notice is Tom Morgan of the Office of the Associ-

ate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further

information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 202-317-8698 (not toll-free numbers).

**Table I**  
 Monthly Yield Curve for August 2017  
 Derived from August 2017 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	1.44	20.5	4.11	40.5	4.39	60.5	4.49	80.5	4.53
1.0	1.56	21.0	4.13	41.0	4.39	61.0	4.49	81.0	4.54
1.5	1.67	21.5	4.14	41.5	4.40	61.5	4.49	81.5	4.54
2.0	1.78	22.0	4.15	42.0	4.40	62.0	4.49	82.0	4.54
2.5	1.88	22.5	4.16	42.5	4.40	62.5	4.49	82.5	4.54
3.0	1.98	23.0	4.17	43.0	4.41	63.0	4.49	83.0	4.54
3.5	2.09	23.5	4.18	43.5	4.41	63.5	4.50	83.5	4.54
4.0	2.19	24.0	4.19	44.0	4.41	64.0	4.50	84.0	4.54
4.5	2.29	24.5	4.20	44.5	4.42	64.5	4.50	84.5	4.54
5.0	2.40	25.0	4.21	45.0	4.42	65.0	4.50	85.0	4.54
5.5	2.51	25.5	4.22	45.5	4.42	65.5	4.50	85.5	4.54
6.0	2.62	26.0	4.23	46.0	4.42	66.0	4.50	86.0	4.54
6.5	2.73	26.5	4.24	46.5	4.43	66.5	4.50	86.5	4.54
7.0	2.83	27.0	4.24	47.0	4.43	67.0	4.50	87.0	4.55
7.5	2.94	27.5	4.25	47.5	4.43	67.5	4.51	87.5	4.55
8.0	3.04	28.0	4.26	48.0	4.44	68.0	4.51	88.0	4.55
8.5	3.13	28.5	4.27	48.5	4.44	68.5	4.51	88.5	4.55
9.0	3.22	29.0	4.27	49.0	4.44	69.0	4.51	89.0	4.55
9.5	3.31	29.5	4.28	49.5	4.44	69.5	4.51	89.5	4.55
10.0	3.39	30.0	4.29	50.0	4.44	70.0	4.51	90.0	4.55
10.5	3.46	30.5	4.29	50.5	4.45	70.5	4.51	90.5	4.55
11.0	3.53	31.0	4.30	51.0	4.45	71.0	4.51	91.0	4.55
11.5	3.59	31.5	4.31	51.5	4.45	71.5	4.52	91.5	4.55
12.0	3.65	32.0	4.31	52.0	4.45	72.0	4.52	92.0	4.55
12.5	3.70	32.5	4.32	52.5	4.46	72.5	4.52	92.5	4.55
13.0	3.74	33.0	4.32	53.0	4.46	73.0	4.52	93.0	4.55
13.5	3.79	33.5	4.33	53.5	4.46	73.5	4.52	93.5	4.55
14.0	3.83	34.0	4.33	54.0	4.46	74.0	4.52	94.0	4.56
14.5	3.86	34.5	4.34	54.5	4.46	74.5	4.52	94.5	4.56
15.0	3.89	35.0	4.34	55.0	4.47	75.0	4.52	95.0	4.56
15.5	3.92	35.5	4.35	55.5	4.47	75.5	4.52	95.5	4.56
16.0	3.95	36.0	4.35	56.0	4.47	76.0	4.53	96.0	4.56
16.5	3.97	36.5	4.36	56.5	4.47	76.5	4.53	96.5	4.56
17.0	4.00	37.0	4.36	57.0	4.47	77.0	4.53	97.0	4.56
17.5	4.02	37.5	4.37	57.5	4.48	77.5	4.53	97.5	4.56
18.0	4.04	38.0	4.37	58.0	4.48	78.0	4.53	98.0	4.56
18.5	4.05	38.5	4.37	58.5	4.48	78.5	4.53	98.5	4.56
19.0	4.07	39.0	4.38	59.0	4.48	79.0	4.53	99.0	4.56
19.5	4.09	39.5	4.38	59.5	4.48	79.5	4.53	99.5	4.56
20.0	4.10	40.0	4.39	60.0	4.48	80.0	4.53	100.0	4.56

## Rev. Proc. 2017-52

### SECTION 1. PURPOSE

This revenue procedure (1) introduces a pilot program expanding the scope of letter rulings available from the Internal Revenue Service (Service) to include for a period of time (*see* section 6 of this revenue procedure) rulings on the tax consequences of a distribution of stock, or stock and securities, of a controlled corporation under § 355 of the Internal Revenue Code (Code), (2) provides procedures for taxpayers requesting these rulings, and (3) clarifies procedures for taxpayers requesting rulings on significant issues relating to these transactions.

### SECTION 2. BACKGROUND

#### .01 Law.

Section 355(a)(1) provides that, if certain requirements are met, a corporation (Distributing) may distribute stock, or stock and securities, of a controlled corporation (Controlled) to its shareholders or to its shareholders and security holders (Distributees), without recognition of gain or loss to, or inclusion of any amount in the income of, the Distributees.

Section 355(c)(1) provides that no gain or loss is recognized to Distributing upon a distribution of Controlled stock, or stock and securities, to which § 355 (or so much of § 356 as relates to § 355) applies and which is not in pursuance of a plan of reorganization.

Section 368(a)(1)(D) provides, in part, that a reorganization includes a transfer by Distributing of part of its assets to Controlled if, immediately after the transfer, Distributing or one or more of the shareholders of Distributing (including persons who were shareholders immediately before the transfer) are in control of Controlled; but only if, in pursuance of the plan, stock or securities of Controlled are distributed in a transaction which qualifies under §§ 355 or 356.

#### .02 Ruling Policy Prior to Pilot Program.

In Rev. Proc. 2013-32, 2013-28 I.R.B. 55, the Service announced that it would no

longer rule on the tax consequences of various corporate transactions, including distributions intended to qualify under § 355, but that, instead, it would rule only on significant issues raised in these transactions (Significant Issue Ruling). This policy was set forth in section 3.01(51) of Rev. Proc. 2017-3, 2017-1 I.R.B. 130, 134, prior to its modification by section 5.06 of this revenue procedure. Prior to its modification by section 5.05 of this revenue procedure, Appendix G of Rev. Proc. 2017-1, 2017-1 I.R.B. 1, 96, provided that the information and representations described in Rev. Proc. 96-30, 1996-1 C.B. 696, as modified and amplified by Rev. Proc. 2003-48, 2003-2 C.B. 86, should be included in a ruling request addressing significant issues presented in a transaction described in § 355, but only to the extent related to the significant issues involved in the request. Rev. Proc. 96-30 describes information and representations that a taxpayer was required to submit in a request for a ruling under § 355 prior to the Service only issuing Significant Issue Rulings in accordance with the ruling policy announced in Rev. Proc. 2013-32.

The Service has reviewed its ruling program and determined that it should be expanded in a pilot program under the terms and conditions prescribed in this revenue procedure.

#### .03 Ruling Policy Under Pilot Program.

(1) *Definitions.* In this revenue procedure—

(a) *Covered Transaction* means (i) a transaction intended to qualify under §§ 368(a)(1)(D) and 355 or (ii) a distribution that is intended to qualify under §§ 355(a) and 355(c).

(b) *Significant Issue Ruling* is defined in section 2.02 of this revenue procedure.

(c) *Transactional Ruling* means a letter ruling that addresses the general federal income tax consequences of a Covered Transaction.

(2) *Ruling policy.* Under this revenue procedure, a taxpayer may request a Transactional Ruling for a Covered Transaction. If a plan includes multiple Covered Transactions, and the taxpayer requests a Transactional Ruling with respect to one or more of the Covered Transactions, the

taxpayer may request a Transactional Ruling, a Significant Issue Ruling, or no ruling with respect to each of the other Covered Transactions effected pursuant to the plan.

This revenue procedure does not alter the Service's policy that limits rulings on the device prohibition under § 355(a)(1)(B) and § 1.355-2(d), the business purpose requirement under § 1.355-2(b), and whether a distribution is pursuant to a plan under § 355(e). *See* section 3.01(54) of Rev. Proc. 2017-3, as modified by section 5.07 of this revenue procedure, and sections 3.03(6), 3.03(7), and 3.03(16) of this revenue procedure. More generally, *see* Rev. Proc. 2017-3 for other no-rule areas under § 355.

A Transactional Ruling may include the tax consequences of a Covered Transaction under §§ 312, 355, 357, 358, 361, 362(b), 362(e), 368(a)(1)(D), 368(b), 1032(a), 1223(1) and 1223(2), and relevant consolidated return regulations. The Service may decline to rule on tax consequences under any provision of the Code or the regulations or may include rulings under provisions other than those listed above.

(3) *International rulings.* This revenue procedure does not have an effect on Rev. Proc. 2017-7, 2017-1 I.R.B. 269, which provides the current list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (International) relating to matters on which the Internal Revenue Service will not issue letter rulings or determination letters. Therefore, routine or comfort rulings will not ordinarily be issued under the international provisions of the Code such as § 367. *See also* section 4 of Rev. Proc. 2017-7, 2017-1 I.R.B. 269.

### SECTION 3. PROCEDURES FOR TRANSACTIONAL RULING REQUESTS

#### .01 In general.

A taxpayer requesting a Transactional Ruling must follow the procedures in Rev. Proc. 2017-1 for requesting a letter ruling. In addition, the taxpayer must submit the documentation described in section 3.02 of this revenue procedure, the factual information and legal analysis described section 3.03 of this revenue procedure,

and a statement regarding representations described in section 3.04 of this revenue procedure. Section 3.05 of this revenue procedure addresses supplemental ruling requests.

If the ruling request lacks essential information or sufficient legal analysis, the branch representative will request such information or legal analysis. If the taxpayer does not provide the requested information or legal analysis within 21 calendar days of the date of the Service's request, the ruling request will be closed unless an extension of time is granted before the expiration of the 21-day period. *See* section 8.05 of Rev. Proc. 2017-1.

If there is a need for a letter ruling to be issued by a particular date, the taxpayer may request that the Service issue a letter ruling by that date. In such a case, the request for the letter ruling must include the request for issuance by a particular date and a description of the reason the letter ruling is needed by that date and the consequences of not receiving the letter ruling by that date. The Service will attempt to accommodate reasonable requests made in a timely manner. However, the Service cannot guarantee that a letter ruling will be issued by a requested date.

Taxpayers are encouraged to consider the scope of ruling requests, especially requests for Transactional Rulings. For example, if a plan includes both stock distributions within a consolidated group that raise no significant legal issues and a distribution of stock outside the group, a request for Transactional Rulings on the intragroup stock distributions may delay issuance of the letter ruling.

#### *.02 Documentation for Transactional Rulings.*

Notwithstanding the general rule in section 7.01(2)(a) of Rev. Proc. 2017-1, as modified by section 5.04 of this revenue procedure, a taxpayer requesting a Transactional Ruling should submit only the documents that may be relevant in determining whether to issue the requested rulings. If only a portion of a document is relevant to resolving an issue, the taxpayer must indicate the relevant portion or portions of the document, generally by highlighting or underscoring. In either instance, the taxpayer must summa-

rize the relevant portion or portions and explain their relevance in the body of its request.

#### *.03 Description of Covered Transactions, Related Transactions, and Legal Issues.*

(1) *In general.* A request for a Transactional Ruling with respect to a Covered Transaction must include a description of each Covered Transaction and each other transaction that is part of the same plan or series of related transactions. The request must also include a description and analysis of all legal issues that may affect the requested rulings (even if arising in a Covered Transaction for which a Significant Issue Ruling or no ruling is requested). The descriptions must include sufficient factual information and legal analysis to allow the Service to determine whether to issue the requested rulings. *See* sections 7.01(8) and (9) of Rev. Proc. 2017-1. The information and legal analysis described in this section 3.03 must be included in the body of the request.

A request for a Transactional Ruling must be accompanied by a statement describing the federal income tax consequences of all other material transactions related to the request.

For purposes of section 11.05(1) of Rev. Proc. 2017-1 (conditions under which a letter ruling may be revoked), a determination whether there has been a misstatement or omission of controlling facts is made solely on the basis of the information in the body of the request and without regard to any documents or other attachments, including those provided pursuant to section 3.02 of this revenue procedure.

If the Service finds that information relevant to the requested rulings is not included in the body of the request (whether or not it is included in a document attached to the request), the Service will bring the matter to the attention of the taxpayer's representative, request a supplemental submission correcting the omission, and take any other appropriate action.

The information required pursuant to this section 3.03 must include, as applicable, the information and legal analysis described in paragraphs (2) through (20) of this section 3.03.

(2) *Control.* The taxpayer must describe how Distributing will have control of Controlled immediately before the distribution under § 355(a)(1)(A) and how Distributing will meet the requirement that it distribute: (a) all of the Controlled stock and securities that it holds immediately before the distribution, or (b) an amount of Controlled stock constituting control (within the meaning of § 368(c)) under § 355(a)(1)(D). If Distributing retains any Controlled stock or options after the distribution, the taxpayer must describe how Distributing meets the requirements of § 355(a)(1)(D)(ii).

(3) *Active conduct of a trade or business.* The taxpayer must provide a complete description of each business (Active Business) on which each of Distributing and Controlled relies to satisfy the requirements of § 355(b) and § 1.355-3(b) (Active Business Requirement). If Distributing or Controlled meets the Active Business Requirement by relying on § 355(b)(3), the taxpayer must so state and must describe the separate affiliated group and its relevant activities. If Distributing or Controlled relies on activities of a partnership to meet the Active Business Requirement, the taxpayer must so state and describe the facts and circumstances relating to the partnership. For each of Distributing and Controlled—

(a) The taxpayer must describe how each of the requirements of § 1.355-3(b) is met with respect to each Active Business. The information should establish that each Active Business engages in the collection of income and the payment of expenses.

(b) The taxpayer must submit a table showing the amounts of gross income earned and salaries and wages paid to employees during each of the past five years for each Active Business. The taxpayer should not submit financial statements to satisfy this requirement unless requested by the Service. *But see* paragraph (4) of this section 3.03.

(c) The taxpayer must demonstrate the performance of active and substantial managerial and operational functions for each Active Business during each of the past five years and immediately after the distribution. To make this demonstration, the taxpayer must provide information on the duties and actions of employees in

sufficient detail but should not provide more detail than necessary regarding the duties or actions of specific employees or groups of employees.

(d) If the Active Business or any material portion of the Active Business was acquired within the past five years, the taxpayer must describe the acquisition. Specifically, the taxpayer must describe whether: (1) the acquisition occurred in a transaction in which gain or loss was recognized in whole or in part; (2) any stock of Controlled was acquired in a taxable transaction; and (3) the acquisition constituted an expansion of an existing business (*see*, for example, § 1.355-3(b)(3)(ii)).

(4) *Balance sheets.* The taxpayer must provide the most recent available quarterly or annual (book) consolidated balance sheet. The taxpayer must also include the following schedules from its most recent Form 1120, U.S. Corporation Income Tax Return, or similar Form: L, M-1, M-2, or M-3, as applicable. In addition, the taxpayer must provide a pro forma balance sheet for each of the separate affiliated groups of which either Distributing or Controlled is the common parent (as defined in § 355(b)(3)(B)), as of immediately after the final distribution that is part of a plan or series of related transactions.

(5) *Section 355(a)(3)(B).* If Distributing acquired any stock in Controlled within the past five years, the taxpayer must describe the acquisition.

(6) *Device prohibition.* The taxpayer must describe the facts relevant to determine whether the distribution constitutes a device for the distribution of earnings and profits, within the meaning of § 355(a)(1)(B). The description must include a discussion of the applicability or nonapplicability of the device and nondevice factors set forth in § 1.355-2(d). A Transactional Ruling may contain a ruling on a significant legal issue pertaining to the device prohibition, but the general issue of whether the distribution constitutes a device will not be addressed. *See* section 3.01(54) of Rev. Proc. 2017-3, as modified by section 5.07 of this revenue procedure.

(7) *Business purpose.* The taxpayer must describe the facts relevant to determine whether the distribution satisfies the corporate business purpose requirement

under § 1.355-2(b). A Transactional Ruling may contain a ruling on a significant legal issue pertaining to the business purpose requirement, but the general issue of whether the distribution satisfies the business purpose requirement will not be addressed. *See* section 3.01(54) of Rev. Proc. 2017-3, as modified by section 5.07 of this revenue procedure.

(8) *Continuity of interest.* The taxpayer must provide a description of the facts relevant to determine whether the continuity-of-interest requirement under § 1.355-2(c) will be satisfied.

(9) *Transactions between Distributing and Controlled.* The taxpayer must submit a description of all transfers of property and all performance of services between Distributing (or its affiliates) and Controlled (or its affiliates) undertaken in pursuance of the plan of reorganization, in connection with the reorganization or otherwise related to the distribution.

(10) *Loss recognized.* The taxpayer must submit a description of any loss that will be recognized in Covered Transactions or in a related transaction.

(11) *Continuity of business enterprise.* For a distribution that is also part of a reorganization qualifying under § 368(a)(1)(D), the taxpayer must explain how the taxpayer will meet the continuity of business enterprise (COBE) requirement under § 1.368-1(d).

(12) *Indebtedness.* The taxpayer must describe any issuance of indebtedness by Distributing (or any of its affiliates), the proceeds of which will be used to satisfy any pre-existing indebtedness of Distributing. *See* §§ 361(b)(3) and 361(c)(3), and Rev. Rul. 79-258, 1979-2 C.B. 143.

(13) *Matching of income and deductions.* The taxpayer must state the current method of accounting for each of the parties to the transaction. If one or more parties use the cash method of accounting, the taxpayer must explain the extent to which any actions have been or will be taken that are not in the ordinary course of business and that might affect the timing or the amount of any income or deduction to be recognized by a cash basis party to the transaction. *See*, for example, Rev. Rul. 80-198, 1980-2 C.B. 113. In addition, the taxpayer must submit a statement as to whether any income item, such as an account receivable, or any item resulting

from a sale, exchange or disposition that would have resulted in income to Distributing, or any item of expense, will be transferred to Controlled. The taxpayer must submit a complete list with explanations if any of these items are being transferred.

(14) *Transfer of property to Controlled and related matters.* The taxpayer must describe (a) any transfer of property by Distributing (or any of its affiliates) to Controlled (or any of its affiliates) in pursuance of the plan of reorganization or otherwise related to the distribution (including any transfer intended to qualify under § 351(a)), (b) any Controlled stock or securities or other consideration received therefor (actual or deemed), and (c) any distribution or other transfer of any such consideration to shareholders or creditors of Distributing in pursuance of the plan or reorganization, in connection with the reorganization, or otherwise related to the distribution.

(15) *Disqualified distribution.* The taxpayer must explain why the distribution will not be a disqualified distribution under § 355(d)(2).

(16) *Planned 50-percent acquisitions.* The taxpayer must state whether the transaction will be part of a plan or series of related transactions pursuant to which one or more persons acquire, directly or indirectly, stock representing a 50-percent or greater interest in the stock of Distributing or Controlled, and describe any relevant facts. *See* § 355(e) and §§ 1.355-7 and 1.355-8T (or successor regulations). Except as provided in section 3.01(54) of Rev. Proc. 2017-3, as modified by section 5.07 of this revenue procedure, the issue of whether a distribution is part of such a plan will not be addressed in a Transactional Ruling.

(17) *Certain intragroup transactions.* The taxpayer must state whether § 355(f), including by operation of § 1.355-8T (or successor regulations), precludes the application of § 355(a) to any distribution or exchange between members of an affiliated group, and describe any relevant facts.

(18) *Disqualified investment corporation.* The taxpayer must explain why, immediately after the distribution, neither Distributing nor Controlled will be a dis-

qualified investment corporation (within the meaning of § 355(g)(2)).

(19) *Real estate investment trust.* If either Distributing or Controlled is a real estate investment trust, the taxpayer must so state and explain why § 355(a) (and so much of § 356 as relates to § 355) otherwise applies to the transaction. *See* § 355(h).

(20) *Post-distribution transactions and relationships.* The ruling request must include a description of any transactions expected to occur and continuing relationships expected to exist between Distributing and Controlled, and their respective affiliates or shareholders, and an explanation of the reasons why these transactions and relationships should not affect the requested rulings.

#### *.04 Representations Required for Transactional Rulings.*

(1) *In general.* A request for a Transactional Ruling must include a statement that, except as otherwise set forth in the submission, the taxpayer makes all the representations in section 3 of the Appendix to this revenue procedure in the form set forth therein. The taxpayer should not state the representations separately.

If a taxpayer requests a Transactional Ruling and also requests, with respect to any material transaction related to the request, either a Significant Issue Ruling or no ruling, the taxpayer must provide a representation as to the qualification of the material transaction under the relevant provision, *e.g.*, whether the material transaction qualifies as an exchange under § 351, as a reorganization under § 368(a) (1) [insert appropriate subparagraph] and/or under § 355. The taxpayer should not make the representations in the Appendix to this revenue procedure with respect to such material transaction.

If any of the representations in section 3 of the Appendix does not apply to the Transactional Ruling request (for example, representations regarding consolidated return matters if the taxpayers are not members of a consolidated group), the taxpayer should so state and explain why the representation does not apply.

If a representation in section 3 of the Appendix applies, but the taxpayer cannot make the representation in the form set forth in the Appendix, the taxpayer must

explain its inability to make the representation in that form. If appropriate, the taxpayer should make a modified representation that addresses the same issue(s) and explain why the modification is necessary and should not prevent the Service from ruling as requested. In addition, if the taxpayer cannot make any of the following three representations in section 3 of the Appendix, it must provide the discussion set forth below:

(a) If the taxpayer cannot make representation 42, it must discuss the application of §§ 897 and 1445 to the distribution and any related transaction.

(b) If the taxpayer cannot make representation 43, it must discuss the application of §§ 367 and 1248 to the distribution and any related transaction.

(c) If the taxpayer cannot make representation 44, it must discuss the application of § 7874 to the acquisition.

Furthermore, if Distributing cannot make representation 25, it must enter into a closing agreement with the Service as a condition to receiving a letter ruling.

(2) *Alternative representations.* Representations 3, 8, 11, 15, 22, 31, and 41 of section 3 of the Appendix permit the taxpayer to make any of two or more alternative representations. As to each of these items, the taxpayer should indicate which of the alternative representations it makes.

(3) *Revisions to representations.* Deviations from the required representations may delay the processing of a request. Taxpayers are encouraged to revise representations only if the revision makes the representations materially more accurate.

Furthermore, inconsequential changes to the representations should be avoided. For example, if Distributing or Controlled is a limited liability company with “membership interests” rather than “stock,” and is classified as a corporation for federal income tax purposes, it would be appropriate to include a description of the equity interests in the explanation of the facts and make representations referring to “stock”.

#### *.05 Supplemental Ruling Requests.*

If a taxpayer receives a Transactional Ruling, the taxpayer may request a supplemental ruling if the facts at the time of submission of the supplemental ruling request are materially different from the

controlling facts on which the Transactional Ruling was based.

## **SECTION 4. PROCEDURES FOR SIGNIFICANT ISSUE RULING REQUESTS**

A taxpayer may request a Significant Issue Ruling, pursuant to section 3.01(51) of Rev. Proc. 2017–3, as modified by section 5.06 of this revenue procedure, even if the Covered Transaction would qualify for a Transactional Ruling. The Service may, however, decline to issue a Significant Issue Ruling if it concludes that issuing a ruling on only part of an integrated transaction would not be in the best interests of tax administration.

In submitting a request for a Significant Issue Ruling, a taxpayer must submit the material described in section 6.03(2) of Rev. Proc. 2017–1, as modified by section 5.02 of this revenue procedure, and comply with the documentation requirements set forth in section 3.02 of this revenue procedure.

## **SECTION 5. EFFECT ON OTHER DOCUMENTS**

.01 Rev. Proc. 2017–1 is modified by adding the following subheadings under section 6.03 in the Table of Contents:

- (1) General rule
- (2) Significant issue ruling
  - (a) No rule areas
  - (b) Section 355 distributions and related transactions
- (3) Submission requirements

.02 Section 6.03 of Rev. Proc. 2017–1 is modified by deleting the text and adding the following text in its place:

(1) *General rule.* An Associate office ordinarily will not issue a letter ruling on only part of an integrated transaction. If a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Before preparing the letter ruling request, a taxpayer should call a branch having jurisdiction for the matters on which the taxpayer is seeking a letter ruling to discuss whether the Associate office will issue a letter ruling on part of the transaction.

(2) *Significant issue ruling.*

(a) *No rule areas.* The Service will not rule on the qualification of any transaction under § 332, § 351, or § 1036, or (except

as provided in paragraph (b) of this section 6.03(2)) on whether a transaction constitutes a reorganization within the meaning of § 368 (other than under §§ 368(a)(1)(D) and 355), regardless of whether such transaction is part of an integrated transaction (*see* section 3.01(51) of Rev. Proc. 2017–3, 2017–1 I.R.B. 130, 134). Instead, the Associate Chief Counsel (Corporate) will only issue a letter ruling on significant issues (within the meaning of section 3.01(51) of Rev. Proc. 2017–3) presented in a transaction described in § 332, § 351, § 368 (other than under §§ 368(a)(1)(D) and 355), or § 1036. For example, the Service may rule on significant issues under § 1.368–1(d) (continuity of business enterprise) and § 1.368–1(e) (continuity of interest). Letter rulings requested under this section 6.03(2)(a) are subject to the no-rule policies of Rev. Proc. 2017–3, 2017–1 I.R.B. 130.

(b) *Section 355 distributions and related transactions.* Pursuant to section 4 of Rev. Proc. 2017–52, 2017–41 I.R.B. 283, in lieu of requesting a Transactional Ruling regarding a Covered Transaction, a taxpayer may request a Significant Issue Ruling. Letter rulings requested under this section 6.03(2)(b) are subject to the policies of Rev. Proc. 2017–3, 2017–1 I.R.B. 130.

(3) *Submission requirements.* Before preparing a letter ruling request under section 6.03(2) of this revenue procedure involving significant issues presented in a transaction described in § 332, § 351, § 355, § 368, or § 1036, the taxpayer is encouraged to call the Office of Associate Chief Counsel (Corporate) at the telephone number provided in section 10.07(1)(a) of this revenue procedure to discuss whether the Service will entertain a letter ruling request under section 6.03(2). The Service reserves the right to rule on any other aspect of the transaction (including ruling adversely) to the extent the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of Rev. Proc. 2017–3, 2017–1 I.R.B. 130.

The taxpayer may request rulings on one or more significant issues in a single letter ruling request. Letter ruling requests under section 6.03(2) must include the following for each significant issue:

(a) A narrative description of the transaction that puts the issue in context;

(b) A statement identifying the issue;

(c) An analysis of the relevant law, which should set forth the authorities most closely related to the issue and explain why these authorities do not resolve the issue, and an explanation concerning why the issue is significant within the meaning of section 3.01(51) of Rev. Proc. 2017–3, 2017–1 I.R.B. 130; and

(d) The precise ruling(s) requested.

The taxpayer should consult other published authorities (*see*, for example, Appendix G of this revenue procedure, which identifies certain checklist and guideline revenue procedures including Rev. Proc. 2017–52) to identify information or representations but only to the extent that they relate to the issue.

If the Service issues a letter ruling on a significant issue under section 6.03(2), then the letter ruling will state that no opinion is expressed as to any issue or step not specifically addressed by the letter. In addition, letter rulings issued under section 6.03(2) will contain the following (or similar) language:

**This letter is issued pursuant to section 6.03(2) of Rev. Proc. 2017–1, 2017–1 I.R.B. 1, regarding one or more significant issues under § 332, § 351, § 355, § 368, or § 1036. The ruling[s] contained in this letter only address[es] one or more significant issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the ruling[s] below.**

.03 Section 6.11 of Rev. Proc. 2017–1 is modified by deleting the text and adding the following text in its place:

Except with respect to a Covered Transaction within the meaning of Rev. Proc. 2017–52, a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, except with respect to issues under § 332, § 351, § 368, or § 1036 and the tax consequences resulting from the application of such Code sections (*see generally* section 6.03(2) of this revenue

procedure), the Associate office may, in its discretion, decide to issue a Comfort Ruling if the Associate office is otherwise issuing a letter ruling to the taxpayer on another issue arising in the same transaction.

.04 Section 7.01(2)(a) of Rev. Proc. 2017–1 is modified by deleting the text and adding the following text in its place:

(a) *Documents.* True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transactions must be submitted with the request. *But see* section 3.02 and section 4 of Rev. Proc. 2017–52 for requirements relating to ruling requests under § 355.

If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should also be submitted. If the request relates to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted. *But see* section 3.02 and section 4 of Rev. Proc. 2017–52 for requirements relating to ruling requests under § 355.

If any document, including any balance sheet and profit and loss statement, is in a language other than English, the taxpayer must also submit a certified English translation of the document, along with a true copy of the document. For guidelines on the acceptability of such documents, *see* paragraph (c) of this section 7.01(2).

Each document other than the request should be labeled and attached to the request in alphabetical sequence. Original documents such as contracts, wills, etc., should not be submitted because they become part of the Service’s file and will not be returned.

.05 Section .01 of Appendix G to Rev. Proc. 2017–1 is modified as follows:

(1) In the column titled REVENUE PROCEDURE AND NOTICE, in the text corresponding to “Subchapter C—Corporate Distributions, Adjustments, Transfers, and Reorganizations” found in the column CODE OR REGULATION SECTION, deleting the text and adding the following text in its place:

Rev. Proc. 77–37, 1977–2 C.B. 568, as modified by Rev. Proc. 89–30, 1989–1 C.B. 895, and as amplified by Rev. Proc.

77–41, 1977–2 C.B. 574, Rev. Proc. 83–81, 1983–2 C.B. 598 (see also Rev. Proc. 2017–3, 2017–1 I.R.B. 130), Rev. Proc. 84–42, 1984–1 C.B. 521 (superseded, in part, as to no-rule areas by Rev. Proc. 2017–3, 2017–1 I.R.B. 130), Rev. Proc. 86–42, 1986–2 C.B. 722, Rev. Proc. 89–50, 1989–2 C.B. 631, and Rev. Proc. 2017–52 (relating to Transactional Rulings for Covered Transactions). *But see* section 3.01(51) of Rev. Proc. 2017–3, which states that the Service will not issue a letter ruling as to whether a transaction constitutes a reorganization within the meaning of § 368 (except as provided in section 6.03(2)(b) of this revenue procedure). However, the Service will issue a letter ruling addressing significant issues (within the meaning of section 3.01(51) of Rev. Proc. 2017–3) presented in a reorganization within the meaning of § 368. The information and representations described in these revenue procedures should be included in a letter ruling request only to the extent that they relate to the significant issues with respect to which the letter ruling is requested. *See* section 6.03(2).

(2) In the column titled REVENUE PROCEDURE AND NOTICE, in the text corresponding to “355 Checklist questionnaire” found in the column CODE OR REGULATION SECTION, deleting the text and adding the following text in its place:

Rev. Proc. 2017–52. *See* also section 6.03(2) of this revenue procedure.

.06 Section 3.01(51) of Rev. Proc. 2017–3 is modified by:

(1) deleting the language “Distribution of Stock and Securities of a Controlled Corporation;” from the heading,

(2) deleting the language “355,” each place it appears,

(3) adding the language “except a transaction intended to qualify under §§ 368(a)(1)(D) and 355,” after the phrase “within the meaning of § 368,” and

(4) replacing the reference to “6.03” with “6.03(2),” each place it appears.

.07 Section 3.01(54) of Rev. Proc. 2017–3 is modified by deleting the text and adding the following text in its place:

(54) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate busi-

ness purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). Notwithstanding the preceding sentence, the Service: (1) will issue a letter ruling with respect to a significant issue under § 1.355–2(b) pertaining to the corporate business purpose requirement, provided that the issue is a legal issue and is not inherently factual in nature, (2) will issue a letter ruling with respect to a significant issue under § 355(a)(1)(B) and § 1.355–2(d) pertaining to device, provided that the issue is a legal issue and is not inherently factual in nature, and (3) may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

.08 Section 4.02(2) of Rev. Proc. 2017–3 is modified by replacing the reference to “6.03” with “6.03(2).”

.09 Section 4.02(9) of Rev. Proc. 2017–3 is modified by deleting the text and adding the following text in its place:

Except with respect to a Covered Transaction within the meaning of section 2.03(1)(a) of Rev. Proc. 2017–52, a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, except with respect to issues under §§ 332, 351, 368, and 1036 and the tax consequences resulting from the application of such Code sections (*see generally* section 6.03(2) of Rev. Proc. 2017–1, 2017–1 I.R.B. 1), an Associate office may in its discretion issue a Comfort Ruling if the Associate office is otherwise ruling on another issue arising in the same transaction.

.10 Rev. Proc. 96–30, 1996–1 C.B. 696, is superseded.

.11 Rev. Proc. 2003–48, 2003–2 C.B. 86, is superseded.

.12 Rev. Proc. 2009–25, 2009–24 I.R.B. 1088, is superseded.

.13 Rev. Proc. 2013–32, 2013–28 I.R.B. 55, is superseded.

## SECTION 6. EFFECTIVE DATE AND ENDING DATE

### .01 *Effective Date.*

(1) *In general.* This revenue procedure will apply to all ruling requests postmarked or, if not mailed, received by the Service after September 21, 2017.

(2) *Application of this Revenue Procedure to Pending Ruling Requests.* If a taxpayer has a request for a Significant Issue Ruling that is postmarked or, if not mailed, received by the Service on or before September 21, 2017 (a pending ruling request), the taxpayer may convert that pending ruling request to a request for a Transactional Ruling by submitting the information and documentation required under this revenue procedure. All requests to convert pending ruling requests must be submitted on or before November 20, 2017 and no extensions to submit a conversion request will be granted.

### .02 *Ending Date.*

(1) *In general.* This pilot program will expire on March 21, 2019. At that time, the Service will evaluate the effectiveness and sustainability of the program and consider whether the program should be extended.

(2) *Application of this Revenue Procedure to submitted ruling requests.* This revenue procedure will continue to apply to all ruling requests postmarked or, if not mailed, received by the Service on or before March 21, 2019 (a submitted ruling request) if the submitted ruling request is a complete and thorough submission. *See* section 7.01 of Rev. Proc. 2017–1.

## SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 3 and 4, and the Appendix. This information is required to determine whether a taxpayer would qualify for a Transactional Ruling or a Significant Issue Ruling under this revenue procedure. The collections of information are required to obtain a benefit. The likely respondents are corporations that control another corporation, as well as the management of the corporation the stock of which is being distributed or that controls the corporation the stock of which is being distributed.

The estimated total annual reporting burden for Rev. Proc. 2017-1 is 320,436 hours.

The estimated annual burden per respondent for Rev. Proc. 2017-1 varies from 1 to 200 hours, depending on individual circumstances, with an estimated average of 80 hours. The estimated number of respondents is 3,956.

The estimated total annual reporting burden for this revenue procedure adds 6,000 hours to Rev. Proc. 2017-1.

The estimated annual burden per respondent for this revenue procedure varies from 150 to 250 hours, depending on individual circumstances, with an estimated average of 200 hours. The estimated number of additional respondents added to Rev. Proc. 2017-1 by this revenue procedure is 30, increasing the estimated number of respondents to Rev. Proc. 2017-1 to 3,986.

The estimated average burden for Rev. Proc. 2017-1, as increased by this revenue procedure, is 81 hours.

The estimated annual frequency of responses is on occasion.

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

## **SECTION 8. REQUEST FOR COMMENTS**

The Service requests comments on all aspects of this revenue procedure. In particular, the Service requests comments concerning the reasonableness of the requirements and conditions set forth in this revenue procedure and recommendations for increasing efficiencies. The Service also requests comments regarding the required representations set forth in section 3 of the Appendix of this revenue procedure, including any additions, deletions, and modifications. In addition, the Service requests comments regarding whether Transactional Rulings, as described in section 2.03(1)(c) of this revenue procedure, should be made available for other transactions.

## **SECTION 9. WHERE TO SEND AND DATE BY WHICH TO SUBMIT COMMENTS**

Written comments, identified by Rev. Proc. 2017-52, may be submitted using one of the following methods:

- By Mail:  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Rev. Proc. 2017-52)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

- By Hand or Courier Delivery: Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:  
Courier's Desk  
Internal Revenue Service  
Attn: CC:PA:LPD:PR  
(Rev. Proc. 2017-52)  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

- Electronic: Alternatively, persons may submit comments electronically to [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Rev. Proc. 2017-52" in the subject line of any electronic communications.

Comments should be submitted no later than December 31, 2017.

## **SECTION 10. DRAFTING INFORMATION**

The principal authors of this revenue procedure are Grid R. Glycer and Richard M. Heinecke of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Grid R. Glycer at (202) 317-6847 or Richard M. Heinecke at (202) 317-5363 (not toll-free numbers).

## APPENDIX

### SECTION 1. INTRODUCTION

This Appendix sets forth the representations the taxpayer must make pursuant to section 3.04 of this revenue procedure.

### SECTION 2. DEFINITIONS

For purposes of this Appendix, the following definitions apply:

.01 *Control* is as defined in § 368(c).

.02 *Distributing* and *Controlled* mean, respectively, the distributing corporation and the controlled corporation, as described in § 355(a)(1)(A). In the case of a Split-Up (defined in section 2.11 of this Appendix), a reference to *Distributing* means, where applicable, a reference to the resulting *Controlled* corporations.

.03 *Distribution* means either a distribution of stock or securities of *Controlled* with respect to *Distributing* stock (*i.e.*, a Spin-Off (defined in section 2.09 of this Appendix)), an exchange of *Distributing* stock or securities for *Controlled* stock or securities (*i.e.*, a Split-Off (defined in section 2.10 of this Appendix) or a Split-Up (as defined in section 2.11 of this Appendix)), or a combination thereof.

.04 *Expanded Affiliated Group* refers to all members of an affiliated group, as defined in § 1504(a) without regard to § 1504(b).

.05 *Liability* means any liability or other obligation without regard to whether it has been taken into account for Federal income tax purposes.

.06 *Other Property* means property other than stock and securities of *Controlled*.

.07 *Property* is as defined in § 317(a).

.08 *SAG*, *DSAG*, *CSAG*. *SAG* means a separate affiliated group as defined in 355(b)(3)(B). *DSAG* means the *SAG* of which *Distributing* is the common parent immediately after the distribution. *CSAG* means the *SAG* of which *Controlled* is the common parent immediately after the distribution.

.09 *Spin-Off* means a pro rata *Distribution* to the shareholders of *Distributing* of the stock of *Controlled*.

.10 *Split-Off* means a *Distribution* of the stock of *Controlled* to some (but not all) of the shareholders of *Distributing* in redemption of some or all of their stock of *Distributing*.

.11 *Split-Up* means a liquidating *Distribution* in which *Distributing* distributes to its shareholders the stock of more than one *Controlled*, either pro rata or non-pro rata.

### SECTION 3. REPRESENTATIONS

**Control Requirements**  
**Sections 355(a)(1)(A), 355(a)(1)(D)(i) and 368(c)**  
**See section 3.03(2) of this revenue procedure**

- 1 *Distributing* will have *Control* of *Controlled* immediately before the *Distribution*.
- 2 In the *Distribution*, *Distributing* will distribute on the same day all the stock and securities of *Controlled* that it holds immediately before the *Distribution*.
- 3 Alternative representations (*see* section 3.04(2) of this revenue procedure):
  - (a) *Distributing* will not engage in a transaction, in anticipation of the *Distribution*, in which either (i) *Distributing* obtains *Control* of *Controlled* (including a recapitalization into *Control* but excluding a transaction that includes the formation of *Controlled*), or (ii) a corporation of which *Distributing* is not in *Control* becomes a member of the *CSAG*.
  - (b) If *Distributing* engages in a transaction described in paragraph (a), *Controlled* will comply with one of the safe harbors set forth in Rev. Proc. 2016-40, 2016-32 I.R.B. 228.
- 4 No indebtedness owed by *Controlled* to *Distributing* after the *Distribution* will constitute stock or securities of *Controlled* or any other entity.

**Shareholders Participating in a Spin-Off**  
**Sections 355(a)(1) and 356(a)(1)**

- 5 None of the *Controlled* stock, *Controlled* securities, or *Other Property* to be distributed in the *Distribution* will be received in any capacity other than that of a shareholder of *Distributing*.
- 6 No shareholder of *Distributing* will surrender *Distributing* stock in the *Distribution*.

**Shareholders Participating in a Split-Up or Split-Off**  
**Sections 355(a)(1) and 356(a)(1)**

- 7 The fair market value of Controlled stock, Controlled securities, or Other Property to be received by each shareholder of Distributing that surrenders Distributing stock will be approximately equal to the fair market value of Distributing stock surrendered by the shareholder in the transaction.

**Distributing Securities**

- 8 Alternative representations (*see* section 3.04(2) of this revenue procedure):
- (a) Distributing will have no securities outstanding.
  - (b) Distributing has securities outstanding, but it will not distribute Controlled stock, Controlled securities or Other Property to any holder of such securities in the Distribution, in satisfaction thereof.

**Active Trade or Business Requirement**

**Section 355(b)**

**See section 3.03(3) of this revenue procedure**

- 9 The business relied on by each of Distributing or the DSAG and Controlled or the CSAG to meet the active trade or business requirement of § 355(b) is not the holding of Property for investment purposes.
- 10 With respect to the business relied on by each of Distributing or the DSAG and Controlled or the CSAG to meet the active trade or business requirement of § 355(b), there have been no substantial operational changes since the end of the taxpayer's most recent taxable year.
- 11 Alternative representations (*see* section 3.04(2) of this revenue procedure):
- (a) Following the Distribution, Distributing or the DSAG and Controlled or the CSAG each will continue, independently and with its separate employees, the active conduct of the business on which it relies to meet the active trade or business requirement of § 355(b).
  - (b) Following the Distribution, Distributing or the DSAG and Controlled or the CSAG each will continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business on which it relies to meet the active trade or business requirement of § 355(b), as conducted by Distributing or the DSAG prior to consummation of the transaction.
- Note: Distributing or the DSAG and Controlled or the CSAG may share employees after the Distribution as long as the parties enter into agreements with respect to those employees based on arm's-length terms for a limited period of time consistent with Rev. Rul. 2003-75, 2003-75, I.R.B. 79.
- 12 Immediately after the Distribution, the fair market value of the gross assets of the trade(s) or business(es) in which each of Distributing or the DSAG and Controlled or the CSAG will rely to satisfy the active trade or business requirement of § 355(b) will be, in each case, at least 5 percent of the total fair market value of the gross assets of that corporation or SAG. *See* section 4.01(30) of Rev. Proc. 2017-3.

**Hot stock**

**Section 355(a)(3)(B)**

**See section 3.03(5) of this revenue procedure**

- 13 Distributing will not have acquired any Controlled stock in a transaction in which gain or loss was recognized during the five-year period immediately preceding the Distribution.

**Device**

**Section 1.355-2(d)**

**See section 3.03(6) of this revenue procedure**

- 14 The transaction will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both. *See* § 355(a)(1)(B).
- 15 Alternative representations (*see* section 3.04(2) of this revenue procedure):
- (a) Immediately after the Distribution, the fair market value of the gross investment assets of each of Distributing and Controlled will be less than two-thirds of the fair market value of its total gross assets. *See* section 5.01(3) of Rev. Proc. 2017-3.
  - (b) Immediately after the Distribution, the fair market value of the gross assets of the trade(s) or business(es) on which each of Distributing and Controlled relies to satisfy the active trade or business requirement of § 355(b) will be 10 percent or more of the fair market value of its gross investment assets. *See* section 5.01(3) of Rev. Proc. 2017-3.
  - (c) Immediately after the Distribution, the ratio of the fair market value of the gross investment assets to the fair market value of the gross assets other than the gross investment assets of Distributing or Controlled will not be three times or more of such ratio for the other corporation. *See* section 5.01(3) of Rev. Proc. 2017-3.

**Business Purpose**  
**Section 1.355-2(b)**

**See section 3.03(7) of this revenue procedure**

- 16 The Distribution is motivated, in whole or substantial part, by one or more of the corporate business purposes described in this request for ruling.

**Section 357(b)**

- 17 Any Liabilities assumed (within the meaning of § 357(d)) by Controlled were incurred in the ordinary course of business and are associated with any assets transferred.

**Sections 357(c) and 361(b)(3)**

- 18 The total adjusted basis and the fair market value of assets transferred by Distributing to Controlled will each equal or exceed the sum of:
- (a) The total amount of the Liabilities assumed (within the meaning of § 357(d)) by Controlled, and
  - (b) The total amount of any money and the fair market value of other property, if any, received by Distributing and transferred to its shareholders and its creditors.

**Sections 361(b)(3) and (c)(3)**

**See section 3.03(12) of this revenue procedure**

- 19 Any Other Property issued or transferred by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization.

**Controlled Securities**

- 20 Any securities issued by Controlled to Distributing in pursuance of the plan of reorganization will be transferred by Distributing to its shareholders in pursuance of the plan of reorganization or to its creditors in connection with the reorganization.

**Solvency of Distributing and Controlled**

- 21 Immediately after the transaction, the fair market value of the assets of each of Distributing and Controlled will exceed the amount of its Liabilities.

**Investment Tax Credit Recapture**

- 22 Alternative representations (*see* section 3.04(2) of this revenue procedure):
- (a) No Property will be transferred by Distributing to Controlled as part of the Distribution for which an investment credit determined under § 46 has been (or will be) claimed.
  - (b) With respect to Property being transferred by Distributing to Controlled as part of the Distribution for which an investment credit determined under § 46 has been (or will be) claimed, the income tax obligation for the taxable year in which the Property is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) to reflect an early disposition of the Property.

**Matching of income and deductions**

**See sections 3.03(13) and 3.04(1) of this revenue procedure**

- 23 The transaction does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes the income associated with such Property.
- 24 If one or more parties use the cash method of accounting, Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the transaction.
- 25 If Distributing uses the cash method of accounting or a similar method and Controlled uses the accrual method or a similar method, then:
- (a) No income item, including an account receivable, nor any item resulting from a sale, exchange or disposition of Property that would have resulted in income to Distributing, will be transferred to Controlled if Distributing has earned the right to receive the income under the accrual or similar method of accounting, and
  - (b) No item of expense will be transferred to Controlled if Distributing could claim a deduction for the expense under the accrual or similar method of accounting.

**Investment Companies**

**Section 368(a)(2)(F)**

- 26 No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

**Section 355(d)**  
**Section 1.355-6**

**See section 3.03(15) of this revenue procedure**

- 27 Immediately after the Distribution, no person will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Distributing stock, that was acquired by purchase during the five-year period ending on the date of the Distribution.

The term person is determined applying the aggregation rules of § 355(d)(7); the term purchase is used as defined in § 355(d)(5) and (8); and the term five-year period is determined applying § 355(d)(6).

- 28 Immediately after the Distribution, no person will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Controlled stock, that was acquired by purchase during the five-year period ending on the date of the Distribution.

The term person is determined applying the aggregation rules of § 355(d)(7); the term purchase is used as defined in § 355(d)(5) and (8); and the term five-year period is determined applying § 355(d)(6).

**Section 355(e)**

**Sections 1.355-7 and 1.355-8T (or successor regulations)**

**See section 3.03(16) of this revenue procedure**

- 29 Stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including a predecessor or successor within the meaning of § 1.355-8T (or successor regulations)) will not be acquired by any person or persons in a plan or series of related transactions (within the meaning of § 1.355-7) that includes the Distribution.

**Section 355(g)**

**See section 3.03(18) of this revenue procedure**

- 30 Immediately after the Distribution, neither Distributing nor Controlled will be a disqualified investment corporation within the meaning of § 355(g)(2).

**Section 355(h)**

**See section 3.03(19) of this revenue procedure**

- 31 Alternative representations (*see* section 3.04(2) of this revenue procedure):

(a) Neither Distributing nor Controlled will be a real estate investment trust (within the meaning of § 856) (a “REIT”) at the time of the Distribution.

(b) Immediately after the Distribution, Distributing and Controlled will both be REITs.

(c)(i) Distributing has been a REIT at all times during the 3-year period ending on the date of the Distribution; (ii) Controlled has been a taxable REIT subsidiary (as defined in § 856(l)) of Distributing at all times during such period; and (iii) Distributing had control (as defined in § 368(c) applied by taking into account stock owned directly or indirectly, including through one or more corporations or partnerships, by Distributing) of Controlled at all times during such period.

Controlled will be treated as meeting the requirements of (c)(ii) and (c)(iii) if the stock of Controlled was distributed by a taxable REIT subsidiary in a transaction to which § 355 (or so much of § 356 as relates to § 355) applies, and the assets of Controlled consist solely of the stock or assets held by one or more taxable REIT subsidiaries of Distributing meeting the requirements of (c)(ii) and (c)(iii). For purposes of (c)(iii), control of a partnership means ownership of 80 percent of the profits interest and 80 percent of the capital interests.

**Related Transactions**

- 32 No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution of Controlled stock.
- 33 Payments made in connection with all continuing transactions, if any, between Distributing and Controlled after the Distribution will be for fair market value based on arm’s-length terms.
- 34 Distributing and Controlled each will pay its own expenses, if any, incurred in connection with the Distribution.
- 35 The payment of cash in lieu of fractional shares of Controlled is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing shareholder will be aggregated and no Distributing shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Controlled.

**Consolidated Return Matters**  
**Intercompany Transactions**  
**Sections 1.1502–13 and 1.1502–14**

- 36 Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (*See* §§ 1.1502–13 and 1.1502–14 as in effect before the publication of § 1.1502–13 in T.D. 8597, 1995–2 C.B. 147, and as currently in effect).
- 37 There is no loss subject to § 1.1502–13 that will be taken into account as a result of a transaction related to the Distribution.

**Excess Loss Accounts**  
**Section 1.1502–19**

- 38 Any excess loss account in the stock of Controlled or in the stock of any lower-tier Controlled subsidiary will be taken into account as required by § 1.1502–19.

**Intercompany Obligation**  
**Section 1.1502–13(g)**

- 39 Pursuant to § 1.1502–13(g)(3)(ii), no deemed satisfaction and reissuance will occur with respect to securities or other obligations of Controlled distributed by Distributing to its shareholders or creditors in pursuance of the plan of reorganization or in connection with the reorganization.

**Affiliated Group and Section 358(g)**

- 40 With respect to any Distribution of stock from one member of an Expanded Affiliated Group to another member of the Expanded Affiliated Group, the § 358 allocation will not result in the stock of Controlled having a higher basis than it had immediately prior to the Distribution.

**S Corporation Matters**

- 41 Alternative representations (*see* section 3.04(2) of this revenue procedure):
- (a) Distributing is not an S corporation (within the meaning of § 1361(a)) and will not be an S corporation at the time of the Distribution, and there is no plan or intention by Distributing or Controlled to make an S corporation election pursuant to § 1362(a).
- (b) If Distributing is an S corporation within the meaning of § 1361(a), Controlled will elect to be an S corporation pursuant to § 1362(a) on the first available date after the Distribution, and there is no plan or intention to revoke or otherwise terminate the S corporation election of either Distributing or Controlled.

**International Issues**  
***See* section 3.04(1) of this revenue procedure**

**FIRPTA**

- 42 Neither Distributing nor Controlled will have been a U.S. real property holding corporation (as defined in § 897(c)(2)) at any time during the five-year period preceding the Distribution, and neither will be a U.S. real property holding corporation immediately after the Distribution.

**CFC Status**

- 43 Neither Distributing nor Controlled will be a controlled foreign corporation (within the meaning of § 957(a)) immediately before or after the Distribution.

**Inversions**

- 44 The Distribution is not part of a plan (or series of related transactions) resulting in an acquisition described in § 7874(a)(2)(B)(i).

**Miscellaneous**

- 45 Distributing will not dispose of any Controlled stock in anticipation of the Distribution.
- 46 Controlled will not issue stock or securities to a person other than Distributing in anticipation of the Distribution.

## Part IV. Items of General Interest

### Use of Truncated Taxpayer Identification Numbers on Forms W-2, Wage and Tax Statement, Furnished to Employees

#### REG-105004-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations under sections 6051 and 6052 of the Internal Revenue Code (Code). To aid employers' efforts to protect employees from identity theft, these proposed regulations would amend existing regulations to permit employers to voluntarily truncate employees' social security numbers (SSNs) on copies of Forms W-2, Wage and Tax Statement, that are furnished to employees so that the truncated SSNs appear in the form of IRS truncated taxpayer identification numbers (TTINs). These proposed regulations also would amend the regulations under section 6109 to clarify the application of the truncation rules to Forms W-2 and to add an example illustrating the application of these rules. Additionally, these proposed amendments would delete obsolete provisions and update cross references in the regulations under sections 6051 and 6052. These proposed regulations affect employers who are required to furnish Forms W-2 and employees who receive Forms W-2.

DATES: Written or electronic comments and requests for a public hearing must be received by December 18, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-105004-16), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-105004-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent via

the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (REG-105004-16).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Eliezer Mishory, (202) 317-6844; concerning submissions of comments and/or requests for a hearing, Regina Johnson (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background:

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Procedure and Administration Regulations (26 CFR part 301) regarding statements that are required to be furnished to employees by employers or other persons under sections 6051 and 6052 of the Code. Section 6051(a) generally requires that an employer provide to each employee on or before January 31st of the succeeding year a written statement that shows the employee's total amount of wages and the total amount deducted and withheld as tax from those wages, along with other information, for each calendar year. Employers must use Form W-2 (or a substitute statement that complies with applicable revenue procedures relating to such statements) to provide the information required by section 6051(a) to employees. See § 31.6051-1(a)(1)(i); Rev. Proc. 2016-54, 2016-45 I.R.B. 685, also published as Publication 1141, "General Rules and Specifications for Substitute Forms W-2 and W-3," or any successor guidance. Section 6051(d) provides that, when required to do so by regulations, employers must file with the Secretary duplicates of the forms required to be furnished to employees under section 6051. Section 31.6051-2(a) generally requires employers to file Social Security Administration copies of Forms W-2 with the Social Security Administration. A person making a payment of third-party sick pay to an employee of another employer (payee) is required under section 6051(f)(1) to furnish a written statement to the

employer for whom services are normally rendered containing certain information, including the payee's SSN. Under certain conditions, the employer for whom services are normally rendered is required under section 6051(f)(2) to furnish a Form W-2 to the payee. This situation may arise, for example, when an insurance company is making payments to an employee of another employer because the employee is temporarily absent from work due to injury, sickness or disability, and the insurance company has satisfied the necessary requirements under § 32.1(e) of the Temporary Employment Tax Regulations under the Act of December 29, 1981 (Pub. L. 97-123) to transfer the obligation to do Form W-2 reporting to the employer. Employers also must use Form W-2 to file and furnish information regarding payment of wages in the form of group-term life insurance under section 6052.

Section 6109(a) authorizes the Secretary to prescribe regulations with respect to the inclusion in returns, statements, or other documents of an identifying number as may be prescribed for securing proper identification of a person. On July 15, 2014, the Treasury Department and the IRS published in the **Federal Register** (79 FR 41127-02) final regulations (TD 9675) authorizing the use of TTINs on certain payee statements and certain other documents. These final regulations were in response to concerns about the risks of identity theft, including its effect on tax administration.

Section 301.6109-4(b) generally provides that a TTIN may be used to identify any person on any statement or other document that the internal revenue laws require to be furnished to another person. Under § 301.6109-4(a), a TTIN is an individual's SSN, IRS individual taxpayer identification number (ITIN), IRS adoption taxpayer identification number (ATIN), or IRS employer identification number (EIN) in which the first five digits of the nine-digit number are replaced with Xs or asterisks. For example, a TTIN replacing an SSN appears in the form XXX-XX-1234 or \*\*\*-\*\*-1234. Section 301.6109-4(b)(2)(ii) prohibits using TTINs if, among other

things, a statute, regulation, other guidance published in the Internal Revenue Bulletin, form, or instructions specifically requires the use of an SSN. Additionally, § 301.6109-4(b)(2)(iii) prohibits the use of TTINs on any return, statement, or other document that is required to be filed with or furnished to the IRS.

Prior to being amended by the Protecting Americans from Tax Hikes (PATH) Act of 2015, Public Law No. 114-113, div. Q, title IV, 129 Stat. 2242, section 6051(a)(2) specifically required employers to include their employees' SSNs on copies of Forms W-2 that are furnished to employees. In addition, current regulations under § 31.6051-1, as well as forms and instructions, require employers to include their employees' SSNs on copies of Forms W-2 that are furnished to employees. Section 409 of the PATH Act amended section 6051(a)(2) by striking "his social security account number" from the list of information required on Form W-2 and inserting "an identifying number for the employee" instead. This statutory amendment is effective for statements issued after December 18, 2015, the date that the PATH Act was signed into law. Because an SSN is no longer required by section 6051, the Treasury Department and the IRS propose amending the regulations to permit employers to truncate employees' SSNs to appear in the form of TTINs on copies of Forms W-2 that are furnished to employees. If the proposed regulations are finalized without change, the IRS intends to incorporate the revised regulations into forms and instructions, permitting employers to use a TTIN on the employee copy of the Form W-2. See § 301.6109-4(b)(2)(i) and (ii).

### Explanation of Provisions

#### *Truncated SSN permitted on employee's copies of Form W-2*

These proposed regulations amend § 31.6051-1 to permit employers to truncate employees' SSNs to appear in the form of a TTIN on copies of Forms W-2 that are furnished to employees under section 6051. Consistent with the rule in § 301.6109-4(b)(2)(iii), prohibiting the use of TTINs on any return, statement, or other document that is required to be filed

with or furnished to the IRS, these proposed regulations amend § 31.6051-2 to clarify that employers may not truncate an employee's SSN to appear in the form of a TTIN on a copy of a Form W-2 that is filed with the Social Security Administration. This result is appropriate because both the IRS and the SSA need to utilize Forms W-2 to properly identify individuals to be able to carry out their respective duties.

Consistent with the rule in § 301.6109-4(b)(2)(ii) that prohibits using TTINs if, among other things, a statute specifically requires the use of an SSN, the proposed regulations also amend § 31.6051-3 to clarify that a payee's SSN may not be truncated to appear in the form of a TTIN on a statement furnished to the employer of the payee who received sick pay from a third party because section 6051(f)(1)(A)(i) specifically requires such a statement to contain the employee's SSN. Nonetheless, these proposed regulations permit employers to truncate payees' SSNs to appear in the form of TTINs on copies of Forms W-2 that are furnished under section 6051(f)(2) to payees that report such third-party sick pay, in accordance with the general rule governing the reporting of wages to employees on Forms W-2 under section 6051(a), because section 6051(f)(2) does not specifically require the use of an SSN.

Further, these proposed regulations amend § 1.6052-2 to permit employers to truncate employees' SSNs to appear in the form of TTINs on copies of Forms W-2 that are furnished to employees under section 6052(b) regarding payment of wages in the form of group-term life insurance.

These proposed regulations amend § 301.6109-4 to clarify that truncation is not allowed on any return, statement, or other document that is required to be filed with or furnished to the Social Security Administration under the internal revenue laws. These proposed regulations also clarify the rule prohibiting truncation if a statute, regulation, other guidance published in the Internal Revenue Bulletin, form, or instructions, specifically requires use of a SSN, ITIN, ATIN, or EIN. The proposed regulations provide that truncation is allowed if a statute or IRS guidance (e.g., regulations, forms, instructions), that specifically requires use of a SSN, ITIN, ATIN, or EIN, also specifically

states that the taxpayer identifying number may be truncated. These proposed regulations also add an example illustrating the application of these rules to Forms W-2. These proposed regulations also amend the existing example for clarity.

#### *Miscellaneous updates to regulations under sections 6051 and 6052*

In addition to the amendments relating to the truncation of employees' SSNs to appear in the form of TTINs in specific circumstances, these proposed regulations eliminate obsolete provisions and update cross references in the regulations under sections 6051 and 6052, as explained below.

First, these proposed regulations amend § 31.6051-1 to remove obsolete provisions regarding compensation, as defined in the Railroad Retirement Tax Act, paid during 1968, 1969, 1970, and 1971 and reported on the now obsolete Form W-2 (RR); the special rule for statements with respect to the refundable earned income credit for Form W-2 for 1987 and 1988; and references to the annual contribution base (repealed in 1993) for wages subject to the Hospital Insurance tax (commonly known as Medicare tax).

Second, these proposed regulations amend § 31.6051-1 to remove obsolete cross references, including a cross reference to former § 301.6676-1 relating to the penalty for failure to report an identification number or an account number, and a cross reference to section 6723 (prior to its amendment in 1989) that was relevant for Forms W-2 that were due from the beginning of 1987 through the end of 1989.

Third, these proposed regulations amend § 31.6051-2 to update now inaccurate cross references resulting from statutory and regulatory changes regarding penalties for failures to file, and to remove a cross reference to section 6723 (prior to its amendment in 1989) that was relevant for Forms W-2 that were due from the beginning of 1987 through the end of 1989. These proposed regulations also change the title of § 31.6051-2 from "Information returns on Form W-3 and Internal Revenue Service copies of Forms W-2" to "Information returns on Form W-3 and Social Security Administration

copies of Forms W-2,” to conform with the text of the regulation that refers to the Social Security Administration copies of Form W-2. In addition, these proposed regulations remove obsolete references in § 31.6051-2 to the requirements to submit information on magnetic tape and insert a reference to the requirements to submit information on magnetic media.

Fourth, these proposed regulations amend § 31.6051-3 to remove the obsolete transition rule for third-party sick pay that was paid to a payee after December 31, 1980, and before May 1, 1981.

Fifth, these proposed regulations amend § 1.6052-2 to remove an obsolete rule that allowed employers to use a statement other than a Form W-2 to satisfy the requirement to furnish a statement to an employee with respect to wages paid in the form of group-term life insurance. This rule was relevant for years prior to 1973, before § 1.6052-1 was amended to require employers to report wages in the form of group-term life insurance on Form W-2. At the same time, to conform to this new requirement, § 1.6052-2 was amended to provide that the requirement to furnish a statement to an employee with respect to wages paid in the form of group-term life insurance may be satisfied by furnishing to the employee the employee’s copy of Form W-2 that was filed pursuant to § 1.6052-1. Because the transition period to require employers to file Form W-2 has long since passed and because the Treasury Department and the IRS understand that copies of Forms W-2 are used to satisfy the requirement to furnish statements to employees under § 1.6052-2, these proposed regulations require employers to furnish to employees the employees’ copies of Forms W-2 that were filed pursuant to § 1.6052-1, and these proposed regulations make conforming changes throughout that section.

Finally, these proposed regulations update the now inaccurate cross reference resulting from statutory changes regarding penalties for failures to furnish statements under section 6052 and remove the deemed compliance rule, which applied only to years before 1972.

### *Proposed effective/applicability date*

These proposed regulations will be effective on the date of the publication of the Treasury Decision adopting these rules as final in the **Federal Register**. These proposed regulations amend the effective/applicability date provisions in § 31.6051-1, § 31.6051-3, and § 301.6109-4, and add applicability date provisions to § 1.6052-2 and § 31.6051-2. Several state tax administrators have requested additional time to develop systems to process the copies of Forms W-2 filed with state income tax returns that may contain truncated SSNs. In light of this request, these proposed regulations will not apply to Forms W-2 required to be furnished before January 1, 2019. Accordingly, these proposed regulations provide that these regulations, as amended, will be applicable for statements required to be filed and furnished under sections 6051 and 6052 after December 31, 2018.

### **Statement of Availability of IRS Documents**

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

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the ADDRESSES section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. All comments submitted will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these proposed regulations is Eliezer Mishory of the Office of the Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805, unless otherwise noted.

\* \* \* \* \*

Par. 2. Section 1.6052-2 is amended by:

1. Revising paragraph (a).
  2. Removing paragraph (b).
  3. Redesignating paragraph (e) as new paragraph (b).
  4. Revising paragraphs (c) and (d).
  5. Removing paragraphs (f) and (g).
- The revisions read as follows:

*§ 1.6052-2 Statements to be furnished employees with respect to wages paid in the form of group-term life insurance.*

(a) *Requirement.* Every employer filing a return under section 6052(a) and § 1.6052-1, with respect to group-term

life insurance on the life of an employee, shall furnish to the employee whose name is set forth in such return the tax return copy and the employee's copy of Form W-2. Each copy of Form W-2 must show the information required to be shown on the Form W-2 filed under § 1.6052-1. An employer may truncate an employee's social security number to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Form W-2 furnished to the employee. For provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations). The rules in § 31.6051-1 of this chapter (Employment Taxes and Collection of Income Tax at Source Regulations) shall apply with respect to the means and time (including extensions thereof) for furnishing the employee's copy of Form W-2 required by this section to the employee and making corrections to such form.

\* \* \* \* \*

(c) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722 and the regulations thereunder.

(d) *Applicability date.* This section is applicable for statements required to be furnished under section 6052 after December 31, 2018.

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Par. 3. The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

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

Section 31.6051-3 also issued under 26 U.S.C. 6051.

\* \* \* \* \*

Par. 4. Section 31.6051-1 is amended by:

1. Revising paragraphs (a)(1)(i)(b) and (b)(1)(ii).
2. Removing paragraph (d)(1)(ii)(C).
3. Revising paragraphs (f), (h)(2), and (i).
4. Removing paragraph (j)(8).
5. Adding paragraph (k).

The revisions and addition read as follows:

*§ 31.6051-1 Statements for employees.*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(b) The name, address, and social security number of the employee, which may be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W-2 that are furnished to the employee (for provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations)), if wages as defined in section 3121(a) have been paid or if the Form W-2 is required to be furnished to the employee,

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The name, address, and social security number of the employee, which may be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W-2 that are furnished to the employee (for provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations)),

\* \* \* \* \*

(f) *Statements with respect to compensation, as defined in the Railroad Retirement Tax Act—(1) Notification of possible credit or refund.* With respect to compensation (as defined in section 3231(e)), every employer (as defined in section 3231(a)) who is required to deduct and withhold from an employee (as defined in section 3231(b)) a tax under section 3201, shall include on or with the statement required to be furnished to such employee under section 6051(a), a notice concerning the provisions of this title with respect to the allowance of a credit or refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on wages imposed by section 3101(b).

(2) *Information to be supplied to employees upon request.* With respect to compensation (as defined in section 3231(e)), every employer (as defined in section 3231(a)) who is required to deduct and withhold tax under section 3201 from an employee (as defined in section 3231(b)) who has also received wages during such year subject to the tax imposed by section

3101(b), shall upon request of such employee furnish to him or her a written statement showing—

(i) The total amount of compensation with respect to which the tax imposed by section 3101(b) was deducted;

(ii) The total amount of employee tax under section 3201 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year); and

(iii) The proportion thereof (expressed either as a dollar amount, or a percentage of the total amount of compensation as defined in section 3231(e), or as a percentage of the total amount of employee tax under section 3201) withheld as tax under section 3201 for financing the cost of hospital insurance benefits.

(h) \* \* \*

(2) *Time for furnishing statement.* The statement required by this paragraph (h) for a calendar year shall be furnished—

(i) In the case of an employee who is required to be furnished a Form W-2, Wage and Tax Statement, for the calendar year, within one week of (before or after) the date that the employee is furnished a timely Form W-2 for the calendar year (or, if a Form W-2 is not so furnished, on or before the date by which it is required to be furnished); and

(ii) In the case of an employee who is not required to be furnished a Form W-2 for the calendar year, on or before February 7 of the year succeeding the calendar year.

\* \* \* \* \*

(i) *Cross references.* For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see § 31.6674-1 and section 7204. For additional provisions relating to the inclusion of identification numbers and account numbers in statements on Form W-2, see §§ 31.6109-1 and 31.6109-4. For the penalties applicable to information returns and payee statements, see sections 6721-6724 and the regulations thereunder.

\* \* \* \* \*

(k) *Applicability date.* This section is applicable for statements required to be

furnished under section 6051 after December 31, 2018.

Par. 5. Section 31.6051-2 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

*§ 31.6051-2 Information returns on Form W-3 and Social Security Administration copies of Forms W-2.*

(a) *In general.* Every employer who is required to make a return of tax under § 31.6011(a)-1 (relating to returns under the Federal Insurance Contributions Act), § 31.6011(a)-4 (relating to returns of income tax withheld from wages), or § 31.6011(a)-5 (relating to monthly returns) for a calendar year or any period therein, shall file the Social Security Administration copy of each Form W-2 required under § 31.6051-1 to be furnished by the employer with respect to wages paid during the calendar year. An employer may not truncate an employee's social security number to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Form W-2 filed with the Social Security Administration. Each Form W-2 and the transmittal Form W-3 shall together constitute an information return to be filed with the Social Security Administration as indicated on the instructions to such forms. For the requirement to submit the information on Form W-2 on magnetic media, see section 6011(e) and § 301.6011-2 of this chapter (Procedure and Administration Regulations).

\* \* \* \* \*

(c) *Cross references.* For provisions relating to the time for filing the information returns required by this section and to extensions of the time for filing, see sections 6071 and 6081 and the regulations thereunder. For the penalties applicable to information returns and payee statements, see sections 6721 through 6724 and the regulations thereunder.

(d) *Applicability date.* This section is applicable for statements required to be filed under section 6051 after December 31, 2018.

Par. 6. Section 31.6051-3 is amended by revising paragraphs (a)(1)(i), (b)(1), (e)(3), and (f) and removing paragraph (g) to read as follows:

*§ 31.6051-3 Statements required in case of sick pay paid by third parties.*

(a) \* \* \*

(1) \* \* \*

(i) The name and, if there is withholding from sick pay under section 3402(o) and the regulations thereunder, the social security account number of the payee (the payee's social security number may not be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN)),

(b) \* \* \*

(1) All of the information required to be furnished under paragraph (a) of this section, but the employer may truncate the payee's social security number to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W-2 that are furnished to the payee (for provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations)),

\* \* \* \* \*

(e) \* \* \*

(3) The provisions of section 6109 (relating to identifying numbers) and the regulations thereunder shall be applicable to Form W-2 and to any payee of sick pay to whom a statement on Form W-2 is required by this section to be furnished. The employer must include the social security number of the payee on all copies of Forms W-2. The employer may truncate the payee's social security number to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W-2 that are furnished to the payee. For provisions relating to the use of truncated taxpayer identification numbers (TTINs), see § 301.6109-4 of this chapter (Procedure and Administration Regulations).

(f) *Applicability date.* This section is applicable for statements required to be furnished under section 6051 after December 31, 2018.

**PART 301 - PROCEDURE AND ADMINISTRATION**

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

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

Par. 8. Section 301.6109-4 is amended by revising paragraphs (b)(2)(ii) and (iii), (b)(3), and (c) to read as follows:

*§ 301.6109-4 IRS truncated taxpayer identification numbers.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) A TTIN may not be used on a statement or document if a statute, regulation, other guidance published in the Internal Revenue Bulletin, form, or instructions, specifically requires use of a SSN, ITIN, ATIN, or EIN and does not specifically state that the taxpayer identifying number may be truncated. For example, a TTIN may not be used on a Form W-8ECI or Form W-8IMY because the forms and/or form instructions specifically prescribe use of an SSN, EIN, or ITIN for the U.S. taxpayer identification number.

(iii) A TTIN may not be used on any return, statement, or other document that is required to be filed with or furnished to the Internal Revenue Service or the Social Security Administration in the case of forms required to be filed with the Social Security Administration under the internal revenue laws.

\* \* \* \* \*

(3) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

(i) *Example 1.* Pursuant to section 6051(d) and § 31.6051-2(a) of this chapter, Employer files the Social Security Administration copy of Employee's Form W-2, Wage and Tax Statement, with the Social Security Administration. Employer may not truncate any identifying number on the Social Security Administration copy. Pursuant to section 6051(a) and § 31.6051-1(a)(1)(i) of this chapter, Employer furnishes copies of Form W-2 to Employee. There are no applicable statutes, regulations, other published guidance, forms, or instructions that prohibit use of a TTIN on Form W-2, and § 31.6051-1(a)(1)(i) specifically permits truncating employees' SSNs. Accordingly, Employer may truncate Employee's SSN to appear in the form of a TTIN on copies of Form W-2 furnished to Employee. Employer may not truncate its own EIN on copies of Form W-2 furnished to Employee.

(ii) *Example 2.* On April 5, year 1, Donor contributes a used car with a blue book value of \$1100 to Charitable Organization. On April 20, year 1, Charitable Organization sends Donor copies B and C of the Form 1098-C as a contemporaneous written acknowledgement of the \$1100 contribution as required by section 170(f)(12). In late-February, year 2, Charitable Organization prepares and files copy A of Form 1098-C with the IRS, reporting Donor's donation of a qualified vehicle in year 1. Charitable Organization may truncate Donor's SSN to appear in the form of a TTIN in the Donor's Identification

Number box on copies B and C of the Form 1098-C because copies B and C of the Form 1098-C are documents required by the Internal Revenue Code and regulations to be furnished to another person; there are no applicable statutes, regulations, other published guidance, forms or instructions that prohibit the use of a TTIN on those copies; and there are no applicable statutes, regulations, other published guidance, forms, or instructions that specifically require use of an SSN or other identifying number on those copies. Charitable Organization may not truncate its own EIN on copies B and C of the Form 1098-C because a person cannot truncate its own taxpayer identifying number on any statement or other document the person furnishes to another person. Charitable Organization may not truncate any identifying number on copy A of the Form 1098-C because copy A is required to be filed with the IRS.

(c) *Applicability date.* This section is applicable to returns, statements and other documents required to be filed or furnished after December 31, 2018.

Kirsten Wielobob,  
*Deputy Commissioner for Services  
and Enforcement.*

(Filed by the Office of the Federal Register on September 18, 2017, 11:15 a.m., and published in the issue of the Federal Register for September 20, 2017, 82 F.R. 43920)

## REG-125374-16

### Guidance on the Definition of Registered Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the definitions of registration-required obligation and registered form, including guidance on the issuance of pass-through certificates and participation interests in registered form. This document also withdraws a portion of previously proposed regulations regarding the definition of a registration-required obligation. The proposed regulations generally are necessary to address changes in market practices as well as issues raised by the statutory repeal of the foreign-targeted bearer obligation exception to the registered form requirement. The proposed regulations will affect issuers and holders of obligations in registered form as well as

issuers and holders of registration-required obligations that are not issued in registered form.

DATES: Comments and requests for a public hearing must be received by December 18, 2017.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-125374-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-125374-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-125374-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann at (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under control number 1545-0945 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in this proposed regulation is in § 1.163-5(b), which permits issuers of registration-required obligations to satisfy the requirement for those obligations to be in registered form by maintaining a book entry system. Sections 163(f) and 149(a) require that certain obligations be in registered form and expressly permit issuers to satisfy that requirement through a book entry system. Accordingly, the proposed regulations permit issuers to satisfy the registration requirement through a book entry system and detail certain arrangements that qualify as book entry systems. The collection of information in proposed § 1.163-5(b) is an increase in the total annual burden under control

number 1545-0945. The respondents are businesses and other for-profit organizations, non-profit organizations, and state, local and tribal governments.

Estimated total annual recordkeeping burden: 95,105 hours.

Estimated average annual burden hours per respondent: 0.5 hours.

Estimated number of respondents: 190,210.

Estimated annual frequency of responses: 190,210.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 20, 2017.

Comments are specifically requested concerning:

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

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

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

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally tax returns and tax return information are confidential, as required by section 26 U.S.C. 6103.

## Background

This document contains proposed amendments to 26 CFR parts 1, 5f, and 46 under sections 103, 149, 163, 165, 860D, 871, 881, 1287, 4701, 6045, and 6049 of the Internal Revenue Code (Code).

### 1. In General

The classification of an obligation as in bearer or registered form has significant tax implications because a number of Code provisions impose sanctions on issuers and holders of registration-required obligations that are not issued in registered form. An obligation not issued in registered form is a bearer form obligation. Most of the Code provisions that pertain to registration-required obligations were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat. 324, § 310. Among these provisions, section 163(f) denies an issuer an interest deduction for interest on a registration-required obligation that is not in registered form. Section 4701 imposes an excise tax on the issuer of a registration-required obligation that is not in registered form. The excise tax is equal to 1 percent of the principal amount of the obligation multiplied by the number of calendar years (or portions thereof) between the issue date of the obligation and the date of maturity. Section 149(a) provides that interest on a registration-required bond is not exempt from tax under section 103(a) unless the bond is in registered form. In addition, section 871(h) and section 881(c) exempt from federal income tax portfolio interest from sources within the U.S. received by a nonresident alien or foreign corporation (portfolio interest exception) only if the obligation with respect to which the interest was paid is in registered form. Similar restrictions are found in sections 165(j) (generally denying the holder a deduction for a loss sustained on a registration-required obligation not in registered form), 312(m) (generally providing that the issuer's earnings and profits cannot be decreased by interest paid on a registration-required obligation not in registered form),

and 1287 (generally treating the holder's gain on sale of a registration-required obligation not in registered form as ordinary income).

Historically, the Code provisions referenced in the preceding paragraph generally did not apply to obligations that complied with the foreign-targeting rules of prior section 163(f)(2)(B) and § 1.163-5(c) (foreign-targeted bearer obligations). Under the foreign-targeting rules, an issuer could issue foreign-targeted bearer obligations without penalty provided the obligations were issued under arrangements reasonably designed to ensure that the obligations were sold only to non-U.S. persons. The portfolio interest exception also applied to interest paid on foreign-targeted bearer obligations issued under such reasonably designed arrangements.

The Hiring Incentives to Restore Employment Act (the HIRE Act), Public Law 111-147, 124 Stat. 71, section 502, repealed section 163(f)(2)(B) and generally eliminated the special treatment of foreign-targeted bearer obligations. Foreign-targeted bearer obligations issued after March 18, 2012, are subject to the sanctions on bearer form obligations under sections 149(a), 163(f), 165(j), 312(m), and 1287. The HIRE Act also revoked the portfolio interest exception for foreign-targeted bearer obligations, thus requiring that obligations issued after March 18, 2012, be in registered form to qualify for that exception. The HIRE Act did not, however, repeal the foreign-targeted bearer obligation exception to the excise tax under section 4701. See section 4701(b)(1)(B)(i).

### 2. Registration-Required Obligations

#### A. In General

Under section 163(f)(2)(A), as amended by the HIRE Act, the term *registration-required obligation* means any obligation other than an obligation that: (1) Is issued by a natural person; (2) is not of a type offered to the public; or (3) has a maturity at issue of not more than 1 year. For purposes of sections 165(j), 312(m), and 1287, registration-required obligation has the same meaning as when used in section 163(f). See also section 149(a) (providing a similar definition except for the exclusion for instruments issued by a natural person). For purposes of

section 4701, that term also has the same meaning as when used in section 163(f), except that tax-exempt bonds and foreign-targeted bearer obligations are excluded.

Section 5f.163-1(b)(2) provides that the determination as to whether an obligation is of a type offered to the public is based on whether similar obligations are in fact publicly offered or traded. On January 21, 1993, the Department of the Treasury (Treasury) and the IRS published in the **Federal Register** (58 FR 5316) a notice of proposed rulemaking (INTL-0115-90) containing proposed regulations that elaborated upon the meaning of “of a type offered to the public” for purposes of section 163(f)(2)(A) (the 1993 proposed regulations). See Prop. Treas. Reg. § 5f.163-1(b)(2). The preamble to the 1993 proposed regulations cited the report of the Senate Finance Committee on TEFRA for the conclusion that an obligation that represents a “readily negotiable substitute for cash” should be a registration-required obligation. 58 FR 5316 (citing S. Rep. No. 97-494, at 242 (1982)). Treasury and the IRS reasoned in the preamble to the 1993 proposed regulations that, because the standards for determining if an obligation is “readily tradable in an established securities market” under section 453(f)(4)(B) and § 15a.453-1(e)(4) address an analogous concern with negotiability, similar standards should apply for determining whether an obligation is “of a type offered to the public” under section 163(f)(2)(A).

#### B. Pass-Through Certificates

Section 1.163-5T provides rules to address whether pass-through certificates are registration-required obligations. In their most common form, pass-through certificates are issued by an investment entity (typically a trust) that holds a pool of obligations, such as mortgage loans. Each pass-through certificate represents an interest in the investment entity.

To accommodate these securitization transactions, § 1.163-5T(d)(1) generally provides that a pass-through certificate evidencing an interest in a pool of mortgage loans that is treated as a trust of which the grantor is the owner is considered to be a registration-required obligation if, standing alone, the pass-through certificate meets the

definition of a registration-required obligation. Section 1.163-5T(d)(1) also applies to “similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust,” although commenters have noted the ambiguity of the reference. Similarly, § 1.871-14(d)(1) provides that interest received on a pass-through certificate qualifies for the portfolio interest exception if, standing alone, the pass-through certificate is in registered form.

Commenters have asked that Treasury and the IRS describe the types of arrangements that qualify as pass-through certificates. Specifically, commenters have requested that Treasury and the IRS amend the definition of a pass-through certificate to clarify that the issuer of a pass-through certificate may be either a grantor trust or another type of entity, such as a partnership or a disregarded entity, so long as the obligations in the pool are held through an arrangement that meets the requirements to be in registered form. Commenters have also requested that Treasury and the IRS amend § 1.871-14(d)(1) so that the definition of pass-through certificate for purposes of the portfolio interest exception is identical to the definition of pass-through certificate under § 1.163-5T(d)(1).

### 3. Definition of Registered Form

#### A. In General

For purposes of determining whether an obligation is in registered form under section 163(f),<sup>1</sup> the principles of section 149(a)(3) apply. See section 163(f)(3). Section 149(a)(3)(A) provides that a bond is treated as being in registered form if the right to the principal of, and stated interest on, the bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary. Section 149(a)(3)(B) authorizes the Secretary to prescribe regulations to carry out the requirement that a bond be issued in registered form when there is one or more nominee. For purposes of section 149(a), the conditions for an obligation to be considered in registered form are described in

§ 5f.103-1(c).<sup>2</sup> The regulations under both section 163(f) and section 871(h), specifically §§ 5f.163-1(a) and 1.871-14(c), refer to § 5f.103-1(c) for a definition of registered form. Obligations that do not meet the conditions described in § 5f.103-1(c) are treated as issued in bearer form.

Generally, under § 5f.103-1(c), an obligation is in registered form if: (1) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and any transfer of the obligation may be effected only by surrender of the old obligation and reissuance to the new holder; (2) the right to principal and stated interest with respect to the obligation may be transferred only through a book entry system maintained by the issuer or its agent; or (3) the obligation is registered as to both principal and stated interest with the issuer or its agent and may be transferred both by surrender and reissuance and through a book entry system. An obligation is considered transferable through a book entry system if ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. An obligation that would otherwise be considered to be in registered form is not considered to be in registered form if the obligation may be converted at any time in the future into an obligation that is not in registered form. See § 5f.103-1(e).

#### B. Dematerialized Book Entry Systems

Since the publication of § 5f.103-1, market practices have changed with respect to how interests in obligations are recorded and transferred. For example, many obligations trade in fully dematerialized form. An obligation that is fully dematerialized is not represented by a physical (paper) certificate, and a clearing organization that is the registered holder of the obligation operates an electronic book entry system that identifies the clearing organization’s member or members holding the obligation (or interests in the obligation). The clearing organization facilitates and records transfers of the obli-

gation (or interests in the obligation) among the clearing organization’s members. The members (typically, banks or broker-dealers), in turn, record their clients’ ownership of the obligation (or interests in the obligation) in their book entry systems. Alternatively, an obligation may be represented by a physical global certificate that is nominally in bearer form but that is immobilized in a clearing organization, which handles the obligation thereafter exactly as it does an obligation that was fully dematerialized when issued. Commenters have requested additional guidance on how the registered form rules in § 5f.103-1 apply to these arrangements.

Treasury and the IRS provided guidance on how to apply the registered form rules to certain of these arrangements in Notice 2006-99, 2006-2 CB 907. Notice 2006-99 addresses an arrangement in which no physical certificates are issued and under which ownership interests in bonds are required to be represented only by book entries in a dematerialized book entry system maintained by a clearing organization. Notice 2006-99 provides that an obligation issued under such an arrangement is treated as in registered form notwithstanding the ability of holders to obtain physical certificates in bearer form upon the termination of the business of the clearing organization without a successor.

The HIRE Act also addressed dematerialized book entry systems. For obligations issued after March 18, 2012, section 163(f)(3), as amended by the HIRE Act, provides that, for purposes of section 163(f), a dematerialized book entry system or other book entry system specified by the Secretary will be treated as a book entry system described in section 149(a)(3). The Joint Committee on Taxation’s technical explanation of the HIRE Act further explained that an obligation “that is formally in bearer form is treated, for the purposes of section 163(f), as held in a book entry system as long as the debt obligation may be transferred only through a dematerialized book entry system or other book entry system specified by the Secretary.” J. Comm. on Tax’n, *Technical Explanation of the Revenue Provisions Contained*

<sup>1</sup>For purposes of sections 165(j), 312(m), 871(h)(7), 881(c)(7), 1287, and 4701, the term *registered form* has the same meaning as when used in section 163(f).

<sup>2</sup>Section 5f.103-1 was originally published under section 103(j) of the Internal Revenue Code of 1954, which was enacted as part of TEFRA and provided that obligations must be in registered form to be tax-exempt. Section 103(j) was recodified as section 149(a) by section 1301 of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085.

in *Senate Amendment 3310, the "Hiring Incentives to Restore Employment Act," Under Consideration by the Senate* (JCX-4-10), Feb. 23, 2010, at 53.

### C. Notice 2012-20

Commenters expressed concern that the explicit reference to a "dematerialized book entry system" in section 163(f)(3), as amended by the HIRE Act, would create uncertainty about obligations issued in a manner not specifically described in Notice 2006-99. In particular, commenters requested guidance to address the treatment of obligations represented by a physical global certificate that is nominally in bearer form, but that is immobilized in a clearing system. In addition, commenters requested guidance regarding whether an obligation will be considered to be in registered form if holders may obtain physical certificates in bearer form under circumstances not described in Notice 2006-99.

In response to these comments, Treasury and the IRS published Notice 2012-20, 2012-13 IRB 574, on March 26, 2012. Notice 2012-20 provides additional guidance on the definition of registered form and further states that Treasury and the IRS intend to publish regulations consistent with the guidance described in the notice. Under Notice 2012-20, an obligation is considered to be in registered form if it is issued either through a dematerialized book entry system in which beneficial interests are transferable only through a book entry system maintained by a clearing organization (or by an agent of the clearing organization) or through a clearing system in which the obligation is effectively immobilized. Notice 2012-20 provides that an obligation is considered to be effectively immobilized if: (1) The obligation is represented by one or more global securities in physical form that are issued to and held by a clearing organization (or by a custodian or depository acting as an agent of the clearing organization) for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the global securities except to a successor clearing organization subject to the same terms; and (2) beneficial interests in the underlying obligation are transferable only through a book entry system main-

tained by the clearing organization (or an agent of the clearing organization). Notice 2012-20 further states that an interest in an obligation is considered to be transferable only through a book entry system if the interest would be considered transferable through a book entry system under § 5f.103-1(c)(2), except that holders may obtain physical certificates in bearer form in certain limited circumstances stated in the notice. Finally, Notice 2012-20 states that, for purposes of determining when an obligation is a registration-required obligation under section 4701, rules identical to the foreign-targeting rules under section 163(f)(2)(B), prior to its amendment by the HIRE Act, and § 1.163-5(c) will apply to obligations issued after March 18, 2012.

## Explanation of Provisions

### 1. In General

Consistent with Notice 2012-20, these proposed regulations amend the definition of registered form to take into account current market practices and changes made by the HIRE Act, including the repeal of the foreign-targeting rules in section 163(f)(2)(B). In addition, these proposed regulations amend the definition of a registration-required obligation in two ways. First, the proposed regulations specify the types of obligations that are treated as "of a type offered to the public" and withdraw the 1993 proposed regulations. Second, the proposed regulations take into account comments requesting clarification on the types of arrangements that qualify as pass-through certificates.

Though the definitions of the terms *registered form* and *registration-required obligation* are generally consistent across the various provisions in which they are used, the rules are set forth in a number of existing regulations, including several promulgated under section 163(f). To the extent possible, these proposed regulations simplify the definitions of registered form and registration-required obligation by centralizing the rules in § 1.163-5. Thus, the applicable rules have been relocated from §§ 5f.103-1 (definition of registered form), 1.163-5T (pass-through certificates and regular interests in REMICs), and 5f.163-1 (definition of registration-required obligation) to paragraphs (a) and (b) of proposed

§ 1.163-5. Appropriate cross-references to § 1.163-5 are proposed to be added to regulations that rely on one or both definitions, including §§ 1.149(a)-1, 1.165-12, 1.860D-1(b)(5)(i)(A), 1.871-14, 1.1287-1, and 46.4701-1.

### 2. Registration-Required Obligations

#### A. Obligation of a Type Offered to the Public

Consistent with the 1993 proposed regulations, Treasury and the IRS continue to believe that it is appropriate to determine whether an obligation is of a type offered to the public by reference to whether the obligation is "traded on an established market." Although a number of Code and regulation sections refer to and define that phrase (for example, sections 453, 1092, 1273, and 7704, as well as the regulations promulgated under those Code sections), Treasury and the IRS have concluded that the definition provided in § 1.1273-2(f) is most appropriate for purposes of defining a registration-required obligation. Thus, the proposed regulations generally treat an obligation as of a type offered to the public if the obligation is traded on an established market as determined under § 1.1273-2(f). For this purpose, however, the proposed regulations do not take into account the exception for small debt issues in § 1.1273-2(f)(6).

#### B. Pass-Through Certificates and Participation Interests

Commenters indicated that an entity that issues pass-through certificates may hold a pool of debt instruments that is either fixed or that changes over time. For example, the issuing entity may have the right to acquire additional assets after formation, or the right to dispose of assets at any time. In those situations, the entity generally will not be classified as a grantor trust for federal tax purposes, but that does not preclude it from issuing pass-through certificates. To address these situations, the proposed regulations amend the definition of a pass-through certificate to provide that a pass-through certificate may be issued by a grantor trust or a similar fund, and specify that a similar fund includes entities that are partnerships or disregarded for federal tax purposes and funds that have the power to

vary the assets they hold or the sequence of payments to holders. A similar fund, however, does not include a business entity classified as a corporation.

In addition, Treasury and the IRS have concluded that an arrangement that satisfies the definition of a registration-required obligation and the registered form rules should be treated the same as a pass-through certificate even if the arrangement is with respect to only one underlying obligation or if the arrangement is treated as co-ownership of one or more obligations (rather than, for purposes of TEFRA or otherwise, ownership of an entity that holds the underlying obligations). The proposed regulations eliminate the requirement that the fund hold a pool of loans and replace it with a requirement that the fund primarily hold debt instruments. Thus, a fund can hold one or more debt instruments, so long as the fund primarily holds debt instruments.

In addition, the proposed regulations treat an interest that evidences co-ownership of one or more obligations (including a participation interest) as a registration-required obligation if, standing alone, the interest satisfies the definition of a registration-required obligation. The proposed regulations also propose to amend § 1.871-14(d)(1) to include a cross-reference to the rules for pass-through certificates and participation interests in proposed § 1.163-5(a)(3)(i) and (ii) such that similar rules apply for purposes of the portfolio interest exception.

### 3. Definition of Registered Form

The proposed regulations amend the definition of registered form in a number of ways. First, the proposed regulations provide that an obligation is considered to be in registered form if it is transferable through a book entry system, including a dematerialized book entry system, maintained by the issuer of the obligation, an agent of the issuer, or a clearing organization. A clearing organization includes an entity that holds obligations for its members or maintains a system that reflects the ownership interests of members and transfers of obligations among members' accounts without the necessity of physical delivery of the obligation.

Second, the proposed regulations provide that an obligation represented by a physical certificate in bearer form will be considered to be in registered form if the physical certificate is effectively immobilized. To be effectively immobilized, the physical certificate evidencing an obligation must be issued to and held by a clearing organization for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the physical certificate except to a successor clearing organization and permit transfers of ownership interests in the underlying obligation only through a book entry system maintained by the clearing organization (or a successor clearing organization). As suggested in comments, the proposed regulations change the requirement in Notice 2012-20 that a successor clearing organization hold the physical certificate subject to the same terms as the predecessor; Treasury and the IRS concluded that it is sufficient if the successor clearing organization has rules that effectively immobilize the physical certificate.

Third, the proposed regulations permit holders of obligations (or interests in obligations) to have a right to obtain physical certificates evidencing the obligation (or interests in the obligation) in bearer form without causing the obligation to be treated as not in registered form in two circumstances: (1) A termination of the clearing organization's business without a successor; or (2) the issuance of physical securities at the issuer's request upon a change in tax law that would be adverse to the issuer but for the issuance of physical securities in bearer form. This exception from bearer form treatment is consistent with the guidance provided in Notice 2012-20, except that the proposed regulations do not permit a holder to have a right to obtain a physical bearer certificate if there is an issuer event of default (default exception). Treasury and the IRS understand that in certain situations holders may be required to obtain physical certificates to pursue claims against the issuer, but in such instances it would be appropriate to expect those physical certificates to be issued in registered form. Taxpayers may rely on the default exception in Notice 2012-20 for obligations issued prior to publication of a Treasury decision

adopting these rules as final regulations in the **Federal Register**.

After the occurrence of one of the two events described in the first sentence of the preceding paragraph, an obligation will no longer be in registered form if a holder, or a group of holders acting collectively, has a right to obtain a physical certificate in bearer form, regardless of whether any option to obtain a physical certificate in bearer form has actually been exercised.

### 4. Section 881

Commenters requested that examples 10 and 19 set forth in § 1.881-3(e) be removed or revised to take into account the repeal of the foreign-targeted bearer obligation exception. Consistent with these comments, the proposed regulations propose to remove those examples.

### 5. Section 4701

Commenters requested clarification on whether the foreign-targeting rules under § 1.163-5(c) would apply to obligations issued after March 18, 2012, for purposes of section 4701. Consistent with Notice 2012-20, proposed § 46.4701-1 provides that, for purposes of determining whether an obligation is a foreign-targeted bearer obligation, the rules of § 1.163-5(c) apply.

### 6. Applicability Dates

Notice 2012-20 stated that regulations incorporating the guidance described in that notice will be effective for obligations issued after March 18, 2012. Accordingly, the proposed regulations will generally apply to obligations issued after March 18, 2012. However, taxpayers may apply the rules in section 3 of Notice 2012-20, including the default exception, for obligations issued prior to publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules related to pass-through certificates, participation interests, and regular interests in REMICs and the rules related to obligations not of a type offered to the public are not described in Notice 2012-20 and, therefore, will apply only to obligations issued after the publication of

a Treasury decision adopting these rules as final regulations in the **Federal Register**, except as otherwise provided in the next sentence. The existing regulations under § 5f.103–1 will continue to apply to tax-exempt bonds issued prior to the date 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

### Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Sections 163(f) and 149(a) require that certain obligations be in registered form which is satisfied if the obligations are transferable only through a book entry system. The existing regulations under these sections therefore permit issuers to satisfy the registration requirement through a book entry system and describe the arrangements that are necessary for a system to qualify as a book entry system. Certain systems that are now common, however, may not qualify as book entry systems under the existing regulations. Because the proposed regulations merely clarify that these systems are book entry systems, the proposed regulations would not impose a significant economic impact. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public

hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal authors of these regulations are Spence Hanemann and Diana Imholtz, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from Treasury and the IRS participated in their development.

### Availability of IRS Documents

The IRS notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS Web site at [www.irs.gov](http://www.irs.gov).

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### Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 5f.163–1(b)(2) of the notice of proposed rulemaking (INTL–0115–90, subsequently converted to REG–208245–90) that was published in the **Federal Register** (58 FR 5316) on January 21, 1993, is withdrawn.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5f, and 46 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

Section 1.149(a)–1 also issued under 26 U.S.C. 149(a)(3).

\* \* \* \* \*

Section 1.163–5 also issued under 26 U.S.C. 163(f)(3).

\* \* \* \* \*

Par. 2. Section 1.149(a)–1 is added to read as follows:

### § 1.149(a)–1 Obligations required to be in registered form.

(a) *General rule.* Interest on a registration-required bond shall not be exempt from tax notwithstanding section 103(a) or any other provision of law, exclusive of any treaty obligation of the United States, unless the bond is issued in registered form (as defined in § 1.163–5(b)). For this purpose, registration-required bond has the same meaning as registration-required obligation in § 1.163–5(a)(2).

(b) *Applicability date.* This section applies to bonds issued on or after the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For bonds issued before the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see § 5f.103–1 of this chapter.

Par. 3. Section 1.163–5 is amended by revising the section heading and adding paragraphs (a), (b), and (c)(3)(iii) to read as follows:

### § 1.163–5 Denial of interest deduction on certain obligations unless issued in registered form.

(a) *Denial of deduction—(1) In general.* No deduction shall be allowed a taxpayer under section 163 for interest paid or accrued on a registration-required obligation (as defined in section 163(f) and paragraph (a)(2) of this section) unless such obligation is issued in registered form (as defined in paragraph (b) of this section). An obligation that is not in registered form under paragraph (b) of this section is an obligation in bearer form.

(2) *Registration-required obligation—(i) In general.* The term *registration-required obligation* means any obligation (including a pass-through certificate or participation interest described in paragraph (a)(3) of this section and a regular interest in a REMIC described in paragraph (a)(4) of this section) other than—

(A) An obligation issued by a natural person;

(B) An obligation not of a type offered to the public (as described in paragraph (a)(2)(ii) of this section); or

(C) An obligation that has a maturity at the date of issue of not more than 1 year.

(ii) *Obligation not of a type offered to the public.* For purposes of section 163(f)(2)(A)(ii) and paragraph (a)(2)(i)(B) of this section, an obligation is not of a type offered to the public unless the obligation is traded on an established market as determined under § 1.1273-2(f) without regard to § 1.1273-2(f)(6).

(3) *Pass-through certificates and participation interests*—(i) *Pass-through certificate*—(A) *In general.* A pass-through certificate is considered to be a registration-required obligation if the pass-through certificate is described in paragraph (a)(2)(i) of this section without regard to whether any obligation held by the entity to which the pass-through certificate relates is described in paragraph (a)(2)(i) of this section.

(B) *Definition of pass-through certificate.* For purposes of paragraph (a) of this section, a *pass-through certificate* is an instrument evidencing an interest in a grantor trust under Subpart E of Part I of Subchapter J of the Code, or a similar fund, that principally holds debt instruments. For purposes of this paragraph (a)(3)(i)(B), a similar fund includes an entity that, under §§ 301.7701-1 through 301.7701-3 of this chapter, is disregarded as an entity separate from its owner or classified as a partnership for federal tax purposes, without regard to whether the fund has the power to vary the assets in the fund or the sequence of payments made to holders. In addition, for purposes of this paragraph (a)(3)(i)(B), a similar fund does not include a business entity that is classified as a corporation under § 301.7701-2 of this chapter.

(ii) *Participation interest.* A participation interest that evidences ownership of some or all of one or more obligations and that is treated as conveying ownership of a specified portion of the obligation or obligations (and not ownership of an entity treated as created under § 301.7701-1(a)(2) of this chapter) is considered to be a registration-required obligation if the participation interest is described in paragraph (a)(2)(i) of this section without regard to whether any obligation to which the participation interest relates is described in paragraph (a)(2)(i) of this section.

(iii) *Treatment of obligation held by a trust or fund.* An obligation held by a trust or a fund in which ownership interests are represented by pass-through certificates is considered to be in registered form or to be a registration-required obligation if the obligation held by the trust or fund is in registered form (as defined in paragraph (b) of this section) or is a registration-required obligation described in paragraph (a)(2)(i) of this section, without regard to whether the pass-through certificates are so considered.

(iv) *Examples.* The application of paragraph (a)(3) of this section may be illustrated by the following examples:

*Example 1.* Fund, a partnership under the laws of the state in which it is organized, acquires a pool of student loans. The student loans are issued by natural persons and, therefore, are not registration-required obligations as described in paragraph (a)(2)(i) of this section. Fund contributes the student loans to Trust, a business trust under the laws of the state in which Trust is organized. Trust has the power to vary the investments in Trust, and is not treated as a trust of which the grantor is the owner under Subpart E of Part I of Subchapter J of the Code. Trust issues certificates evidencing an interest in Trust. The certificates issued by Trust are offered to the public. The certificates issued by Trust are pass-through certificates (as described in paragraph (a)(3)(i)(B) of this section) and are described in paragraph (a)(2)(i) of this section, and thus, are registration-required obligations described in paragraph (a)(2)(i) of this section, even though the student loans held by Trust are not registration-required obligations.

*Example 2.* Partnership U purchases a building from Partnership V. Partnership U makes a cash down payment and issues a note secured by a mortgage in the building to Partnership V for the remaining purchase price of the building. The note is not a registration-required obligation described in paragraph (a)(2)(i) of this section because it is not an obligation of a type offered to the public. Partnership V offers participations in the underlying note to the public. Under the terms of the participation, each participant will own an interest in the note that will entitle the participant to a specified portion of the interest and principal generated by the note. The participation is a participation interest described in paragraph (a)(3)(ii) of this section and is described in paragraph (a)(2)(i) of this section, and, thus, is a registration-required obligation described in paragraph (a)(2)(i) of this section, even though the underlying note is not a registration-required obligation.

(4) *REMICs*—(i) *Regular interest in a REMIC.* A regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be a registration-required obligation if the regular interest is described in paragraph (a)(2)(i) of this section, without regard to whether one or more of the obli-

gations held by the REMIC to which the regular interest relates is described in paragraph (a)(2)(i) of this section.

(ii) *Treatment of obligation held by a REMIC.* An obligation described in paragraph (a)(2)(i) of this section and held by a REMIC is treated as a registration-required obligation regardless of whether the regular interests in the REMIC are so treated.

(5) *Applicability date*—(i) *In general.* Except as otherwise provided in paragraphs (a)(5)(ii) and (iii) of this section, paragraph (a) of this section applies to obligations issued after March 18, 2012. For obligations issued on or before March 18, 2012, see § 5f.163-1 of this chapter.

(ii) *Obligations not of a type offered to the public.* Paragraph (a)(2)(ii) of this section applies to obligations issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(iii) *Pass-through certificates, participation interests, and regular interests in REMICs.* Paragraph (a) of this section applies to pass-through certificates, participation interests, and regular interests in REMICs issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. For pass-through certificates or regular interests in REMICs issued on or before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, see § 1.163-5T.

(b) *Registered form*—(1) *General rule.* Except as provided in paragraph (b)(4) of this section, an obligation is in registered form if a transfer of the right to receive both principal and any stated interest on the obligation may be effected only—

(i) By surrender of the old obligation and either the reissuance of the old obligation to the new holder or the issuance of a new obligation to the new holder;

(ii) Through a book entry system (as described in paragraph (b)(2) of this section) maintained by the issuer of the obligation (or its agent) or by a clearing organization (as defined in paragraph (b)(3) of this section); or

(iii) Through both of the methods described in paragraphs (b)(1)(i) and (ii) of this section.

(2) *Book entry system*—(i) *In general.* An obligation will be considered transferable through a book entry system, including a dematerialized book entry system, if ownership of the obligation or an interest in the obligation is required to be recorded in an electronic or physical register maintained by the issuer of the obligation (or its agent) or by a clearing organization (as defined in paragraph (b)(3) of this section).

(ii) *Book entry system maintained by clearing organization that effectively immobilizes a bearer form obligation.* An obligation represented by one or more physical certificates in bearer form will be considered to be in registered form if the physical certificates are effectively immobilized. A physical certificate is effectively immobilized only if—

(A) The physical certificate is issued to and held by a clearing organization (as defined in paragraph (b)(3) of this section) for the benefit of purchasers of interests in the obligation under arrangements that prohibit the transfer of the physical certificate except to a successor clearing organization subject to terms that effectively immobilize the physical certificate, as provided in paragraph (b)(2)(ii) of this section, in the hands of the successor clearing organization; and

(B) Ownership of the obligation or an interest in the obligation is transferable only through a book entry system (as described in paragraph (b)(2)(i) of this section) maintained by the clearing organization (as defined in paragraph (b)(3) of this section).

(3) *Definition of clearing organization.* For purposes of paragraph (b) of this section, *clearing organization* means an entity that is in the business of holding obligations for or reflecting the ownership interests of member organizations and transferring obligations among such member organizations by credit or debit to the account of a member organization without the necessity of physical delivery of the obligation.

(4) *Temporal limitations on registered form*—(i) *In general.* Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, an obligation is not considered to be in registered form as of a particular time if the obligation may be transferred at that time or at a time or times on or before the maturity of the obligation by

any means not described in paragraph (b)(1) of this section.

(ii) *Events that permit issuance of physical certificates in bearer form*—(A) *In general.* An obligation transferrable through a dematerialized book entry system is not in bearer form pursuant to paragraph (b)(4)(i) of this section solely because a holder of the obligation (or an interest therein) has a right to obtain a physical certificate in bearer form upon the occurrence of one or both of the following events—

(1) A termination of business without a successor by the clearing organization that maintains the book entry system; or

(2) The issuance of physical securities at the issuer's request upon a change in tax law that would be adverse to the issuer but for the issuance of physical securities in bearer form.

(B) *Treatment upon issuance of physical certificate in bearer form.* Upon the occurrence of one or both of the events described in paragraph (b)(4)(ii)(A) of this section, any obligation with respect to which a holder, or a group of holders acting collectively, may obtain a physical certificate in bearer form will no longer be in registered form, regardless of whether a physical certificate in bearer form has actually been issued.

(iii) *Obligations in registered form until maturity.* An obligation that as of a particular time is not considered to be in registered form because the obligation may be transferred at a time or times before the maturity of the obligation by a means not described in paragraph (b)(1) of this section and that during the period beginning at a later time and ending at maturity may be transferred only by a means described in paragraph (b)(1) of this section is considered to be in registered form during the period beginning at that later time.

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

*Example 1.* X issues an obligation that is a registration-required obligation as described in paragraph (a)(2)(i) of this section. At issuance, X issues the obligation in the purchaser's name evidencing the purchaser's ownership of the principal and interest under the obligation. The purchaser may transfer the obligation only by surrendering the obligation to X and by X issuing a new instrument to the new holder. X's obligation is issued in registered form under paragraph (b)(1) of this section.

*Example 2.* Corporation A issues US\$500 million of debt (the Note) evidenced by a physical certificate that is registered in the name of ABC, a clearing organization (as defined in paragraph (b)(3) of this section). Under the terms of the Note, Corporation A must maintain an electronic register identifying the owners of interests in the Note, and a transfer of the right to receive either principal or any stated interest on such ownership interests may be effected only through a change to the electronic register. Pursuant to an agreement with Corporation A, ABC takes custody of the physical certificate evidencing the Note and receives all principal and interest on the Note from Corporation A. Independently of its agreement with Corporation A, ABC maintains electronic records of its members' ownership interests in the Note and distributes principal and interest to members' accounts in accordance with those interests. ABC's members, in turn, maintain electronic records of their customers' ownership interests in the Note and similarly distribute principal and interest to their customers' accounts. Corporation A's electronic register identifies ABC as the sole owner of the Note. Corporation A does not record transfers of ownership interests in the Note to or among ABC's members, and ABC does not record transfers of ownership interests in the Note to or among its members' customers. Corporation A's electronic register is a book entry system as described in paragraph (b)(2)(i) of this section, and the Note is in registered form under paragraph (b)(1) of this section.

*Example 3.* The facts are the same as in *Example 2* of paragraph (b)(5) of this section, except that, instead of maintaining an electronic register, Corporation A issues a global bearer certificate (Certificate) to ABC pursuant to an agreement that prohibits the transfer of Certificate except to a successor clearing organization subject to terms that effectively immobilize Certificate, as provided in paragraph (b)(2)(ii) of this section, in the hands of the successor clearing organization. Further, holders of interests in Certificate may only obtain physical bearer certificates upon cessation of ABC's operations without a successor or, at Corporation A's request, upon a change in tax law that would be adverse to Corporation A but for the issuance of physical bearer certificates. Because ownership of interests in Certificate may be transferred only through a dematerialized book entry system maintained by ABC, and because the circumstances under which definitive bearer certificates may be issued to holders of interests in Certificate are limited to the circumstances described in paragraph (b)(4)(ii)(A) of this section, Certificate is an immobilized bearer form obligation described in paragraph (b)(2)(ii) of this section and is accordingly in registered form under paragraph (b)(2)(ii) of this section.

*Example 4.* The facts are the same as in *Example 3* of paragraph (b)(5) of this section, except that purchasers of interests in Certificate have the right to obtain definitive bearer certificates upon request at any time until maturity of Certificate. Because the circumstances under which definitive bearer obligations may be issued to holders of interests in Certificate are not limited to the circumstances described in paragraph (b)(4)(ii)(A) of this section, Certificate is not considered to be issued in registered form under paragraph (b)(4)(i) of this section.

*Example 5.* Bank makes a loan to borrower secured by real property (Loan). Participations in Loan are traded on an established market. The participations are participation interests described in paragraph (a)(3)(ii) of this section and are accordingly registration-required obligations described in paragraph (a)(2)(i) of this section. Bank remains the registered owner of Loan and maintains an electronic book entry system that identifies participants. Participation interests may be transferred only by surrender of the old participation interest and reissuance of the participation interest in the name of the new participant, or by transfer of the participation interest from the name of the old participant to the name of the new participant in the book entry system of Bank. Bank's book entry system is described in paragraph (b)(2)(i) of this section, and, accordingly, under paragraph (b)(1)(iii) of this section, the participation interests are in registered form.

(6) *Applicability date.* Paragraph (b) of this section applies to obligations issued after March 18, 2012. Taxpayers may apply the rules in section 3 of Notice 2012–20, 2012–13 IRB 574, for obligations issued prior to the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For obligations issued on or before March 18, 2012, see § 5f.103–1 of this chapter.

(c) \* \* \*

(3) \* \* \*

(iii) *Applicability to obligations issued after March 18, 2012.* For purposes of section 163(f), paragraph (c) of this section does not apply to obligations issued after March 18, 2012. However, for purposes of determining whether an obligation is described in section 4701(b)(1)(B) or whether the exception in section 6049 from information reporting of interest or original discount with respect to obligations that have an original term of 183 days or less applies, paragraph (c) of this section continues to apply to obligations issued after March 18, 2012. See §§ 1.4701–1(b)(3) and 1.6049–5(b)(10).

Par. 4. Section 1.163–5T is amended by adding paragraph (f) to read as follows:

**§ 1.163–5T Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form (temporary).**

\* \* \* \* \*

(f) *Applicability date.* This section applies to obligations to which § 5f.163–1 of this chapter applies. See § 5f.163–1(d) of this chapter.

Par. 5. Section 1.165–12 is amended by:

1. Revising paragraph (a).

2. Redesignating paragraphs (b)(1) and (2) as (b)(2) and (3), respectively.

3. Adding a new paragraph (b)(1).

4. Revising the paragraph heading and first sentence of newly redesignated paragraph (b)(2).

5. Redesignating paragraph (d) as paragraph (d)(1).

6. Revising the paragraph heading and the first sentence of newly redesignated paragraph (d)(1).

7. Adding a new paragraph heading for paragraph (d).

8. Adding paragraph (d)(2).

The revisions and additions read as follows:

**§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.**

(a) *In general.* Except as provided in paragraph (c) of this section, nothing in section 165(a) and the regulations thereunder, or in any other provision of law, shall be construed to provide a deduction for any loss sustained on any registration-required obligation held after December 31, 1982, unless the obligation is in registered form or the issuance of the obligation was subject to tax under section 4701. The term *registration-required obligation* has the meaning given to that term in section 163(f)(2) and § 1.163–5(a)(2)(i). For purposes of this section, the term *holder* means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a). For purposes of this section, the term *United States* means the United States and its possessions within the meaning of § 1.163–5(c)(2)(iv).

(b) *Registered form—(1) Obligations issued after March 18, 2012.* With respect to obligations issued after March 18, 2012, the term *registered form* has the meaning given that term in § 1.163–5(b).

(2) *Obligations issued after September 21, 1984 and on or before March 18, 2012.* With respect to any obligation originally issued after September 21, 1984, and on or before March 18, 2012, the term *registered form* has the meaning given that term in § 5f.103–1 of this chapter. \* \* \*

\* \* \* \* \*

(d) *Applicability date—(1) In general.* Except as provided in paragraph (d)(2) of

this section, these regulations apply generally to obligations issued after January 20, 1987. \* \* \*

(2) *Obligations issued after March 18, 2012.* Paragraph (a) of this section applies to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before March 18, 2012, see § 1.165–12 as contained in 26 CFR part 1, revised as of the date of the most recent annual revision.

**§ 1.860D–1 [Amended]**

Par. 6. Section 1.860D–1(b)(5)(i)(A) is amended by removing the language “§ 5f.103–1(c)” and adding in its place the language “§ 1.163–5(b).”

Par. 7. Section 1.871–14 is amended by:

1. Revising the heading for paragraph (c).

2. Revising paragraph (c)(1)(i).

3. Revising the heading for paragraph (d).

4. Revising paragraphs (d)(1) and (2).

5. Adding paragraphs (j)(4) and (5).

The revisions and additions read as follows:

**§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.**

\* \* \* \* \*

(c) *Obligations in registered form—(1) In general—(i) Registered form.* For purposes of this section, the rules of § 1.163–5(b) apply to determine when an obligation is in registered form.

\* \* \* \* \*

(d) *Application of repeal of 30-percent withholding to pass-through certificates or participation interests—(1) In general—(i) Pass-through certificates.* Interest received on a pass-through certificate (as defined in § 1.163–5(a)(3)(i)(B)) qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section, without regard to whether any obligation held by the grantor trust, or similar fund, to which the pass-through certificate relates is described in para-

graph (c)(1)(ii) or (e) of this section. For purposes of this paragraph (d)(1)(i), a similar fund includes an entity that, under §§ 301.7701-1 through 301.7701-3 of this chapter, is disregarded as an entity separate from its owner or classified as a partnership for federal tax purposes, without regard to the fund has the power to vary the assets in the fund or the sequence of payments made to holders. In addition, for purposes of this paragraph (d)(1)(i), a similar fund does not include a business entity that is classified as a corporation under § 301.7701-2 of this chapter.

(ii) *Participation interests.* Interest received on a participation interest described in § 1.163-5(a)(3)(ii) qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section, without regard to whether the obligation to which the participation interest relates is described in paragraph (c)(1)(ii) or (e) of this section.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (c)(1)(ii) of this section or the conditions described in paragraph (e) of this section. For purposes of paragraphs (c)(1)(ii) and (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The rule in the preceding sentence, however, applies only to payments made to the holder of the regular interest in the REMIC from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraphs (c)(1)(ii) and (e) of this section, interest on a residual interest in a REMIC is considered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest.

\* \* \* \* \*

(j) \* \* \*

(4) *Registered form.* Paragraph (c)(1)(i) of this section applies to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before

March 18, 2012, see § 1.871-14 as contained in 26 CFR part 1, revised as of the date of the most recent annual revision.

(5) *Pass-through certificates, participation interests, and interests in REMICs.* Paragraph (d) of this section applies to pass-through certificates, participation interests, or interests in REMICs issued after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

### § 1.881-3 [Amended]

Par. 8. Section 1.881-3(e) is amended by:

1. Removing *Examples 10* and *19*.
2. Redesignating *Examples 11* through *18* as *Examples 10* through *17* and *Examples 20* through *26* as *Examples 18* through *24*.

Par. 9. Section 1.1287-1 is amended by:

1. Revising paragraph (a).
2. Redesignating paragraphs (b)(1) and (2) as (b)(2) and (3), respectively.
3. Adding a new paragraph (b)(1).
4. Revising the paragraph heading and first sentence of newly redesignated paragraph (b)(2).
5. Redesignating paragraph (d) as paragraph (d)(1).
6. Revising the paragraph heading and the first sentence of newly redesignated paragraph (d)(1).
7. Adding a new paragraph heading for paragraph (d).
8. Adding paragraph (d)(2).

The revisions and additions read as follows:

### § 1.1287-1 Denial of capital gains treatment for gains on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (c) of this section, any gain on the sale or other disposition of a registration-required obligation held after December 31, 1982, that is not in registered form shall be treated as ordinary income unless the issuance of the obligation was subject to tax under section 4701. The term *registration-required obligation* has the meaning given to that term in section 163(f)(2) and § 1.163-5(a)(2)(i).

The term *holder* means the person that would be denied a loss deduction under section 165(j)(1) or denied capital gain treatment under section 1287(a).

(b) *Registered form*—(1) *Obligations issued after March 18, 2012.* With respect to obligations issued after March 18, 2012, the term *registered form* has the meaning given that term in § 1.163-5(b).

(2) *Obligations issued after September 21, 1984 and on or before March 18, 2012.* With respect to any obligation originally issued after September 21, 1984, and on or before March 18, 2012, the term *registered form* has the meaning given that term in § 5f.103-1 of this chapter. \* \* \*

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, these regulations apply generally to obligations issued after January 20, 1987. \* \* \*

(2) *Obligations issued after March 18, 2012.* Paragraph (a) of this section applies to obligations issued after March 18, 2012.

### § 1.6045-1 [Amended]

Par. 10. Section 1.6045-1(n)(2)(ii)(J) is amended by removing the language “§ 1.1471-1(b)(18)” and adding in its place the language “§ 1.1471-1(b)(21)”.

### § 1.6049-5 [Amended]

Par. 11. Section 1.6049-5 is amended by:

1. Removing “§ 5f.103-1(c),” and adding in its place “§ 1.163-5(b);” in paragraph (a)(1)(i).
2. Removing the language “§ 5f.163-1” and adding in its place the language “§ 1.163-5(a)(2)” in paragraph (a)(1)(ii).

### PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 12. The authority citation for part 5f continues to read in part as follows:

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

Par. 13. Section 5f.103-1(d) is amended by revising the paragraph heading and adding two sentences at the end of the paragraph to read as follows:

**§ 5f.103–1 Obligations issued after December 31, 1982, required to be in registered form.**

\* \* \* \* \*

(d) *Applicability date.* \* \* \* For the purpose of determining whether bonds satisfy the requirements of section 149(a), this section applies to bonds issued prior to the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, and § 1.149(a)–1 of this chapter applies to bonds issued on or after the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For all other purposes, see § 1.163–5(a)(2) and (b) of this chapter for obligations issued after March 18, 2012.

\* \* \* \* \*

Par. 14. Section 5f.163–1(d) is amended by revising the paragraph heading and adding a sentence at the end of the paragraph to read as follows:

**§ 5f.163–1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.**

\* \* \* \* \*

(d) *Applicability date.* \* \* \* For obligations issued after March 18, 2012, see § 1.163–5 of this chapter.

\* \* \* \* \*

**PART 46—EXCISE TAX ON POLICIES ISSUED BY FOREIGN INSURERS AND OBLIGATIONS NOT IN REGISTERED FORM**

Par. 15. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. Section 46.4701–1 is amended by:

1. Revising paragraphs (b)(3), (4), and (5).
2. Redesignating paragraph (e) as paragraph (e)(1).
3. Revising the paragraph heading of newly redesignated paragraph (e)(1).
4. Adding a new paragraph heading for paragraph (e).
5. Adding paragraph (e)(2).

The revisions and additions read as follows:

**§ 46.4701–1 Tax on issuer of registration-required obligation not in registered form.**

\* \* \* \* \*

(b) \* \* \*

(3) *Registration-required obligation.* The term *registration-required obligation* has the same meaning as in section 163(f) and § 1.163–5(a)(2)(i) of this chapter, except that the term does not include an obligation described in section 4701(b)(1)(B) or any obligation that is required to be registered under section 149(a), such as bonds that are tax-exempt under section 103. For purposes of determining whether an obligation is described in section 4701(b)(1)(B), the rules of § 1.163–5(c) of this chapter apply.

(4) *Registered form.* The term *registered form* has the same meaning as in § 1.163–5(b) of this chapter.

(5) *Issuer*—(i) *In general.* Except as provided in paragraph (b)(5)(ii) of this section, the term *issuer* is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

(ii) *Sponsor treated as issuer.* A pass-through certificate (as defined in § 1.163–5(a)(3)(i)(B) of this chapter), a participation interest described in § 1.163–5(a)(3)(ii) of this chapter, or a regular interest in a REMIC, as defined in sections 860D and 860G and the regulations thereunder, is considered to be issued solely by the recipient of the proceeds from the issuance of the certificate or interest (the *sponsor*). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the pass-through certificate, participation interest, or regular interest.

\* \* \* \* \*

(e) *Applicability date*—(1) *In general.* \* \* \*

(2) *Exception.* Notwithstanding paragraph (e)(1) of this section, paragraphs (b)(3), (4), and (5) of this section apply to obligations issued after March 18, 2012. For the rules that apply to obligations issued on or before March 18, 2012, see § 46.4701–1 as contained in 26 CFR part 46, revised as of the date of the most recent annual revision.

Kirsten Wielobob,  
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on September 15, 2017, 4:15 p.m., and published in the issue of the Federal Register for September 19, 2017, 82 F.R. 43720)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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

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<sup>1</sup>A 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.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

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

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