

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

**Bulletin No. 2018-15**  
**April 9, 2018**

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

### ADMINISTRATIVE

#### **Notice 2018-21, page 472.**

This notice provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) of the Internal Revenue Code for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2017. This notice also provides instructions for how a claimant may offset its § 4081 liability with the § 6426(e) alternative fuel mixture credit for 2017, as well as instructions for how a claimant may make certain income tax claims relating to biodiesel, second generation biofuel, and alternative fuel. In addition, this notice provides a temporary modified safe harbor for semimonthly deposits of the oil spill liability tax imposed by § 4611, which was reinstated effective March 1, 2018.

### EXCISE TAX

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### INCOME TAX

#### **Notice 2018-23, page 474.**

Notice 2018-23 provides transitional guidance regarding the requirements of Sec. 162(f), as amended on December 22, 2017, and sec. 6050X, added on December 22, 2017.

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

# Part III. Administrative, Procedural, and Miscellaneous

## Biodiesel and Alternative Fuels; Claims for 2017; Oil Spill Liability Tax; Excise Tax and Deposits

### Notice 2018–21

#### SECTION 1. PURPOSE

This notice provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e) of the Internal Revenue Code (Code) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2017 (collectively, 2017 biodiesel and alternative fuel incentives). These rules are prescribed under §§ 40406, 40407, and 40415, of the Bipartisan Budget Act of 2018, Pub. L. 115–123, 132 Stat. 64 (2018) (the Act). This notice also provides instructions for how a claimant may offset its § 4081 liability with the § 6426(e) alternative fuel mixture credit for 2017, as well as instructions for how a claimant may make certain income tax claims relating to biodiesel, second generation biofuel, and alternative fuel. In addition, this notice provides a temporary modified safe harbor for semimonthly deposits of the oil spill liability tax imposed by § 4611, which was reinstated effective March 1, 2018, by § 40416 of the Act.

#### SECTION 2. BACKGROUND

##### .01 Fuel Incentives.

Section 6426(a) and (c) allow a blender of a biodiesel (including renewable diesel) mixture to claim a \$1.00 per gallon credit against its tax liability under § 4081 (relating to the tax imposed on taxable fuel). Similarly, § 6426(a) and (e) allow a blender of an alternative fuel mixture to claim a credit against its tax liability under § 4081, except that the credit amount is \$0.50 per gallon. Section 6426(a) and (d) allow a person that sells or uses alternative fuel as a fuel in a motor vehicle or motorboat or in aviation to claim a \$0.50 per gallon credit against the claimant's tax liability under § 4041 (relating to the tax imposed on diesel fuel and alternative fuel).

Blenders of biodiesel (including renewable diesel) mixtures and persons that sell or use alternative fuel as a fuel in a motor vehicle or motorboat or in aviation may claim any excess credit under § 6426(c) or (d) as a payment under § 6427(e) or as a refundable income tax credit under § 34. As an alternative to the payments and credits allowed under §§ 6426, 6427, and 34, a blender of a biodiesel (including renewable diesel) mixture may claim a nonrefundable income tax credit under § 40A (see Section 8 of this notice for additional information). For federal income tax purposes, a claimant reduces its § 4081 excise tax liability by the amount of excise tax credit allowable under § 6426(c) and its § 4041 excise tax liability by the amount of excise tax credit allowable under § 6426(d) in determining its deduction for those excise taxes or its cost of goods sold deduction attributable to those excise taxes. *See* Notice 2015–56, 2015–35 I.R.B. 235, and Notice 2016–05, 2016–6 I.R.B. 302.

The Code provisions that authorize these credits and payments expired for sales and uses after December 31, 2016, but were reinstated by the Act for sales and uses through 2017. Sections 40407(b)(4) and 40414(b) of the Act direct the Secretary of the Treasury (Secretary) to issue guidance providing for a one-time submission of claims under §§ 6426(c), 6426(d), and 6427(e) for 2017. The Act requires the guidance to provide for a 180-day period for the submission of claims (in such manner as prescribed by the Secretary) to begin no later than 30 days after the guidance is issued.

Sections 40406(a) and 40407(a) of the Act also reinstated Code provisions authorizing credits for second generation biofuel producers (§ 40(b)(6)) and biodiesel and renewable diesel used as fuel (§ 40A), respectively. The second generation biofuel producer credit expired for production after December 31, 2016, and was reinstated by the Act for production through 2017. The credit for biodiesel and renewable diesel used as fuel expired for sales and uses after December 31, 2016,

and was reinstated by the Act for sales and uses through 2017.

##### .02 Oil Spill Liability Tax.

Section 4611 imposes a tax of \$0.09 per barrel on crude oil received at a United States refinery, and on petroleum products entered into the United States for consumption, use, or warehousing (oil spill liability tax). The oil spill liability tax expired on December 31, 2017.

Section 40416 of the Act reinstates the oil spill liability tax for the period beginning on March 1, 2018, and ending on December 31, 2018.

#### SECTION 3. SCOPE

This notice provides the procedures for claiming 2017 biodiesel and alternative fuel incentives. Claimants that filed “protective” or anticipatory claims for biodiesel and alternative fuel incentives covered by this notice should refile their claims pursuant to the procedures provided in this notice. The IRS will not treat as perfected any such protective or anticipatory claims previously filed with the IRS that are not timely supplemented in accordance with these procedures.

Except as provided by this notice, the rules in Notice 2005–4, 2005–1 C.B. 289 (providing guidance on alcohol and biodiesel fuel tax credits and payments), as modified by Notice 2005–62, 2005–2 C.B. 443 (providing guidance for certain biodiesel issues not addressed in Notice 2005–4), and Notice 2006–92, 2006–2 C.B. 774 (providing guidance on alternative fuel and alternative fuel mixture taxes, credits, and payments), apply to claims for 2017 biodiesel and alternative fuel incentives.

This notice also prescribes a method for submitting claims for the alternative fuel mixture credit relating to alternative fuel mixtures sold or used during 2017.

This notice does not affect the income tax claims described in Section 8 of this notice.

Finally, this notice provides a special rule for tax deposits related to the reinstatement of the oil spill liability tax.

#### **SECTION 4. HOW TO MAKE A ONE-TIME CLAIM FOR CREDITS AND PAYMENTS ALLOWABLE UNDER §§ 6426(c), 6426(d), AND 6427(e)**

Claimants must follow the procedures listed below to make a one-time claim under this notice for credits and payments allowable under §§ 6426(c), 6426(d), and 6427(e), relating to 2017 biodiesel and alternative fuel incentives.

- Claimants must submit claims for 2017 biodiesel and alternative fuel incentives on Form 8849, *Claim for Refund of Excise Taxes*.
- Claimants must include Schedule 3 (Form 8849), *Certain Fuel Mixtures and the Alternative Fuel Credit*, with their submission and enter amounts for 2017 biodiesel and alternative fuel incentives on Line 2 and Line 3 of Schedule 3 (Form 8849), as appropriate.
- Claimants must follow the instructions to Form 8849 and Schedule 3 (Form 8849) when preparing their submission to the extent that those instructions do not conflict with this notice.
- Each claimant must claim all 2017 biodiesel and alternative fuel incentives for which the claimant is eligible on a single Form 8849.
- Each claimant must mail its submission to the address listed for Schedule 3 (Form 8849) in the instructions to Form 8849 under *Where to File*. Alternatively, claimants may electronically file Form 8849 and Schedule 3 (Form 8849) through any electronic return originator, transmitter, or intermediate service provider participating in the IRS e-file program for excise taxes.
- Claimants are reminded that they must be registered by the IRS in order to make alternative fuel claims under §§ 6426(d) and 6427(e). Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.
- Claimants are also reminded that they must have and maintain adequate records to substantiate eligibility for the 2017 biodiesel and alternative fuel incentives.

#### **SECTION 5. CLAIM PERIOD AND DUE DATE FOR BIODIESEL AND ALTERNATIVE FUEL INCENTIVES**

The 180-day claim period for 2017 biodiesel and alternative fuel incentives begins on April 2, 2018. Consequently, all claims for 2017 biodiesel and alternative fuel incentives must be filed on or before September 29, 2018. The IRS will not process claims filed after that date. The IRS will deem any claim that is submitted by the method prescribed in this notice before April 2, 2018, as filed on April 2, 2018.

If the IRS does not pay a 2017 biodiesel and alternative fuel incentives claim that conforms to this notice within 60 days after the claim is received, the IRS will pay the claim with interest from the claim filing date (April 2, 2018, in the case of claims submitted before that date) using the overpayment rate and method provided by § 6621 of the Code.

#### **SECTION 6. HOW TO MAKE AN ALTERNATIVE FUEL MIXTURE CLAIM UNDER § 6426(e)**

Claimants must follow the procedures listed below to claim the alternative fuel mixture credit allowable under § 6426(e) for 2017.

- For 2017, all alternative fuel mixture credit claims allowed by § 6426(e) must be made on Form 720X, *Amended Quarterly Federal Excise Tax Return*.
- Claimants must enter amounts for 2017 alternative mixture credit claims on Line 2 of Form 720X. In addition, on Line 6 of Form 720X, claimants must identify the type of alternative fuel(s) in the mixture(s) for which a credit is being claimed and the number of gallons of alternative fuel(s) used by the claimant in producing the mixture(s). This information is the same information claimants are required to report on Line 13 of Schedule C to Form 720, *Quarterly Federal Excise Tax Return*.
- Claimants must follow the instructions to Form 720X when preparing their submission to the extent that those instructions do not conflict with this notice.
- Each claimant must mail its submission to the address listed for Form

720X in the instructions under *Where to File*.

- Claimants are reminded that they must be registered by the IRS in order to make alternative mixture claims under § 6426(e). Claimants that are not already registered by the IRS may apply to the IRS for registration by filing Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions to Form 637.
- Claimants are also reminded that the claim for a § 6426(e) credit for any quarter may not exceed the § 4081 liability incurred in the quarter for which the credit is being claimed. Form 720X allows claimants to adjust multiple quarters on a single Form 720X.
- Claimants are further reminded that they must have and maintain adequate records to substantiate eligibility for the 2017 § 6426(e) credit.
- Failure to file a Form 720, *Quarterly Federal Excise Tax Return*, and remit the § 4081 tax due for any quarter in 2017 before submitting a claim allowed by § 6426(e) on Form 720X will result in delayed processing of the claim and delayed payment of refunds resulting from the credit, or denial of claim.
- Failure to follow the claim procedure in this section will result in delayed processing or denial of claim(s).

#### **SECTION 7. CLAIM PERIOD AND DUE DATE FOR ALTERNATIVE FUEL MIXTURE CREDITS**

The claim period for the 2017 alternative fuel mixture credit begins on April 2, 2018. The IRS will deem any claim that is submitted by the method prescribed in Section 6 of this notice before April 2, 2018, as filed on April 2, 2018. Generally, claims for the § 6426(e) alternative fuel mixture credit must be made within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

#### **SECTION 8. CLAIMS NOT AFFECTED BY THIS NOTICE**

This notice does not affect 2017 claims for the nonrefundable income tax credit un-

der § 40(b)(6) for second generation biofuel producers. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 6478, *Biofuel Producer Credit*. A taxpayer must submit Form 6478 with its income tax return in accordance with the instructions to its income tax return form. This notice also does not affect 2017 claims for the nonrefundable income tax credits under § 40A(b)(1) for biodiesel mixtures, under § 40A(b)(2) for biodiesel (including renewable diesel), or under § 40A(b)(4) for the small agri-biodiesel producer credit. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 8864, *Biodiesel and Renewable Diesel Fuels Credit*. A taxpayer must submit Form 8864 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 40A(c), credits allowable under § 40A must be reduced to the extent that any benefit is claimed under §§ 6426 and 6427 with respect to the same biodiesel (including renewable diesel).

Similarly, this notice does not affect 2017 claims for the refundable income tax credit under § 34 for biodiesel mixtures or alternative fuel. Taxpayers should continue to submit these claims separately on, and in accordance with, Form 4136, *Credit for Federal Tax Paid on Fuels*. A taxpayer must submit Form 4136 with its income tax return in accordance with the instructions to its income tax return form. Taxpayers are reminded that under § 34(b), credits are not allowed under § 34 for any amount properly payable under § 6427 and claimed in a timely filed claim. For this purpose, the IRS will treat as timely filed any claim submitted for amounts payable under § 6427 that conforms to the rules provided in this notice.

## **SECTION 9. MODIFIED SAFE HARBOR RULE FOR SEMIMONTHLY DEPOSITS OF THE OIL SPILL LIABILITY TAX DURING THE THIRD QUARTER OF 2018**

### *.01 Overview.*

Section 6302 authorizes the IRS to establish the mode and time for collecting certain taxes, including the taxes imposed by § 4611. Section 40.6302(c)-1(a)(1) of the Excise Tax Procedural Regulations requires each person that is required to file Form 720 to make deposits of tax for each semimonthly period in which the tax li-

ability is incurred. A semimonthly period is the first 15 days of a calendar month or the portion of a calendar month following the 15th day of the month. See § 40.0-1(c).

Under § 40.6302(c)-1(b)(1), the deposit for the oil spill liability tax for each semimonthly period must not be less than 95% of the amount of net tax liability incurred during the semimonthly period, unless the safe harbor in § 40.6302(c)-1(b)(2)(ii) or (iii) applies. Under the safe harbor, any person that filed a Form 720 reporting the oil spill liability tax for the second preceding calendar quarter (the look-back quarter) is considered to have met the semimonthly deposit requirement for the current quarter if: (1) the deposit for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability reported for the look-back quarter; (2) each deposit is made on time; (3) the amount of any underpayment is paid by the due date of the return; and (4) the person's liability does not include any tax that was not imposed at all times during the look-back quarter.

For deposits that will be made during the third calendar quarter of 2018, the look-back quarter will be the first calendar quarter of 2018. During that look-back quarter, the oil spill liability tax will be imposed for only one month (March). Therefore, the oil spill liability tax will not be imposed at all times during the look-back quarter as required by § 40.6302(c)-1(b)(2)(ii)(D). Consequently, the safe harbor deposit rule will not be available to persons liable for the oil spill liability tax during the third calendar quarter of 2018, and each semimonthly deposit during the third calendar quarter of 2018 must not be less than 95% of the amount of net tax liability incurred during the semimonthly period.

In order to assist taxpayers in meeting their deposit obligations and in the interest of sound tax administration, the Treasury Department and the IRS have decided to allow persons liable for the oil spill liability tax to use a modified form of the safe harbor for the third calendar quarter of 2018. Use of the modified safe harbor described in section 9.02 below is voluntary.

*.02 Modified Safe Harbor.* For purposes of deposits of the oil spill liability tax during the third calendar quarter of

2018, persons will be considered to have met the semimonthly deposit requirement for that quarter if: (1) the deposit for each semimonthly period in the quarter is not less than 1/2 of the net tax liability reported for the look-back quarter; (2) each deposit is made on time; and (3) the amount of any underpayment is paid by the due date of the return. No affirmative election or other special filing is required in order for a person to avail themselves of the modified safe harbor provided in this notice. This modified safe harbor applies only with regard to deposits of the oil spill liability tax during the third calendar quarter of 2018.

## **SECTION 10. DRAFTING INFORMATION**

The principal author of this notice is Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Beker on (202) 317-6855 (not a toll-free number). For further information regarding the income tax treatment of the 2017 biodiesel and alternative fuel incentives, please contact Angella Warren at (202) 317-4718 (not a toll-free number).

## **Transitional Guidance Under §§ 162(f) and 6050X with Respect to Certain Fines, Penalties, and Other Amounts**

### **Notice 2018-23**

#### **SECTION 1. PURPOSE**

Section 13306 of "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Pub. L. 115-97 (the "Act"), which was signed into law on December 22, 2017, amended § 162(f) of the Internal Revenue Code ("Code") and added new § 6050X to the Code. The Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") intend to publish proposed regulations under §§ 162(f) and 6050X. This notice provides transitional guidance under §§ 162(f) and 6050X.

Specifically, as provided in section 3.01 of this notice, to ensure efficient administration of this new provision, reporting will not be required under § 6050X until the date specified in the proposed regulations. The specified date will not be earlier than January 1, 2019, and will not be earlier than the date of publication of the proposed regulations. Reporting will not be required with respect to amounts required to be paid or incurred under a binding court order or agreement entered into before the specified date. Further, section 3.02 of this notice provides transitional guidance for purposes of satisfying the identification requirement in § 162(f)(2)(A)(ii). Finally, section 4 of this notice requests comments regarding issues to be addressed in the proposed regulations.

## SECTION 2. LAW

Section 162(f)(1), as amended by the Act, disallows a deduction for amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. Section 162(f)(2) provides an exception to the general rule under § 162(f)(1). Under the exception, an amount described in § 162(f)(1) that is otherwise deductible under the Code is not disallowed if the taxpayer satisfies all of the requirements in § 162(f)(2)(A)(i), (ii), and (iii).

Section 162(f)(2)(A)(i) requires that the taxpayer establish that the amount paid or incurred (1) constitutes restitution (including remediation of property) for damage or harm that was or may be caused by violation of any law or the potential violation of any law, or (2) is paid to come into compliance with any law that was violated or otherwise involved in the investigation or inquiry into the potential violation of any law (the “establishment requirement”). Section 162(f)(2)(A)(ii) further requires that the amount paid or incurred be identified as restitution or as an amount paid to come into compliance with such law in the court order or settlement agreement (the “identification requirement”). Finally, § 162(f)(2)(A)(iii) provides that in the case of any amount of restitution for failure to pay any tax imposed under the Code, the amount is treated as if

such amount were such tax if it would have been allowed as a deduction had it been timely paid. Section 162(f)(2)(A) further provides that meeting the identification requirement alone is not sufficient to meet the establishment requirement under § 162(f)(2)(A)(i).

Section 6050X(a)(1) requires the appropriate official of any government or nongovernmental entity described in § 162(f)(5) that is involved in suits or agreements described in § 6050X(a)(2) to make a return in such form as determined by the Secretary setting forth (1) the amount required to be paid as a result of the suit or agreement to which § 162(f)(1) applies; (2) any amount required to be paid as a result of the suit or agreement that constitutes restitution or remediation of property; and (3) any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law that was violated or involved in the investigation or inquiry.

Under § 6050X(a)(2), amounts required to be paid as a result of a suit or agreement are required to be reported under § 6050X(a)(1) if the suit or agreement is a type described in § 6050X(a)(2)(A)(i) and the dollar threshold in § 6050X(a)(2)(A)(ii) is met. A suit or agreement is described in § 6050X(a)(2)(A)(i) if it is (1) a suit with respect to a violation of any law over which the government or entity has authority and with respect to which there has been a court order, or (2) an agreement that is entered into with respect to a violation of any law over which the government or entity has authority or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which the government or entity has authority.

Under § 6050X(a)(2)(A)(ii), the dollar threshold for reporting is met if the aggregate amount involved in all court orders and agreements with respect to the violation, investigation, or inquiry is \$600 or more. However, § 6050X(a)(2)(B) requires the Secretary to adjust the \$600 amount as necessary to ensure the efficient administration of the internal revenue laws.

Section 6050X(a)(3) requires the return to be filed at the time the agreement is entered into, as determined by the Secretary.

Section 6050X(b) requires every person required to make a return under § 6050X(a) to furnish to each person who is a party to the suit or agreement a written statement showing (1) the name of the government or entity, and (2) the information supplied to the Secretary under § 6050X(a)(1). This information must be furnished at the same time it is provided to the Secretary.

Section 6050X(c) defines “appropriate official” as the officer or employee having control of the suit, investigation, or inquiry or the person appropriately designated for purposes of § 6050X.

Under § 13306(a)(2) and (b)(3) of the Act, § 162(f) as amended and new § 6050X generally apply to amounts paid or incurred on or after December 22, 2017, except that they do not apply to amounts paid or incurred under any binding order or agreement entered into before that date. If the order or agreement required court approval and the approval was not obtained before that date, § 162(f) as amended and new § 6050X will apply.

## SECTION 3. TRANSITIONAL GUIDANCE

Section 162(f) as amended and new § 6050X were effective on December 22, 2017, the date of the enactment of the Act. Parties to suits and agreements covered by these sections have an immediate need for guidance and have contacted the Treasury Department and the IRS with questions regarding the reporting requirement of § 6050X and the identification requirement of § 162(f)(2)(A)(ii). This section provides transitional guidance regarding those requirements.

### .01 SECTION 6050X REPORTING

Following the enactment of the Act, officials of a number of governments and governmental entities contacted the Treasury Department and the IRS requesting additional time to make the necessary changes to their systems to comply with their new reporting responsibilities under § 6050X. In addition, the IRS needs additional time to make necessary programming and form changes to implement § 6050X. Accordingly, the Treasury Department and the IRS are providing transitional guidance with respect to reporting

obligations under § 6050X. Under this transitional guidance, to ensure efficient administration of this new provision, reporting will not be required under § 6050X until the date specified in the proposed regulations. The specified date will not be earlier than January 1, 2019, and will not be earlier than the date of publication of the proposed regulations. Reporting will not be required with respect to any amounts required to be paid or incurred under a binding court order or settlement agreement entered into before the specified date. For purposes of this notice, an agreement that requires court approval is binding when court approval is obtained. This transitional guidance will provide additional time for dialogue with stakeholders in an effort to clarify the reporting requirements consistent with effective implementation of the law. Transitional guidance will also provide governmental and nongovernmental regulatory entities additional time to develop their systems for collecting and reporting the required information.

#### .02 SECTION 162(f)(2)(A)(ii) IDENTIFICATION

The transitional guidance provided in section 3.01 of this notice does not affect or delay the applicability of § 162(f). Accordingly, the identification requirement in § 162(f)(2)(A)(ii) applies to amounts paid or incurred on or after December 22, 2017, unless the amounts were paid or incurred under any binding order or agreement entered into before that date. Taxpayers and officials of governments and governmental entities have asked for immediate guidance regarding the identification requirement.

Until proposed regulations under § 162(f) are issued, the identification requirement in § 162(f)(2)(A)(ii) is treated as satisfied for an amount if the settlement agreement or court order specifically states on its face that the amount is restitution, remediation, or for coming into compliance with the law. Even if the identification requirement under this section 3.02 is treated as satisfied, taxpayers must also meet the establishment requirement in order to qualify for the § 162(f)(2) exception.

#### SECTION 4. COMMENTS

The Treasury Department and the IRS intend to issue proposed regulations amending and adding sections to the Income Tax Regulations with respect to §§ 162(f) and 6050X. To assist in the development of the proposed regulations, this notice requests comments from the public and affected governments and nongovernmental entities, on any and all issues related to the application and implementation of §§ 162(f) and 6050X that the proposed regulations should address. In particular, the Treasury Department and the IRS request comments on:

1. The timing of the reporting required under § 6050X;
2. The threshold amount for reporting under § 6050X(a)(2);
3. Any anticipated administrative difficulties in securing information needed to report under § 6050X, including situations involving multiple payors or payees;
4. How to define key terms in § 162(f); and
5. What entities are nongovernmental entities under § 162(f)(5).

#### WHERE TO SEND COMMENTS

Comments may be submitted by May 18, 2018, using one of the following methods:

- By Mail:

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2018–23)  
Room 5203  
P.O. Box 7602  
Ben Franklin Station  
Washington, D.C. 20444

- 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 (Notice 2018–23)  
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 “Notice 2018–23” in the subject line of any electronic communications. All submissions will be available for public inspection and copying in room 1621, 1111 Constitution Avenue, N.W., Washington, D.C., from 9 a.m. to 4 p.m.

#### SECTION 5. CONTACT INFORMATION

The principal author of this notice is Christopher Wrobel of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Wrobel at (202) 317-7011 (not a toll-free number).

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2017–27 through 2017–52 is in Internal Revenue Bulletin 2017–52, dated December 27, 2017.

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# **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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