

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. 2019-17
April 22, 2019

ADMINISTRATIVE

REV. PROC. 2019-17, page 1045.

This revenue procedure provides guidance regarding the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under § 142(d) of the Internal Revenue Code. Specifically, this revenue procedure coordinates these requirements with the provisions in § 42(g)(9). Under § 42(g)(9), a project does not violate the general public use requirement under § 42 as a result of specified occupancy restrictions or preferences (for example, certain housing preferences for military veterans).

INCOME TAX

REV. RUL. 2019-11, page 1041.

This revenue ruling provides guidance to taxpayers regarding the inclusion in income of recovered state and local taxes in the current year when the taxpayer deducted state and local taxes paid in a prior year, subject to the section 164(b)(6) limitation.

REG-103083-18, page 1046.

The proposed regulations provide guidance on new information reporting obligations related to reportable policy sales of life insurance contracts and payments of reportable death benefits under § 6050Y, which was added by section 13520 of the Tax Cuts and Jobs Act, PL 115-97 (TCJA). The proposed regulations also provide guidance on the amount of death benefits excluded from gross income under § 101 following a reportable policy sale, under an exception to the transfer for valuable consideration rules for life insurance contracts added to § 101(a) by section 13522 of the TCJA.

REG-113943-17, page 1067.

This document withdraws a portion of a notice of proposed rulemaking published in the Proposed Rules section of the

Federal Register on June 8, 2016. If adopted, the proposed rules would have provided guidance for transactions in which property of a C corporation becomes the property of a REIT following certain corporate distributions of controlled corporation stock. This document also contains a notice of proposed rulemaking that provides revised guidance on the same subject. These proposed regulations would affect REITs, C corporations the property of which becomes property of a REIT, and their respective shareholders.

REG-143686-07, page 1072.

This document withdraws a notice of proposed rulemaking published in the Proposed Rules section of the Federal Register on January 21, 2009 with corrections published on March 5, 2009. If adopted, the proposed rules would have provided guidance on the recovery of stock basis in distributions of property made by a corporation to a shareholder and certain transactions treated as dividend-equivalents, as well as guidance regarding the determination of gain and the basis of stock or securities received in certain transactions. The proposed regulations would affect shareholders and security holders of corporations.

REG-124627-11, page 1073.

This is a withdrawal of a notice of proposed rulemaking (REG-124627-11) published on December 19, 2011 in the Federal Register (76 FR 78591).

EXEMPT ORGANIZATIONS

EXCISE TAX

T.D. 9855, page 1042.

These final regulations prescribe filing Form 4720 to report excise tax under sections 4960, 4966, 4967, and 4968 by the 15th day of the fifth month after the end of the tax year of the person reporting the tax, and update the abatement rules under section 4963 for section 4966 and 4967 taxes, consistent with a statutory change.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Part I.

Section 111.—Recovery of Tax Benefit Items

26 CFR 1.111-1: Recovery of certain items previously deducted or credited.
(Also: § 164; 1.164-1.)

Rev. Rul. 2019-11

ISSUE

If a taxpayer received a tax benefit from deducting state and local taxes under section 164 of the Internal Revenue Code in a prior taxable year, and the taxpayer recovers all or a portion of those taxes in the current taxable year, what portion of the recovery must the taxpayer include in gross income?

FACTS

In Situations 1 through 4 below, the taxpayers are unmarried individuals whose filing status is “single” and who itemized deductions on their federal income tax returns for 2018 in lieu of using their standard deduction of \$12,000. The taxpayers did not pay or accrue the taxes in carrying on a trade or business or an activity described in section 212. For 2018, the taxpayers were not subject to alternative minimum tax under section 55 and were not entitled to any credit against income tax. The taxpayers use the cash receipts and disbursements method of accounting.

Situation 1: Taxpayer A paid local real property taxes of \$4,000 and state income taxes of \$5,000 in 2018. A’s state and local tax deduction was not limited by section 164(b)(6) because it was below \$10,000. Including other allowable itemized deductions, A claimed a total of \$14,000 in itemized deductions on A’s 2018 federal income tax return. In 2019, A received a \$1,500 state income tax refund due to A’s overpayment of state income taxes in 2018.

Situation 2: Taxpayer B paid local real property taxes of \$5,000 and state income taxes of \$7,000 in 2018. Section 164(b)(6) limited B’s state and local tax deduction on B’s 2018 federal income tax return to \$10,000, so B could not deduct \$2,000

of the \$12,000 state and local taxes paid. Including other allowable itemized deductions, B claimed a total of \$15,000 in itemized deductions on B’s 2018 federal income tax return. In 2019, B received a \$750 state income tax refund due to B’s overpayment of state income taxes in 2018.

Situation 3: Taxpayer C paid local real property taxes of \$5,000 and state income taxes of \$6,000 in 2018. Section 164(b)(6) limited C’s state and local tax deduction on C’s 2018 federal income tax return to \$10,000, so C could not deduct \$1,000 of the \$11,000 state and local taxes paid. Including other allowable itemized deductions, C claimed a total of \$15,000 in itemized deductions on C’s 2018 federal income tax return. In 2019, C received a \$1,500 state income tax refund due to C’s overpayment of state income taxes in 2018.

Situation 4: Taxpayer D paid local real property taxes of \$4,250 and state income taxes of \$6,000 in 2018. Section 164(b)(6) limited D’s state and local tax deduction on D’s 2018 federal income tax return to \$10,000, so D could not deduct \$250 of the \$10,250 state and local taxes paid. Including other allowable itemized deductions, D claimed a total of \$12,500 in itemized deductions on D’s 2018 federal income tax return. In 2019, D received a \$1,000 state income tax refund due to D’s overpayment of state income taxes in 2018.

LAW AND ANALYSIS

Section 164 generally provides an itemized deduction for certain taxes paid or accrued during the taxable year. Section 164(a) provides a deduction for (1) state and local, and foreign, real property taxes; (2) state and local personal property taxes; (3) state and local, and foreign, income, war profits and excess profits taxes; and (4) the generation-skipping transfer tax imposed on income distributions. Section 164(a) also provides a deduction for state and local, and foreign, taxes not previously described that were paid or accrued within the taxable year in carrying on any trade or business or an activity described in section 212 (relating to expenses for

production of income). Section 164(b)(5) allows a taxpayer to elect to deduct state and local general sales taxes in lieu of state and local income taxes.

Section 164(b)(6), as added by section 11042 of the “Tax Cuts and Jobs Act” (the “Act”), Pub. L. 115-97, limits an individual’s deduction for the aggregate amount of state and local taxes paid during the calendar year to \$10,000 (\$5,000 in the case of a married individual filing a separate return). The dollar limitations apply to taxable years beginning after December 31, 2017, and before January 1, 2026, but they do not apply to foreign taxes described in section 164(a)(3) or to any taxes described in section 164(a)(1) and (2) that are paid or accrued in carrying on a trade or business or an activity described in section 212.

Section 111(a) excludes from gross income amounts attributable to the recovery during the taxable year of any amount deducted in any prior year to the extent the amount did not reduce the amount of tax imposed by Chapter 1 of the Code. Section 111 partially codifies the tax benefit rule, which generally requires a taxpayer to include in gross income recovered amounts that the taxpayer deducted in a prior taxable year to the extent those amounts reduced the taxpayer’s tax liability in the prior year. *See* Rev. Rul. 93-75, 1993-2 C.B. 63.

If the taxpayers in Situations 1 through 4 had paid only the proper amount of state and local tax in the prior taxable year, their itemized deductions may have been lower or they may have opted for the standard deduction. Thus, the taxpayer in each situation must determine the amount of itemized deductions that the taxpayer would have deducted in the prior year had the taxpayer paid only the proper amount of tax. The taxpayer must then compare this amount to the total itemized deductions actually taken on the return, or the standard deduction that could have been taken on the return, and include the difference as income on the current year return if the taxpayer received a tax benefit in the prior taxable year from that itemized deduction.

Situation 1: State income tax refund fully includable. In 2019, A received a \$1,500 refund of state income taxes paid in 2018.

Had A paid only the proper amount of state income tax in 2018, A's state and local tax deduction would have been reduced from \$9,000 to \$7,500 and as a result, A's itemized deductions would have been reduced from \$14,000 to \$12,500, a difference of \$1,500. A received a tax benefit from the overpayment of \$1,500 in state income tax in 2018. Thus, A is required to include the entire \$1,500 state income tax refund in A's gross income in 2019.

Situation 2: State income tax refund not includable. In 2019, B received a \$750 refund of state income taxes paid in 2018. Had B paid only the proper amount of state income tax in 2018, B's state and local tax deduction would have remained the same (\$10,000) and B's itemized deductions would have remained the same (\$15,000). B received no tax benefit from the overpayment of \$750 in state income tax in 2018. Thus, B is not required to include the \$750 state income tax refund in B's gross income in 2019.

Situation 3: State income tax refund partially includable. In 2019, C received a \$1,500 refund of state income taxes paid in 2018. Had C paid only the proper amount of state income tax in 2018, C's state and local tax deduction would have been reduced from \$10,000 to \$9,500 and as a result, C's itemized deductions would have been reduced from \$15,000 to \$14,500, a difference of \$500. C received a tax benefit from \$500 of the overpayment of state income tax in 2018. Thus, C is required to include \$500 of C's state income tax refund in C's gross income in 2019.

Situation 4: Standard deduction. In 2019, D received a \$1,000 refund of state income taxes paid in 2018. Had D paid only the proper amount of state income tax in 2018, D's state and local tax deduction would have been reduced from \$10,000 to \$9,250, and, as a result, D's itemized deductions would have been reduced from \$12,500 to \$11,750, which is less than the standard deduction of \$12,000 that D would have taken in 2018. The difference between D's claimed itemized deductions (\$12,500) and the standard deduction D could have taken (\$12,000) is \$500. D received a tax benefit from \$500 of the overpayment of state income tax in 2018. Thus, D is required to include \$500 of D's state income tax refund in D's gross income in 2019.

HOLDING

If a taxpayer received a tax benefit from deducting state or local taxes in a prior taxable year and the taxpayer recovers all or a portion of those taxes in the current taxable year, the taxpayer must include in gross income the lesser of (1) the difference between the taxpayer's total itemized deductions taken in the prior year and the amount of itemized deductions the taxpayer would have taken in the prior year had the taxpayer paid the proper amount of state and local tax or (2) the difference between the taxpayer's itemized deductions taken in the prior year and the standard deduction amount for the prior year, if the taxpayer was not precluded from taking the standard deduction in the prior year. This holding applies to the recovery of any state or local tax, including state or local income tax and state or local real or personal property tax.

DRAFTING INFORMATION

The principal author of this revenue ruling is Amy S. Wei of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, contact Amy S. Wei at (202) 317-7011 (not a toll-free number).

T.D. 9855

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 53

Regulations to Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and to Update the Abatement Rules for Section 4966 and 4967 Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations specifying which return to use to pay certain excise taxes and the time for filing the return. The regulations also implement the statutory addition of two excise taxes to the first-tier taxes subject to abatement. These regulations affect applicable tax-exempt organizations and their related organizations, applicable educational institutions, sponsoring organizations that maintain certain donor advised funds, fund managers of such sponsoring organizations, and certain donors, donor advisors, and persons related to a donor or donor advisor of a donor advised fund.

DATES: *Effective date:* These regulations are effective on April 9, 2019. *Applicability date:* These regulations apply on and after April 9, 2019. See also §53.6071-1(j)(3).

FOR FURTHER INFORMATION CONTACT: Amber L. MacKenzie, (202) 317-4086 or Ward L. Thomas, (202) 317-6173 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 26 CFR part 53 under chapter 42, subtitle D, section 4963 and chapter 61, subtitle F, sections 6011 and 6071 of the Internal Revenue Code (Code), to specify the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; to specify the time for filing that return; and to conform the regulations to the statutorily expanded definition of the first-tier taxes subject to abatement under section 4962.

On November 7, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-107163-18) in the *Federal Register* (83 FR 55653) setting forth proposed regulations under sections 6011 and 6071. The proposed regulations specified Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,"

as the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; required that a person (including a governmental entity) required to file a return to report such tax file Form 4720 by the 15th day of the 5th month after the end of the person's taxable year; and added sections 4966 and 4967 to the first-tier taxes subject to abatement under section 4962.

Only one comment from the public was received, which did not raise any concerns or make any recommendations specific to the proposed regulation, and no hearing was requested or held. Therefore, the proposed regulations are adopted without change by this Treasury decision. (All comments are available at www.regulations.gov or upon request.)

Explanation of Provisions

1. Section 4962 Abatement

These final regulations add section 4966 and section 4967 excise taxes to the definitions of "first tier tax" and "taxable event" in § 53.4963-1. Qualified first tier taxes are subject to abatement under section 4962.

2. Requirement To File a Form 4720

These final regulations amend § 53.6011-1(b) to provide that persons (including governmental entities) that are liable for section 4960, 4966, 4967, or 4968 excise taxes are required to file a return on Form 4720.

3. Deadline for Filing a Form 4720

Under § 53.6071-1(i) of these final regulations, a person required to file a Form 4720 to report an excise tax under section 4960, 4966, 4967, or 4968 must file a Form 4720 by the 15th day of the fifth month after the end of the person's taxable year during which the excise tax liability was incurred.

4. Effective/Applicability Date

These regulations are effective on April 9, 2019. These regulations apply on and after April 9, 2019. See also § 53.6071-1(j)(3).

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at <http://www.irs.gov> or contact the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the timing and filing of Form 4720 for persons liable for the specified excise taxes and who have a statutory filing obligation. Completing the applicable portion of the Form 4720 imposes little incremental burden in time or expense as compared to any other filing method.

In addition, a person may already be required to file the Form 4720 under the existing final regulations in §§ 53.6011-1 and 53.6071-1 if it is liable for another excise tax for which filing of the Form 4720 is required. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

Drafting Information

The principal authors of these regulations are Amber L. MacKenzie and

Ward L. Thomas of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Tax). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53 – FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
§ 53.4963-1 [Amended]

Par. 2. Section 53.4963-1 is amended by:

1. In paragraph (a), removing the language "4958, 4971" and adding "4958, 4966, 4967, 4971" in its place.

2. In paragraph (c), removing the language "4958, 4971" and adding "4958, 4966, 4967, 4971" in its place.

Par. 3. Section 53.6011-1(b) is amended by:

1. Revising the first sentence.

2. Removing from the third sentence the language "4958(a), or 4965(a)," and adding "4958(a), 4960(a), 4965(a), 4966(a), or 4967(a)," in its place.

The revision reads as follows:

§ 53.6011-1 *General requirement of return, statement or list.*

* * * * *

(b) Every person (including a governmental entity) liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4955(a), 4958(a), 4959, 4960(a), 4965(a), 4966(a), 4967(a), or 4968(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) shall file an annual return on Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," and shall include

therein the information required by such form and the instructions issued with respect thereto. * * *

* * * * *

§53.6071-1 [Amended]

Par. 4. Section 53.6071-1 is amended by:

1. Redesignating paragraph (i) as paragraph (j).
2. Adding new paragraphs (i) and (j) (3).

The additions read as follows:

§53.6071-1 Time for filing returns.

* * * * *

(i) *Taxes under section 4960, 4966, 4967, or 4968.* A person (including a governmental entity) required by §53.6011-1(b) to file a return for a tax imposed by section 4960(a), 4966(a), 4967(a), or 4968(a) in a taxable year must file the Form 4720 on or before the 15th day of the fifth month after the end of the person's taxable year (or, if the person has not established a taxable year for Federal income tax purposes, the person's annual accounting period).

(j) * * *

(3) Paragraph (i) of this section applies on and after April 9, 2019.

Kirsten Wielobob
*Deputy Commissioner for Services
and Enforcement.*

Approved: March 25, 2019

David J. Kautter
*Assistant Secretary of the Treasury
(Tax Policy).*

(Filed by the Office of the Federal Register on April 5, 2019, 11:15 a.m., and published in the issue of the Federal Register for April 9, 2019, 84 F.R. 14008)

Part III.

26 CFR 601.601: Rules and regulations
(Also Part I, §§ 42 and 142)

Rev. Proc. 2019-17

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under § 142(d) of the Internal Revenue Code (Code). Specifically, this revenue procedure coordinates these requirements with the provisions in § 42(g)(9). Under § 42(g)(9), a project does not violate the general public use requirement under § 42 as a result of specified occupancy restrictions or preferences (for example, certain housing preferences for military veterans).

SECTION 2. BACKGROUND

.01 State and local governments may issue tax-exempt bonds under § 103 to finance exempt facilities (exempt facility bonds). A qualified residential rental project, as defined in § 142(d), is one type of exempt facility that may be financed with exempt facility bonds.

.02 To satisfy the requirements of § 142(d), a specified portion of the residential units in a residential rental project must serve individuals with qualifying incomes. For example, under § 142(d)(1) (A), a residential rental project satisfies these requirements if 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of area median gross income.

.03 Under § 1.103-8(a)(2) of the Income Tax Regulations, to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use, or be part of a facility so used, as contrasted with similar types of facilities that are constructed for the exclusive use of a limited number of private business users. For example, an apartment building for which employees of an adjacent factory are given preference over other potential tenants is not available for use by the general public. See § 1.103-8(b)(9), Example 2.

.04 Section 42 provides a low-income housing credit in an amount equal to a portion of the qualified basis (as defined in § 42(c)(1)) of each qualified low-income building (as defined in § 42(c)(2)) that is part of a qualified low-income housing project (as defined in § 42(g)).

.05 Section 1.42-9(a) provides that a residential rental unit in a building that is not for use by the general public is not eligible for a low-income housing credit under § 42. Section 1.42-9(a) further provides that a residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development. Section 1.42-9(b), however, provides that if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for a low-income housing credit under § 42.

.06 Section 42(g)(9) provides that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (A) with special needs, (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or (C) who are involved in artistic or literary activities. For example, there are certain Federal or State programs that support housing for military veterans. Section 42(g)(9) was added to the Code by § 3004(g) of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654, 2884.

.07 Section 142(d) does not contain a provision similar to § 42(g)(9). Low-income housing credits under § 42 and exempt facility bonds issued under § 142(d) are often used together to finance residential rental projects. Questions have arisen as to whether a project that is treated as not failing the general public use requirement solely based on the restrictions or preferences provided under § 42(g)(9) for purposes of the low-income housing credit under § 42 may be treated as not failing the general public use requirement applicable to tax-exempt financing of qualified residential rental projects under § 142(d).

SECTION 3. SCOPE

This revenue procedure only applies to exempt facility bonds that finance qualified residential rental projects under § 142(d) and does not affect the rules applicable to exempt facility bonds that finance other exempt facilities. For rules applicable to exempt facility bonds that finance other exempt facilities, see, generally, § 1.103-8.

SECTION 4. APPLICATION

A qualified residential rental project (as defined in § 142(d)) does not fail to meet the general public use requirement applicable to exempt facilities solely because of occupancy restrictions or preferences that favor tenants described in § 42(g)(9) (for example, certain housing preferences for military veterans).

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to bonds sold before, on, or after April 3, 2019.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Johanna Som de Cerff on (202) 317-6980 (not a toll free number).

Section 42.—Low-income housing credit

This revenue procedure provides guidance regarding the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under § 142(d) of the Internal Revenue Code. Specifically, this revenue procedure coordinates these requirements with the provisions in § 42(g)(9). Under § 42(g)(9), a project does not violate the general public use requirement under § 42 as a result of specified occupancy restrictions or preferences (for example, certain housing preferences for military veterans). See Rev. Proc. 2019-17, p. [1045].

Part IV.

Notice of Proposed Rulemaking; Notification of Public Hearing

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules

REG-103083-18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notification of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on new information reporting obligations under section 6050Y related to reportable policy sales of life insurance contracts and payments of reportable death benefits. The proposed regulations also provide guidance on the amount of death benefits excluded from gross income under section 101 following a reportable policy sale. The proposed regulations affect parties involved in certain life insurance contract transactions, including reportable policy sales, transfers of life insurance contracts to foreign persons, and payments of reportable death benefits. This document invites comments and provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 9, 2019. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 5, 2019, at 10 a.m. must be received by May 9, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-103083-18), 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-103083-18), 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 (IRS REG-103083-18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn M. Sneade, (202) 317-6995; concerning submissions of comments and requests to speak at the public hearing, Regina Johnson, (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 OMB Control Numbers 1545-0119, 1545-1621, and 1545-2281 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In general, the collection of information in the proposed regulations is required under section 6050Y of the Internal Revenue Code (Code): (1) The requirement under §1.6050Y-2 of the proposed regulations for an acquirer to report certain information about payments made in reportable policy sales is required under section 6050Y(a); (2) the requirement under §1.6050Y-3 of the proposed regulations for an issuer to report certain information about transferors of life insurance contracts is required under section 6050Y(b); and (3) the requirement under §1.6050Y-4 of the proposed regulations for a payor to report certain information about payments of reportable death benefits is required under section 6050Y(c). Section 1.6050Y-3(a)(3) of the proposed regulations would require the issuer to report to the seller and the IRS the amount the seller would have received if the seller had surrendered the life insurance contract on the date of the reportable policy sale. This information is necessary to allow the seller and the IRS to determine the character of all or a portion of the seller's taxable

income from the sale of the life insurance contract (capital or ordinary). Sections 1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations contain reporting exceptions for certain foreign beneficial owners. To determine qualification for these reporting exceptions, §§1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) would require that certain foreign beneficial owners provide a Form W-8ECI, "Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States," to certain persons. This information is necessary to document whether the reporting exception in either §1.6050Y-3(f)(1) or §1.6050Y-4(e)(1) applies in a particular situation.

The likely respondents to the collection of information are (1) Entities acquiring life insurance contracts in reportable policy sales; (2) life insurance companies; (3) life insurance companies and other entities making payments of reportable death benefits; and (4) entities receiving payments of reportable death benefits.

The burden for the collection of information contained in §1.6050Y-2 of the proposed regulations will be reflected in the burden on the form that the IRS created to request the information in section 6050Y(a) and §1.6050Y-2 of the proposed regulations (Form 1099-LS, "Reportable Life Insurance Sale"). The burden for the collection of information contained in §1.6050Y-3 of the proposed regulations will be reflected in the burden on the form that the IRS created to request the information in section 6050Y(b) and §1.6050Y-3 of the proposed regulations (Form 1099-SB, "Seller's Investment in Life Insurance Contract"). The OMB Control Number for both of these forms is 1545-2281. The burden for the collection of information contained in §1.6050Y-4 of the proposed regulations will be reflected in the burden on the Form 1099-R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc." (OMB Control Number 1545-0119). The burden for the collection of information contained in §§1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations will be reflected in the bur-

den on the Form W-8ECI (OMB Control Number 1545-1621), when the burden is revised to reflect the additional collection of information in §§1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations.

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 May 24, 2019.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, 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 services 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.

Background

This document contains proposed amendments to 26 CFR part 1 under sections 101 and 6050Y of the Code (proposed regulations). The proposed regulations implement recent legislative changes to sections 101 and 6050Y by sections 13520 and 13522 of “[a]n Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the bud-

get for fiscal year 2018,” Pub. L. 115-97, 131 Stat. 2054, 2149 (Act). The proposed regulations under section 101 amend final regulations under section 101 published in the **Federal Register** on November 26, 1960 (25 FR 11402), as subsequently amended on December 24, 1964 (29 FR 18356), September 27, 1982 (47 FR 42337), and July 26, 2007 (72 FR 41159) (existing regulations).

Section 13520 of the Act added section 6050Y to chapter 61 (Information and Returns) of subtitle A of the Code (chapter 61). Section 6050Y imposes information reporting obligations related to certain life insurance contract transactions, including reportable policy sales and payments of reportable death benefits. Section 6050Y provides that each of the returns required by section 6050Y is to be made “at such time and in such manner as the Secretary shall prescribe.” The proposed regulations under section 6050Y implement section 6050Y. The proposed regulations specify the manner in which and time at which the information reporting obligations must be satisfied. The proposed regulations also provide definitions and rules that govern the application of the information reporting obligations.

Section 13522 of the Act amended section 101. New section 101(a)(3) defines the term “reportable policy sale” and provides rules for determining the amount of death benefits excluded from gross income following a reportable policy sale. The proposed regulations under section 101 provide definitions applicable under sections 101 and 6050Y and guidance for determining the amount of death benefits excluded from gross income following a reportable policy sale.

Notice 2018-41, 2018-20 I.R.B. 584, described sections 13520 and 13522 of the Act and the regulations the Department of the Treasury (Treasury Department) and the IRS expected to propose under sections 101 and 6050Y. The Treasury Department and the IRS received comments in response to the notice and considered these comments in developing these proposed regulations.

Explanation of Provisions

Section 6050Y imposes information reporting obligations related to reportable

policy sales of life insurance contracts and payments of reportable death benefits. Section 1.6050Y-1 of the proposed regulations contains definitional provisions. Sections 1.6050Y-2, 1.6050Y-3, and 1.6050Y-4 of the proposed regulations provide guidance on the reporting obligations imposed by section 6050Y(a), (b), and (c), respectively.

1. Section 1.6050Y-1: Definitions

The definitions set forth in §1.6050Y-1 of the proposed regulations apply for purposes of §§1.6050Y-1 through -4 of the proposed regulations.

Under the proposed regulations, “life insurance contract,” also referred to as a life insurance policy, is defined by reference to section 7702(a). *See* §1.6050Y-1(a)(9) of the proposed regulations. “Interest in a life insurance contract,” “transfer of an interest in a life insurance contract,” “direct acquisition of an interest in a life insurance contract,” “indirect acquisition of an interest in a life insurance contract,” and “reportable policy sale” are defined by reference to the proposed regulations under section 101. *See* §1.6050Y-1(a)(3), (5), (6), (14), and (19) of the proposed regulations. “Foreign person” means a person that is not a “United States person,” as defined in section 7701(a)(30). *See* §1.6050Y-1(a)(4) of the proposed regulations.

Section 6050Y(a) requires any person that acquires a life insurance contract or any interest in a life insurance contract in a reportable policy sale during any taxable year to report certain information regarding the transaction, including information about each recipient of payment in the reportable policy sale. Under the proposed regulations, “acquirer” means any person that, directly or indirectly, acquires an interest in a life insurance contract in a reportable policy sale. *See* §1.6050Y-1(a)(1) of the proposed regulations.

Section 6050Y(d)(1) defines “payment,” with respect to any reportable policy sale, to mean the amount of cash and the fair market value of any other consideration transferred in the sale. Under the proposed regulations, “reportable policy sale payment” means the total amount of cash and the fair market value of any other consideration transferred, or to be trans-

ferred, in a reportable policy sale, including any amount of a reportable policy sale payment recipient's debt assumed by the acquirer in a reportable policy sale. See §1.6050Y-1(a)(15) of the proposed regulations. An interest in a life insurance contract may be acquired directly, from the direct holder of the interest, or indirectly, through the acquisition of an ownership interest in an entity that holds an interest in a life insurance contract. See §§1.101-1(e)(3)(i) and (ii) and 1.6050Y-1(a)(3) and (5) of the proposed regulations. In the case of an indirect acquisition of an interest in a life insurance contract that is a reportable policy sale, the reportable policy sale payment is the amount of cash and the fair market value of any other consideration transferred for the ownership interest in the entity that is appropriately allocable to the interest in the life insurance contract held by the entity. See §1.6050Y-1(a)(15) of the proposed regulations. The proposed regulations require the acquirer to report the aggregate amount of reportable policy sale payments made, or to be made, with respect to a reportable policy sale. See §1.6050Y-2(a)(5) of the proposed regulations. Accordingly, when an acquirer makes payments in installments in more than one year, the acquirer reports the total amount of all payments in the year of the policy sale.

"Reportable policy sale payment recipient" means any person that receives a reportable policy sale payment in a reportable policy sale. See §1.6050Y-1(a)(16) of the proposed regulations. The seller in a reportable policy sale is a reportable policy sale payment recipient if the seller receives a reportable policy sale payment. A broker or other intermediary that retains a portion of the cash or other consideration transferred in a reportable policy sale is also a reportable policy sale payment recipient. *Id.* The aggregate amount of all reportable policy sale payments made with respect to a reportable policy sale must be reported under section 6050Y(a). The objective of the proposed regulations is for the acquirer to report the net payment, if any, made to each person involved in a reportable policy sale. Accordingly, if the acquirer transfers cash or other consideration to a broker in a reportable policy sale, the broker is a reportable policy sale payment recipient, and the re-

portable policy sale payment made to the broker is the amount of cash and the fair market value of any other consideration retained by the broker. The reportable policy sale payment made to the seller would be the amount of cash and fair market value of any other consideration transferred to the seller, including any amount of the seller's debt assumed by the acquirer in a reportable policy sale, and it would not include the amount of the reportable policy sale payment made to the broker.

Comments received on Notice 2018-41 suggested that the amount of the payment to a seller in a reportable policy sale that should be reported under section 6050Y(a) should be the amount actually paid to the seller. These comments were taken into consideration in developing the definition of "reportable policy sale payment recipient" in the proposed regulations, as well as the reporting requirements in the proposed regulations, which require the acquirer in a reportable policy sale to report, with respect to each reportable policy sale payment recipient, the aggregate amount of reportable policy sale payments made to that person. See §1.6050Y-2(a)(5) of the proposed regulations.

Comments received on Notice 2018-41 suggested that no reporting should be required for payments of ancillary costs and expenses in a reportable policy sale, including broker fees, securities intermediary fees, and other fees and expenses. Comments noted that the person paying these expenses is normally paying them in connection with the conduct of a trade or business, and is therefore required to report these amounts to payees in accordance with applicable rules. The proposed regulations require the acquirer in a reportable policy sale to report all reportable policy sale payments made with respect to the reportable policy sale, meaning all amounts of cash and the fair market value of any other consideration transferred in the reportable policy sale, including any amount of a reportable policy sale payment recipient's debt assumed by the acquirer in a reportable policy sale. The Treasury Department and the IRS are considering whether reportable policy sale payments should be defined to exclude payments of any ancillary costs and expenses and request comments regarding the types of payments made by acquirers

in reportable policy sales, the recipients of those payments, and existing reporting requirements applicable to those payments.

Section 6050Y(b) requires issuers of life insurance contracts receiving a written statement furnished by an acquirer under section 6050Y(a) and §1.6050Y-2 of the proposed regulations (a "reportable policy sale statement" or "RPSS," under §1.6050Y-1(a)(17) of the proposed regulations) or notice of a transfer to a foreign person to report certain information regarding sellers. Under the proposed regulations, "seller" means any person that holds an interest in a life insurance contract and transfers that interest, or any part of that interest, to an acquirer in a reportable policy sale or any person that owns a life insurance contract and transfers title to, possession of, or legal ownership of that life insurance contract to a foreign person. See §1.6050Y-1(a)(18) of the proposed regulations. "Notice of a transfer to a foreign person" means any notice of a transfer of a life insurance contract (*i.e.*, a transfer of title to, possession of, or legal ownership of the life insurance contract) received by a 6050Y(b) issuer (as that term is defined in §1.6050Y-1(a)(8)(iii)(B) of the proposed regulations). See §1.6050Y-1(a)(10) of the proposed regulations. Notice of a transfer to a foreign person includes information provided for nontax purposes such as a change of address notice for purposes of sending statements or for other purposes, and information relating to loans, premiums, or death benefits with respect to the contract, unless the 6050Y(b) issuer knows that no transfer of the life insurance contract has occurred or knows the transferee is a United States person. *Id.* For this purpose, a 6050Y(b) issuer may rely on a Form W-9, Request for Taxpayer Identification Number and Certification, or a valid substitute form, that meets the requirements of §1.1441-1(d)(2) (substituting "6050Y(b) issuer" for "withholding agent"), that indicates the transferee is a United States person.

The definition of "issuer" under the proposed regulations depends on the context in which the term is used. In general, the term "issuer" means, on any date, with respect to any interest in a life insurance contract, any person that bears any part of the risk with respect to the life insur-

ance contract on that date and any person responsible on that date for administering the contract, including collecting premiums and paying death benefits. *See* §1.6050Y-1(a)(8)(i) of the proposed regulations. For instance, if a reinsurer reinsures on an indemnity basis all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract, both the reinsurer and the original issuer of the contract are issuers of the life insurance contract. *Id.*

Additionally, any designee of an issuer for purposes of section 6050Y reporting purposes is generally also considered an issuer. *See* §1.6050Y-1(a)(8)(i) of the proposed regulations. Under §1.6050Y-1(a)(8)(iv) of the proposed regulations, a person is the designee of an issuer for purposes of section 6050Y reporting under §1.6050Y-1(a)(8) only if so designated in writing, including electronically. The designation must be signed and acknowledged, in writing or electronically, by the person named as designee, or that person's representative, and by the issuer making the designation, or a representative of that issuer.

For purposes of information reporting by the acquirer under section 6050Y(a) and §1.6050Y-2 of the proposed regulations, the "6050Y(a) issuer" is the issuer that is responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date of the reportable policy sale. *See* §1.6050Y-1(a)(8)(ii) of the proposed regulations.

For purposes of information reporting by the issuer under section 6050Y(b) and §1.6050Y-3 of the proposed regulations, the definition of "6050Y(b) issuer" depends on whether the reporting obligation results from a reportable policy sale and the receipt of a RPSS, or by a transfer to a foreign person and the receipt of notice of a transfer to a foreign person. *See* §1.6050Y-1(a)(8)(iii)(A) of the proposed regulations (applicable to reportable policy sales) and §1.6050Y-1(a)(8)(iii)(B) of the proposed regulations (applicable to transfers to foreign persons).

With respect to a life insurance contract, or an interest therein, that is transferred in a reportable policy sale, the 6050Y(b) issuer is any person that (1) Receives a

RPSS with respect to the life insurance contract or interest therein (or, in the case of a designee, receives notice that the issuer for whom it serves as designee received a RPSS), and (2) is or was, on or before the date of receipt of the RPSS, an issuer (as defined in §1.6050Y-1(a)(8)(i) of the proposed regulations) with respect to the life insurance contract. *See* §1.6050Y-1(a)(8)(iii)(A) of the proposed regulations. More than one person may meet this definition, but a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by section 6050Y(b) and §1.6050Y-3 is timely reported by any other 6050Y(b) issuer. *See* §1.6050Y-3(b) of the proposed regulations.

With respect to a life insurance contract transferred to a foreign person, the 6050Y(b) issuer generally is any person that (1) Receives notice of the transfer of the life insurance contract to a foreign person, and (2) is or was, on the date of transfer or on the date of receipt of the notice, an issuer (as defined in §1.6050Y-1(a)(8)(i) of the proposed regulations), with respect to the life insurance contract. *See* §1.6050Y-1(a)(8)(iii)(B) of the proposed regulations. However, a person is not a 6050Y(b) issuer under §1.6050Y-1(a)(8)(iii)(B) of the proposed regulations if (1) That person (or, in the case of a designee, the issuer for whom it serves as designee) is not responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date the notice of a transfer to a foreign person of a life insurance contract is received, and (2) that person, or its designee, provides the 6050Y(b) issuer that is responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on that date with such notice and any available information necessary to accomplish reporting under section 6050Y(b) and §1.6050Y-3 of the proposed regulations. *See* §1.6050Y-1(a)(8)(iii)(B) of the proposed regulations.

Section 6050Y(c) imposes reporting requirements on any person that makes a payment of reportable death benefits during any taxable year. Section 6050Y(d) (4) defines the term "reportable death benefits" to mean amounts paid by reason of the death of the insured under a life in-

surance contract that has been transferred in a reportable policy sale. The proposed regulations clarify that the amounts must be attributable to an interest in the life insurance contract that was transferred in a reportable policy sale. *See* §1.6050Y-1(a)(12) of the proposed regulations. For instance, if the original policyholder of a life insurance contract transfers a 50 percent interest in the life insurance contract in a reportable policy sale, amounts paid by reason of the death of the insured that are attributable to the 50 percent interest retained by the original policyholder are not reportable death benefits.

The proposed regulations define "payor" to mean any person making a payment of reportable death benefits and "reportable death benefits payment recipient" to mean any person that receives reportable death benefits as a beneficiary under the life insurance contract or as the holder of an interest in the life insurance contract. *See* §1.6050Y-1(a)(11) and (13) of the proposed regulations. Comments received on Notice 2018-41 suggested that "payor" be defined the same as "issuer" for purposes of section 6050Y. The proposed regulations do not adopt this suggestion, but comments are requested as to whether payor should be so narrowly defined, or should also include any holder of an interest in a life insurance contract that receives reportable death benefits attributable to that interest and is contractually obligated to pay part or all of the proceeds to the beneficial owner of the interest. Comments are also requested as to whether, for purposes of reporting under section 6050Y(c), reportable death benefits payment recipients should include, in addition to any person that receives reportable death benefits as a beneficiary under the life insurance contract, any person that receives reportable death benefits as the holder of an interest in the life insurance contract.

Section 6050Y(b) and §1.6050Y-3 of the proposed regulations require issuers to report the seller's investment in the contract to the seller, and section 6050Y(c) and §1.6050Y-4 of the proposed regulations require payors to report the payor's estimate of the buyer's investment in the contract to the reportable death benefits payment recipient. The "buyer," with respect to any interest in a life insurance

contract that has been transferred in a reportable policy sale, is the person that was the most recent acquirer of that interest in a reportable policy sale as of the date reportable death benefits are paid under the contract. *See* §1.6050Y-1(a)(2) of the proposed regulations.

Under the proposed regulations, the meaning of “investment in the contract” depends on whose investment in the contract is being determined. With respect to the original policyholder of a life insurance contract, §1.6050Y-1(a)(7)(i) of the proposed regulations provides that “investment in the contract” has the same meaning as under section 72(e)(6). With respect to the original policyholder, the issuer will have all of the information required to determine that amount.

With respect to anyone other than the original policyholder, the issuer or payor may lack information required to determine the seller’s or buyer’s investment in the contract as defined in section 72(e)(6), such as the aggregate amount of consideration paid for the contract and the extent to which amounts received under the contract were excludable from gross income. In this context, §1.6050Y-1(a)(7)(i) of the proposed regulations provides that “investment in the contract” has the same meaning as “estimate of investment in the contract.” Section 1.6050Y-1(a)(7)(ii) of the proposed regulations defines “estimate of investment in the contract” with respect to any person other than the original policyholder to mean, on any date, the aggregate amount of premiums paid for the contract by that person before that date, less the aggregate amount received under the contract by that person before that date to the extent such information is known to or can reasonably be estimated by the issuer or payor.

2. Section 1.6050Y-2: Reporting of Payments by Acquirer in a Reportable Policy Sale

Section 6050Y(a) requires reporting of payments made by an acquirer in a reportable policy sale. Section 1.6050Y-2(a) of the proposed regulations sets forth the requirement of information reporting applicable to acquirers in reportable policy sales under section 6050Y(a)(1) and de-

scribes the information that must be reported.

The proposed regulations allow for unified reporting by the acquirers in a series of prearranged transfers of any interest in a life insurance contract. *See* §1.6050Y-2(b) and (d)(3) of the proposed regulations. A series of prearranged transfers of an interest in a life insurance contract may include transfers in which one or more persons serve as intermediaries. Such intermediaries may acquire title or possession of an interest in a life insurance contract for state law purposes as nominee on behalf of another person or persons. Comments received on Notice 2018-41 suggested that a rule allowing unified reporting be adopted with respect to acquirers in a series of prearranged transfers, and these comments were taken into consideration in developing the rules in the proposed regulations.

Section 1.6050Y-2(c) of the proposed regulations sets forth the time and place for filing returns required under section 6050Y(a)(1).

Section 1.6050Y-2(d) of the proposed regulations sets forth the requirement under section 6050Y(a)(2) for the acquirer in a reportable policy sale to furnish a written statement to certain persons with respect to whom information is required on the return required by section 6050Y(a)(1). These persons are the recipients of payments in reportable policy sales (reportable policy sale payment recipients) and the 6050Y(a) issuers.

A written statement provided to a reportable policy sale payment recipient is not required to include information with respect to any other reportable policy sale payment recipient in the reportable policy sale. *See* §1.6050Y-2(d)(1)(i) of the proposed regulations. For instance, the statement is not required to provide information about reportable policy sale payments to any other reportable policy sale payment recipient. *Id.* The contact information of the person furnishing the written statement must provide direct access to a person that can answer questions about the statement. *Id.* Reportable policy sale payment recipients may use the information in the written statements furnished by acquirers to determine their taxable income. To facilitate proper tax reporting, the proposed regulations provide that an

acquirer must furnish any written statement required to be provided to a reportable policy sale payment recipient no later than February 15 of the year following the calendar year in which the reportable policy sale occurs. *See* §1.6050Y-2(d)(1)(ii) of the proposed regulations. The proposed regulations adopt this deadline because a person may be both a reportable policy sale payment recipient and a seller with respect to a reportable policy sale, and this deadline for an acquirer to furnish a written statement to a reportable policy sale payment recipient coordinates with the deadline in §1.6050Y-3(d)(2) of the proposed regulations for a 6050Y(b) issuer that receives a RPSS to furnish a written statement to a seller.

Generally, a 6050Y(a) issuer that receives a RPSS from an acquirer becomes a 6050Y(b) issuer subject to reporting obligations under section 6050Y(b), including the obligation under section 6050Y(b)(2) to furnish a written statement to the seller in a reportable policy sale. Because 6050Y(b) issuers’ reporting obligation is with respect to sellers, the proposed regulations provide that acquirers must furnish the 6050Y(a) issuer with a RPSS with respect to each reportable policy sale payment recipient that is also a seller. *See* §1.6050Y-2(d)(2)(i)(A) of the proposed regulations. However, an acquirer acquiring an interest in a life insurance contract in an indirect acquisition is not required to furnish a RPSS to the 6050Y(a) issuer. *See* §1.6050Y-2(d)(2)(i)(B) of the proposed regulations. As provided in section 6050Y(a)(2)(B), the proposed regulations provide that acquirers are not required to set forth the amount of any reportable policy sale payment in a RPSS furnished to a 6050Y(a) issuer. *See* §1.6050Y-2(d)(2)(i)(A) of the proposed regulations. Sellers may need the information in the written statements furnished by 6050Y(b) issuers that have received a RPSS to determine their taxable income. To facilitate proper tax reporting, the proposed regulations therefore provide that an acquirer must furnish a RPSS to the 6050Y(a) issuer by the later of (1) 20 days after the reportable policy sale, or (2) 5 days after the end of the applicable state law rescission period. *See* §1.6050Y-2(d)(2)(ii) of the proposed regulations. However, if the later date is after January 15 of the year following

the calendar year in which the reportable policy sale occurred, the RPSS must be furnished by January 15 of the year following the calendar year in which the reportable policy sale occurred. *Id.* Section 1.6050Y-3(d)(2) of the proposed regulations generally requires that the 6050Y(b) issuer furnish any written statement required by section 6050Y(b)(2) to the seller no later than February 15 of the year following the calendar year in which the reportable policy sale occurs.

Section 1.6050Y-2(e) of the proposed regulations requires the acquirer to correct returns filed under section 6050Y(a)(1) and written statements furnished under section 6050Y(a)(2) within 15 days of the acquirer's receipt of notice of the rescission of the related reportable policy sale.

Section 1.6050Y-2(f) of the proposed regulations sets forth exceptions to reporting under section 6050Y(a) that may apply to an acquirer that is a foreign person. These exceptions are described in section 5 of this Explanation of Provisions.

Section 1.6050Y-2(g) of the proposed regulations describes the penalty provisions applicable when a person is required under section 6050Y(a) to file an information return, or furnish a written statement, but fails to do so on or before the prescribed date, fails to include all of the information required to be shown, or includes incorrect information.

3. Section 1.6050Y-3: Reporting of Transferor's Investment in the Contract by 6050Y(b) Issuer (Reportable Policy Sale or Transfer to a Foreign Person)

Section 6050Y(b) requires the issuer to report certain information to the seller, including the seller's investment in the contract. Section 1.6050Y-3(a) of the proposed regulations sets forth the information reporting requirement applicable to 6050Y(b) issuers under section 6050Y(b)(1). In addition to the specific information required to be reported under section 6050Y(b)(1), Notice 2018-41 indicated that the proposed regulations would require the issuer to report the amount that would have been received by the policyholder upon surrender of the contract. A comment received on Notice 2018-41 suggested that an issuer should not be required to report this amount because the information may be provided directly by the issuer to the seller upon request.

A purpose of section 6050Y is to provide the seller in a reportable policy sale and the IRS with the information needed to determine the seller's taxable income from the sale. In the case of a sale of a cash value life insurance contract, the gain is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered, and any excess is capital gain. *See* Rev. Rul. 2009-13, 2009-21 I.R.B. 1029. To ensure that the seller and the IRS have the relevant information needed to calculate the seller's gain from the sale, including the amount of any capital or ordinary gain, the proposed regulations do not adopt the suggestion and would require the 6050Y(b) issuer to report to the seller and the IRS the amount that would have been received by the policyholder upon surrender of the contract. The Treasury Department and the IRS have determined that requiring the reporting of this information is authorized under section 6050Y(b)(1), as well as under sections 6011(a) and 7805.

Section 1.6050Y-3(b) of the proposed regulations provides that a 6050Y(b) issuer's reporting obligation under section 6050Y(b) and §1.6050Y-3(a) is deemed satisfied if the information required by section 6050Y(b) and §1.6050Y-3 is timely reported by any other 6050Y(b) issuer or a third party information reporting contractor.

Section 1.6050Y-3(c) of the proposed regulations sets forth the time and place for filing returns required under section 6050Y(b)(1).

Section 1.6050Y-3(d)(1) of the proposed regulations sets forth the requirement under section 6050Y(b)(2) to furnish statements to certain persons with respect to whom information is required on the return required by section 6050Y(b)(1). These persons are the sellers that (1) Transfer interests in life insurance contracts in reportable policy sales and are reportable policy sale payment recipients, or (2) transfer life insurance contracts to foreign persons. The sellers may use the information in the written statements furnished under section 6050Y(b)(2) to determine their taxable income.

To facilitate proper tax reporting, §1.6050Y-2(d)(2)(ii) of the proposed regulations requires acquirers to furnish a

RPSS to the 6050Y(a) issuer by January 15 of the year following the calendar year in which the reportable policy sale occurred, if not earlier, and §1.6050Y-3(d)(2) of the proposed regulations provides that a 6050Y(b) issuer generally must furnish any written statement required to be provided to a seller no later than February 15 of the year following the calendar year in which the reportable policy sale or transfer to a foreign person occurs. Comments received on Notice 2018-41 suggested that issuers be required to furnish written statements required by section 6050Y(b)(2) to the seller no later than February 15 of the year following the calendar year in which the reportable policy sale occurs, noting that this is currently the due date for section 6045 broker returns and consolidated statements, and brokers also rely on third party information (e.g., dividend reclassifications). The Treasury Department and the IRS propose to adopt this suggestion. *See* §1.6050Y-3(d)(2) of the proposed regulations. Section 1.6050Y-3(d)(3) of the proposed regulations provides that a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by §1.6050Y-3(d)(1) of the proposed regulations with respect to that 6050Y(b) issuer is timely reported on behalf of that 6050Y(b) issuer consistent with forms, instructions, and other IRS guidance by one or more other 6050Y(b) issuers or by a third party information reporting contractor.

Section 1.6050Y-3(e) of the proposed regulations requires the 6050Y(b) issuer to correct returns filed under section 6050Y(b)(1) and written statements furnished under section 6050Y(b)(2) within 15 days of the 6050Y(b) issuer's receipt of notice of the rescission of the related reportable policy sale or transfer to a foreign person.

Section 1.6050Y-3(f) of the proposed regulations sets forth exceptions to reporting under section 6050Y(b) that may apply to 6050Y(b) issuers. These exceptions are described in section 5 of this Explanation of Provisions.

Section 1.6050Y-3(g) of the proposed regulations describes the penalty provisions applicable when a person is required under section 6050Y(b) to file an information return, or furnish a written statement, but fails to do so on or before the

prescribed date, fails to include all of the information required to be shown, or includes incorrect information.

4. Section 1.6050Y-4: Reporting of Reportable Death Benefits by Payor

Section 6050Y(c) requires payors to report payments of reportable death benefits. Section 1.6050Y-4(a) of the proposed regulations sets forth the requirement of information reporting applicable to payors under section 6050Y(c)(1).

Section 1.6050Y-4(b) of the proposed regulations sets forth the time and place for filing returns required under section 6050Y(c)(1).

Section 1.6050Y-4(c)(1) of the proposed regulations sets forth the requirement under section 6050Y(c)(2) to furnish statements to persons with respect to whom information is required on the return required by section 6050Y(c)(1). These persons are the recipients of reportable death benefits (reportable death benefits payment recipients). The reportable death benefits payment recipients may use the information in the written statements furnished under section 6050Y(c)(2) to determine their taxable income. To facilitate proper tax reporting, §1.6050Y-4(c)(2) of the proposed regulations provides that a payor must furnish any written statement required to be provided to a reportable death benefits payment recipient no later than January 31 of the year following the calendar year in which the reportable policy sale occurs. The proposed regulations use January 31 because it is generally the deadline for furnishing copies of Form 1099-R to recipients.

Section 1.6050Y-4(d) of the proposed regulations requires the payor to correct returns filed under section 6050Y(c)(1) and written statements furnished under section 6050Y(c)(2) within 15 days of the payor's receipt of notice of the rescission of the related reportable policy sale.

Section 1.6050Y-4(e) of the proposed regulations sets forth exceptions to reporting under section 6050Y(c) that may apply to payors. These exceptions are described in the next section of this Explanation of Provisions.

Section 1.6050Y-4(f) of the proposed regulations describes the penalty provisions applicable when a person is required under section 6050Y(c) to file an information return, or furnish a written state-

ment, but fails to do so on or before the prescribed date, fails to include all of the information required to be shown, or includes incorrect information.

5. Exceptions to Reporting under Section 6050Y

The proposed regulations include certain exceptions to the reporting requirements otherwise imposed on acquirers, 6050Y(b) issuers, and payors under §§1.6050Y-2, -3, and -4 of the proposed regulations, respectively. These exceptions to reporting are similar in their intended purposes to exceptions included in regulations issued under other sections in chapter 61 that exempt reporting by certain payors and brokers (as applicable based on the section) with respect to a transaction occurring outside the United States when no nexus of the transaction to the United States is identified (under criteria specified in each of the regulations). For example, §1.6045-1 generally requires brokers to report the proceeds of certain sales (such as sales of securities) on a Form 1099-B, Proceeds from Broker and Barter Exchange Transactions, but includes an exception to the term "broker" that applies to most non-U.S. securities brokers for sales that are effected outside of the United States within the meaning provided in those regulations. See §1.6045-1(a) and (g)(3)(iii). Reporting of payments under several of the sections in chapter 61 is also excepted when a payor or broker is permitted to treat the person receiving the payments as a foreign person. For certain of those excepted payments, withholding and reporting requirements may instead apply under chapter 3 of subtitle A of the Code.

Sections 1.6050Y-2(f) and 1.6050Y-3(f)(2) of the proposed regulations describe exceptions to the reporting otherwise required of an acquirer and 6050Y(b) issuer under section 6050Y(a) or (b), respectively, for cases in which the Treasury Department and the IRS are of the view that a nexus of the sale or life insurance contract to the United States is insufficient for applying the reporting provisions of those sections.

Sections 1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations provide that reporting under sec-

tion 6050Y(b) or (c) is not required by 6050Y(b) issuers and payors with respect to sellers or reportable death benefits payment recipients, respectively, documented as foreign beneficial owners under the requirements of the regulations under section 1441. The proposed regulations include, however, two modifications to those requirements. First, §§1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations permit a 6050Y(b) issuer or payor to treat a partnership or trust as a foreign beneficial owner provided that the 6050Y(b) issuer or payor obtains a written certification from the partnership or trust that no beneficial owner (within the meaning of §1.1441-1(c)(6)(ii)) of any portion of the sales proceeds or reportable death benefits payment (as applicable based on the section) received by the partnership or trust is a United States person, as well as documentation establishing the partnership's or trust's foreign status. The treatment described in the preceding sentence does not apply, however, when the issuer or payor has actual knowledge that a United States person is a beneficial owner of all or a portion of the sale proceeds or reportable death benefit payment. Second, §1.6050Y-3(f)(1) of the proposed regulations provides that this exception does not apply to a foreign beneficial owner for which the sale of the insurance contract (or interest therein) results in a requirement to report any of the income from the sale as effectively connected with a U.S. trade or business. To address those cases, the proposed regulations provide that a seller required to report any of the income from the sale of an insurance contract (or interest therein) as effectively connected with the conduct of a trade or business in the United States under section 864(b) must provide to the 6050Y(b) issuer a Form W-8ECI, Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States. The proposed regulations do not permit a 6050Y(b) issuer to apply the exception when it receives a Form W-8ECI from a seller or has reason to know that the seller is required to report any of the sale proceeds as income effectively connected with a U.S. trade or business. Similar provisions apply with respect to foreign beneficial owners of reportable death ben-

efits under §1.6050Y-4(e)(1) of the proposed regulations. However, in response to comments received on Notice 2018-41, the Treasury Department and the IRS are considering whether payors required under section 6050Y(c) and §1.6050Y-4(e)(1) of the proposed regulations to report payments of reportable death benefits that are income effectively connected with a U.S. trade or business may satisfy their reporting obligation under section 6050Y(c) by filing a Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, or if such payors may be relieved from the obligation to report some of the information required to be reported under section 6050Y(c).

Section 1.6050Y-4(e)(2) of the proposed regulations also includes a reporting exception for death benefits paid under an insurance contract (or interest therein) held by a buyer that obtained the contract or interest in a reportable policy sale that was within an exception to reporting described in §1.6050Y-3(f)(2) of the proposed regulations. The exception to reporting described in §1.6050Y-3(f)(2) of the proposed regulations applies in those cases in which a 6050Y(b) issuer received only a notice of transfer to a foreign person and, because the requirements set forth in §1.6050Y-3(f)(2)(i) through (iii) of the proposed regulations were met, was not required to treat the transfer as reportable for purposes of section 6050Y(b).

6. Section 1.101-1: Exclusion from Gross Income of Proceeds of Life Insurance Contracts Payable by Reason of Death

Generally, amounts received under a life insurance contract that are paid by reason of the death of the insured are excluded from federal income tax under section 101(a)(1). However, if a life insurance contract is sold or otherwise transferred for valuable consideration, the “transfer for value rule” set forth in section 101(a)(2) limits the excludable portion of the amount paid by reason of the death of the insured. Section 101(a)(2) provides that the excludable amount following a transfer for valuable consideration generally may not exceed the sum of (1) The actual value of the consideration paid by the transferee to acquire the life insurance contract and (2) the premiums and other amounts sub-

sequently paid by the transferee. Section 101(a)(2) provides two exceptions to this transfer for value rule. Specifically, the limitation set forth in section 101(a)(2) does not apply if (1) The transferee's basis in the contract is determined in whole or in part by reference to the transferor's basis in the contract or (2) the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

Section 13522 of the Act added section 101(a)(3) to the Code. Section 101(a)(3)(A) provides that these two exceptions shall not apply in the case of a transfer of a life insurance contract, or any interest therein, that is a reportable policy sale. Section 101(a)(3)(B) defines the term “reportable policy sale” to mean the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in such life insurance contract. For purposes of the preceding sentence, the term “indirectly” applies to the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.

The proposed regulations update §1.101-1(a)(1) of the existing regulations to reflect the repeal of section 101(b) (treatment of employees' death benefits) in 1996, and the addition of section 7702 (definition of life insurance contract) in 1984, section 101(j) (treatment of certain employer-owned life insurance contracts) in 2006, and section 101(a)(3) (exception to valuable consideration rules for reportable policy sales) in 2017. The proposed regulations remove the second and third sentences of §1.101-1(a)(1) of the existing regulations and add a sentence at the end of §1.101-1(a)(1) to address the earlier changes in law. To address the changes in law made by the Act, the proposed regulations under section 101 provide updated rules for determining the amount of death benefits excluded from gross income following a transfer for value or gratuitous transfer, including a reportable policy sale, and provide definitions applicable under section 101. The proposed regulations under section 6050Y adopt the relevant definitions by cross-reference.

The proposed regulations provide that any transfer of an interest in a life insurance contract for cash or other consideration reducible to a money value is a transfer for valuable consideration. *See* §1.101-1(f)(5) of the proposed regulations; *see also* §25.2512-8 (“[a] consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded”). An interest in a life insurance contract (also referred to as a life insurance policy) is held by any person that has taken title to or possession of the life insurance contract, in whole or part, for state law purposes, including any person that has taken title or possession as nominee for another person, or by any person that has an enforceable right to receive all or a part of the proceeds of the life insurance contract or to any other economic benefits of the insurance policy as described in §20.2042-1(c)(2). *See* §1.101-1(e)(1) of the proposed regulations. The enforceable right to designate a contract beneficiary is an interest in a life insurance contract. *Id.* Any person named as the owner in a life insurance contract generally is the owner (or an owner) of the contract and holds an interest in the contract. *Id.*

The transfer of an interest in a life insurance contract includes the transfer of any interest in the life insurance contract as well as any transfer of the life insurance contract itself (meaning a transfer of title to, possession of, or legal or beneficial ownership of the life insurance contract). *See* §1.101-1(e)(2) of the proposed regulations. For instance, the creation of an enforceable right to receive all or a part of the proceeds of a life insurance contract constitutes the transfer of an interest in the life insurance contract. *Id.* However, the revocable designation of a beneficiary of the policy proceeds does not constitute a transfer of an interest in a life insurance contract to the beneficiary until the designation becomes irrevocable other than by reason of the death of the insured. *Id.* For purposes of this rule, a beneficiary designation is not revocable if the person with the right to designate the beneficiary of the contract has an enforceable contractual obligation to designate a particular contract beneficiary. The pledging or assignment of a policy as collateral security also is not a transfer of an interest in

a life insurance contract. Id. In response to comments received on Notice 2018-41 suggesting that the initial owner of a life insurance contract should not be considered an “acquirer” for purposes of section 6050Y(a), §1.101-1(e)(2) of the proposed regulations clarifies that the issuance of a life insurance contract to a policyholder, other than the issuance of a policy in an exchange pursuant to section 1035, is not a transfer of an interest in a life insurance contract.

Section 1.101-1(b)(1)(i) of the proposed regulations provides that, in the case of a transfer of an interest in a life insurance contract for valuable consideration, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited under section 101(a)(2) to the sum of the actual value of the consideration for the transfer paid by the transferee and the premiums and other amounts subsequently paid by the transferee with respect to that interest. Consistent with section 101(a)(3), this general rule applies to all transfers of interests in life insurance contracts for valuable consideration that are reportable policy sales. Consistent with section 101(a)(2), this general rule also continues to apply to transfers of interests in life insurance contracts for valuable consideration that are not reportable policy sales, unless an exception set forth in section 101(a)(2) applies. *See* §1.101-1(b)(1)(i) and (ii) of the proposed regulations. Section 1.101-1(b)(1)(ii)(A) of the proposed regulations applies to carryover basis transfers that are not also subject to §1.101-1(b)(1)(ii)(B) of the proposed regulations. Section 1.101-1(b)(1)(ii)(B) of the proposed regulations applies to transfers to certain persons.

Under §1.101-1(b)(1)(ii)(A) of the proposed regulations, the limitation described in section 101(a)(2) and §1.101-1(b)(1)(i) of the proposed regulations does not apply to the transfer of an interest in a life insurance contract for valuable consideration if (1) The transfer is not a reportable policy sale, (2) the basis of the interest transferred, for the purpose of determining gain or loss with respect to the transferee, is determinable in whole or in part by reference to the basis of that interest in the hands of the transferor, and (3) §1.101-1(b)(1)(ii)(B) of the proposed regulations does not

apply to the transfer. The amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is, however, limited to the sum of (1) The amount that would have been excludable by the transferor, and (2) the premiums and other amounts subsequently paid by the transferee.

This limitation applies without regard to whether the interest previously has been transferred or to the nature of any prior transfer of the interest. For instance, it is irrelevant whether a prior transfer was gratuitous or for value, whether section 101(a)(2)(A) or (B) applied to a prior transfer, whether any prior transfer was a reportable policy sale, or whether the prior transfer was of the same interest or a larger interest in a life insurance contract that included the same interest. If the full amount of the proceeds would have been excludable by the transferor, as would generally be the case if the original policyholder is the transferor, §1.101-1(b)(1)(ii)(A) of the proposed regulations will, as a practical matter, impose no limitation on the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1).

Under §1.101-1(b)(1)(ii)(B)(I) of the proposed regulations, the limitation on the excludable amount of the proceeds described in section 101(a)(2) and §1.101-1(b)(1)(i) of the proposed regulations will not apply to an interest in a life insurance contract that is transferred for valuable consideration if (1) The transfer is not a reportable policy sale and the interest was not previously transferred for valuable consideration in a reportable policy sale, and (2) the transfer is to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (a (B)(I) person).

Under §1.101-1(b)(1)(ii)(B)(2) of the proposed regulations, if a transfer of an interest in a life insurance contract to a (B)(I) person follows a transfer for valuable consideration in a reportable policy sale (whether in the immediately preceding transfer or an earlier transfer), the amount of the proceeds attributable to that interest that is excludable from gross income under section 101(a)(1) is limited to the sum of (1) The higher of the amount that would have been excludable by the trans-

feror if the transfer to the (B)(I) person had not occurred or the actual value of the consideration for the transfer to the (B)(I) person paid by the (B)(I) person, and (2) the premiums and other amounts subsequently paid by the transferee. Thus, in determining the excludable amount of the proceeds attributable to an interest in a life insurance contract that is transferred to a (B)(I) person in a transfer that is not a reportable policy sale, the limitation described in section 101(a)(2) and §1.101-1(b)(1)(i) of the proposed regulations is inapplicable unless the interest previously had been transferred in a reportable policy sale. Additionally, because of the alternative in the formula for computing the limitation, a (B)(I) person will not be subject to a less favorable limitation than the limitation applicable to a transferee in a carryover basis transfer eligible for the exception set forth in §1.101-1(b)(1)(ii)(A) of the proposed regulations.

The proposed regulations provide a single rule applicable to all gratuitous transfers of interests in life insurance contracts, including reportable policy sales that are not for valuable consideration: the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of (1) The amount of the proceeds attributable to the gratuitously transferred interest that would have been excludable by the transferor if the transfer had not occurred, and (2) the premiums and other amounts subsequently paid by the transferee. *See* §1.101-1(b)(2)(i) of the proposed regulations. Although §1.101-1(b)(2) of the existing regulations provides a special rule for gratuitous transfers made by or to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, such a rule is not required by section 101(a), and the proposed regulations do not contain a special rule for these transfers because it could be subject to abuse.

Section 1.101-1(b)(3) of the proposed regulations clarifies that, for purposes of §1.101-1(b)(1) and (2) of the proposed regulations, in determining the amounts, if any, of consideration paid by the transferee for the transfer of an interest in a life insurance contract and premiums and other amounts subsequently paid by the

transferee with respect to that interest, the amounts paid by the transferee are reduced, but not below zero, by amounts received by the transferee under the life insurance contract that are not received as an annuity, to the extent excludable from gross income under section 72(e). This provision is necessary to prevent an exclusion from gross income based on a double-counting of consideration paid.

Section 1.101-1(c) of the proposed regulations defines the term “reportable policy sale,” which was introduced in section 101(a)(3). The proposed regulations provide that, as a general matter, any direct or indirect acquisition of an interest in a life insurance contract is a “reportable policy sale” if the acquirer has, at the time of the acquisition, no substantial family, business, or financial relationship with the insured apart from the acquirer’s interest in that life insurance contract. *See* §1.101-1(c)(1) of the proposed regulations.

Under §1.101-1(e)(3)(i) of the proposed regulations, the transfer of an interest in a life insurance contract results in the direct acquisition of the interest by the transferee (acquirer). Under §1.101-1(e)(3)(ii) of the proposed regulations, an indirect acquisition of an interest in a life insurance contract occurs when a person (acquirer) becomes a beneficial owner of a partnership, trust, or other entity that holds (directly or indirectly) an interest in the life insurance contract. For this purpose, the term “other entity” does not include a C corporation (as that term is defined in section 1361(a)(2)), unless more than 50 percent of the gross value of the assets of the C corporation (as determined under §1.101-1(f)(4)) consists of life insurance contracts immediately before the indirect acquisition. Under §1.101-1(f)(1) of the proposed regulations, a “beneficial owner” of a partnership, trust, or other entity is an individual or C corporation with an ownership interest in that partnership, trust, or other entity. The beneficial owner’s interest may be held directly or indirectly, through one or more other partnerships, trusts, or other entities.

Accordingly, under §1.101-1(e)(3)(ii) of the proposed regulations, persons that acquire shares in a C corporation that holds an interest in a life insurance contract generally will not be considered to have an indirect acquisition of an interest

in such contract. However, if the C corporation primarily owns life insurance contracts (or interests therein), any person that acquires shares in the C corporation will be considered to have an indirect acquisition of an interest in any life insurance contract held by the C corporation.

Section 1.101-1(d) of the proposed regulations defines the terms “substantial family relationship,” “substantial business relationship,” and “substantial financial relationship.” Under section 1.101-1(d)(1) of the proposed regulations, a “substantial family relationship” is the relationship between an individual and any family member of that individual as defined in §1.101-1(f)(3) of the proposed regulations. A substantial family relationship also exists between an individual and his or her former spouse with regard to a transfer of an interest in a life insurance contract to (or in trust for the benefit of) that former spouse incident to divorce. *See* §1.101-1(d)(1) of the proposed regulations. Additionally, a substantial family relationship exists between the insured and an entity if all of the entity’s beneficial owners have a substantial family relationship with the insured. *Id.*

Section 1.101-1(d)(2) describes the two situations in which a substantial business relationship exists between the acquirer and insured: (1) The insured is a key person (as defined in section 264) of, or materially participates (as defined in section 469 and the corresponding regulations) in, an active trade or business as an owner, employee, or contractor, and at least 80% of that trade or business is owned (directly or indirectly, through one or more partnerships, trusts, or other entities) by the acquirer or the beneficial owners of the acquirer, and (2) the acquirer acquires an active trade or business and acquires the interest in the life insurance contract either as part of that acquisition or from a person owning significant property leased to the acquired trade or business or life insurance policies held to facilitate the succession of the ownership of the business, if certain requirements are met. *See* §1.101-1(d)(2)(i) and (ii) of the proposed regulations.

Comments received on Notice 2018-41 suggested that acquisitions of life insurance contracts, or interests therein, in certain ordinary course business transac-

tions involving the acquisition of a trade or business should not be considered reportable policy sales, including ordinary course business transactions whereby one trade or business acquires another trade or business that owns life insurance on the lives of former employees or directors. The definition of substantial business relationship in §1.101-1(d)(2) of the proposed regulations, as well as certain other provisions in the proposed regulations, are intended to exclude certain of these transactions from the definition of reportable policy sales.

Section 1.101-1(d)(3) of the proposed regulations describes the three situations in which a substantial financial relationship exists between the insured and the acquirer: (1) The acquirer (directly or indirectly, through one or more partnerships, trusts, or other entities of which it is a beneficial owner) has, or the beneficial owners of the acquirer have, a common investment (other than the interest in the life insurance contract) with the insured and a buy-out of the insured’s interest in the common investment by the co-investor(s) after the insured’s death is reasonably foreseeable; (2) the acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets or satisfy liabilities following the death of the insured; or (3) the acquirer is an organization described in sections 170(c), 2055(a), and 2522(a) that previously received financial support in a substantial amount or significant volunteer support from the insured. *See* §1.101-1(d)(3)(i) through (iii) of the proposed regulations.

The proposed regulations also specify that the fact that an acquirer is a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (all relationships that are covered by an exception from the transfer for value rule) is not sufficient to establish a substantial business or financial relationship, nor is such status required to establish a substantial business or financial relationship. *See* §1.101-1(d)(4)(ii) of the proposed regulations. The proposed regulations also clarify that, for purposes of determining whether the acquirer in an indirect acquisition of an interest in a life insurance contract has a substantial business or financial relationship with the insured, the acquirer

will be deemed to have a substantial business or financial relationship with the insured if the direct holder of the interest in the life insurance contract has a substantial business or financial relationship with the insured immediately before and after the date the acquirer acquires its interest. See §1.101-1(d)(4)(i) of the proposed regulations. Accordingly, the acquirer in an indirect acquisition may establish a substantial business or financial relationship with the insured based on the acquirer's own relationship with the insured or the relationship between the insured and the direct holder of the interest in the life insurance contract.

The proposed regulations also provide several exceptions from the definition of reportable policy sale. The proposed regulations provide that the transfer of an interest in a life insurance contract between certain related entities is not a reportable policy sale. Specifically, a transfer between entities with the same beneficial owners is not a reportable policy sale if the ownership interest of each beneficial owner in each entity does not vary by more than a 20 percent ownership interest. See §1.101-1(c)(2)(i) and (g)(10) of the proposed regulations. Also, a transfer between corporations that are members of an affiliated group (as defined in section 1504(a)) that files a consolidated U.S. tax return for the taxable year in which the transfer occurs is not a reportable policy sale. See §1.101-1(c)(2)(ii) of the proposed regulations.

Finally, in response to comments received on Notice 2018-41, certain indirect acquisitions of life insurance contracts, or interests in life insurance contracts, are excepted from the definition of a reportable policy sale. The limited definition of "indirect acquisition" under §1.101-1(e)(3)(ii) of the proposed regulations means that shareholders acquiring an interest in a C corporation that holds an interest in one or more life insurance contracts will not be considered to have an indirect acquisition or reportable policy sale unless the C corporation primarily owns life insurance contracts (or interests therein). The proposed regulations also provide an exception from the definition of a reportable policy sale for an indirect acquisition of an interest in a life insurance contract if the direct holder of the interest acquired the

interest in a reportable policy sale and reported the acquisition in compliance with section 6050Y(a) and §1.6050Y-2 of the proposed regulations. See §1.101-1(c)(2)(iii)(A) of the proposed regulations. Also, the indirect acquisition of an interest in a life insurance contract is not a reportable policy sale if (1) Immediately before the acquisition, no more than 50 percent of the gross value of the assets of the entity that directly holds the interest in the life insurance contract consists of life insurance contracts, and (2) the acquirer and his or her family members own five percent or less of the ownership interests in the entity that directly holds the interest in the life insurance contract. See §1.101-1(c)(2)(iii)(B) of the proposed regulations. Section 1.101-1(f)(4) of the proposed regulations provides rules regarding the determination of the gross value of assets for this purpose.

Applicability Dates

The rules in §1.101-1(b) through (g) of the proposed regulations are proposed to apply, for purposes of section 6050Y, to reportable policy sales made after December 31, 2017, and to reportable death benefits paid after December 31, 2017. For any other purpose, §1.101-1(b) through (g) of the proposed regulations apply to transfers of life insurance contracts, or interests therein, made after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

The rules in §1.6050Y-1 of the proposed regulations are proposed to apply to reportable policy sales made and reportable death benefits paid after December 31, 2017. The rules in §§1.6050Y-2 and 1.6050Y-3 are proposed to apply to reportable policy sales made after December 31, 2017. The rules in §1.6050Y-4 are proposed to apply to reportable death benefits paid after December 31, 2017. See §1.6050Y-1(b) of the proposed regulations.

For reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before the date final regulations are published in the **Federal Register**, §1.6050Y-1(b) of the proposed regulations would provide transition relief as follows:

1. With respect to reportable policy sales occurring after December 31, 2017, and before the date final regulations are published in the **Federal Register**, statements required to be furnished to issuers under section 6050Y(a)(2) must be furnished by the later of the applicable deadline set forth in final regulations or 60 days after the date final regulations are published in the **Federal Register**;

2. With respect to reportable policy sales occurring after December 31, 2017, and before the date final regulations are published in the **Federal Register**, returns required to be filed under section 6050Y(a)(1) and (b)(1) and statements required to be furnished to payment recipients and sellers under section 6050Y(a)(2) and (b)(2) must be filed or furnished by the later of the applicable deadline set forth in final regulations or 90 days after the date final regulations are published in the **Federal Register**; and

3. With respect to payments of reportable death benefits paid after December 31, 2017, and before the date final regulations are published in the **Federal Register**, returns required to be filed under section 6050Y(c)(1) and statements required to be furnished to payment recipients under section 6050Y(c)(2) must be filed or furnished by the later of the applicable deadline set forth in final regulations or 90 days after the date final regulations are published in the **Federal Register**.

Special Analyses

The proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

When the IRS issues a proposed rulemaking imposing a requirement on small entities, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis," which will "describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a sig-

nificant economic impact on a substantial number of small entities.

Pursuant to the RFA, it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Section 13520 of the Act added section 6050Y to chapter 61 (Information and Returns) of the Code. Section 6050Y imposes information reporting obligations related to certain life insurance contract transactions, including reportable policy sales and payments of reportable death benefits. Section 6050Y provides that each of the returns required by section 6050Y is to be made “at such time and in such manner as the Secretary shall prescribe.” The proposed regulations under section 6050Y would implement section 6050Y by specifying the manner in which and time at which the information reporting obligations must be satisfied. Accordingly, because the regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal. In addition, the IRS and the Treasury Department expect that the reporting burden will fall primarily on financial and insurance firms with annual receipts greater than \$38.5 million (see 13 CFR 121.201, sector 52 (finance and insurance)). Therefore, because the Commissioner of the IRS hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. The Treasury Department and the IRS request comments on the accuracy of this statement. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. The Treasury Department and the IRS specifically request comments on the following:

1. Whether the proposed regulations should provide rules regarding the electronic furnishing of statements that differ in any way from the rules regarding the electronic furnishing of statements that are set forth in §31.6051-1(j).

2. Information about the types and timing of payments made by acquirers in reportable policy sales, including the types of ancillary costs and expenses paid in reportable policy sales, the recipients of those payments, and existing reporting requirements applicable to those payments.

3. Whether, for purposes of reporting under section 6050Y(c), only issuers should be considered payors of reportable death benefits or whether payors should be more broadly defined to include any holder of an interest in a life insurance contract that receives reportable death benefits attributable to that interest and is contractually obligated to pay them to the beneficial owner of the interest.

4. Whether a substantial business relationship or substantial financial relationship should be considered to exist between the acquirer and insured for purposes of section 101(a)(3) in any situation not included in the definition of “substantial business relationship” in §1.101-1(d)(2) of the proposed regulations or the definition of “substantial financial relationship” in §1.101-1(d)(3) of the proposed regulations.

5. Whether the proposed regulations should include additional provisions regarding the treatment of section 1035 exchanges of life insurance contracts.

6. Whether the exceptions to reporting by 6050Y(b) issuers and payors under §§1.6050Y-3(f)(1) and 1.6050Y-4(e)(1) of the proposed regulations (covering sellers and reportable death benefit payment recipients documented as foreign beneficial owners) are appropriate, including for cases in which a foreign partnership or a foreign trust is the seller or reportable death benefit payment recipient, and also whether the proposed reporting requirements are duplicative or could be combined with other reporting requirements.

All comments that are submitted by the public will be available for public inspection and copying at www.regulations.gov or upon request.

A public hearing has been scheduled for June 5, 2019, at 10 a.m., in the IRS Au-

ditorium, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by May 9, 2019. Such persons should submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

Availability of IRS Documents

The IRS notice cited in this preamble is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.101-1 is amended by:

1. Removing the second and third sentences in paragraph (a)(1) and adding a sentence at the end of the paragraph.

2. Revising paragraphs (b)(1) through (3).

3. Removing paragraphs (b)(4) and (5).

4. Adding paragraphs (c) through (g).

The revisions and additions read as follows:

§1.101-1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a)(1) * * * If the life insurance contract is an employer-owned life insurance contract within the definition of section 101(j)(3), the amount to be excluded from gross income may be affected by the provisions of section 101(j).

* * * * *

(b) * * * (1) *Transfer of an interest in a life insurance contract for valuable consideration*—(i) *In general.* In the case of a transfer of an interest in a life insurance contract for valuable consideration, including a reportable policy sale for valuable consideration, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited under section 101(a)(2) to the sum of the actual value of the consideration for the transfer paid by the transferee and the premiums and other amounts subsequently paid by the transferee with respect to the interest. For exceptions to this general rule for certain transfers for valuable consideration that are not reportable policy sales, see paragraph (b)(1)(ii) of this section. The application of section 101(d), (f), or (j), which is not addressed in paragraph (b) of this section, may further limit the amount of the proceeds excludable from gross income.

(ii) *Exceptions*—(A) *Exception for carryover basis transfers.* The limitation described in paragraph (b)(1)(i) of this section does not apply to the transfer of an interest in a life insurance contract for valuable consideration if each of the fol-

lowing requirements are satisfied. First, the transfer is not a reportable policy sale. Second, the basis of the interest, for the purpose of determining gain or loss with respect to the transferee, is determinable in whole or in part by reference to the basis of the interest in the hands of the transferor (see section 101(a)(2)(A)). Third, paragraph (b)(1)(ii)(B) of this section does not apply. In the case of a transfer described in this paragraph (b)(1)(ii)(A), the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount that would have been excludable by the transferor if the transfer had not occurred and the premiums and other amounts subsequently paid by the transferee. The preceding sentence applies without regard to whether the interest previously has been transferred and the nature of any prior transfer of the interest.

(B) *Exception for transfers to certain persons*—(1) *In general.* The limitation described in paragraph (b)(1)(i) of this section does not apply to the transfer of an interest in a life insurance contract for valuable consideration if both of the following requirements are satisfied. First, the transfer is not a reportable policy sale and the interest was not previously transferred for valuable consideration in a reportable policy sale. Second, the interest is transferred to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (see section 101(a)(2)(B)).

(2) *Transfers to certain persons subsequent to a reportable policy sale.* If a transfer of an interest in a life insurance contract would be described in paragraph (b)(1)(ii)(B)(1) of this section, but for the fact that the interest was previously transferred for valuable consideration in a reportable policy sale (whether in the immediately preceding transfer or an earlier transfer), then the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of—

(i) The higher of the amount that would have been excludable by the transferor if the transfer had not occurred or the actual value of the consideration for the transfer paid by the transferee; and

(ii) The premiums and other amounts subsequently paid by the transferee.

(2) *Other transfers*—(i) *Gratuitous transfer of an interest in a life insurance contract.* To the extent that a transfer of an interest in a life insurance contract is gratuitous, including a reportable policy sale that is not for valuable consideration, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount of the proceeds attributable to the gratuitously transferred interest that would have been excludable by the transferor if the transfer had not occurred and the premiums and other amounts subsequently paid by the transferee.

(ii) *Partial transfers.* When only part of an interest in a life insurance contract is transferred, the transferor's exclusion is ratably apportioned among the several parts. If multiple parts of an interest are transferred, the transfer of each part is treated as a separate transaction, with each transaction subject to the rule under paragraph (b) of this section that is appropriate to the type of transfer involved.

(iii) *Bargain sales.* When the transfer of an interest in a life insurance contract is in part a sale and in part a gratuitous transfer, the transfer of each part is treated as a separate transaction for purposes of determining the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1). Each separate transaction is subject to the rule under paragraph (b) of this section that is appropriate to the type of transfer involved.

(3) *Determination of amounts paid by the transferee.* For purposes of paragraphs (b)(1) and (2) of this section, in determining the amounts, if any, of consideration paid by the transferee for the transfer of an interest in a life insurance contract and premiums and other amounts subsequently paid by the transferee with respect to that interest, the amounts paid by the transferee are reduced, but not below zero, by amounts received by the transferee under the life insurance contract that are not received as an annuity, to the extent excludable from gross income under section 72(e).

(c) *Reportable policy sale*—(1) *In general.* Except as provided in paragraph (c)

(2) of this section, a reportable policy sale for purposes of this section and section 6050Y is any direct or indirect acquisition of an interest in a life insurance contract if the acquirer has, at the time of the acquisition, no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in the life insurance contract.

(2) *Exceptions.* None of the following transactions is a reportable policy sale:

(i) A transfer of an interest in a life insurance contract between entities with the same beneficial owners, if the ownership interest of each beneficial owner in the transferor entity does not vary by more than a 20 percent ownership interest from that beneficial owner's ownership interest in the transferee entity. In a series of transfers, the prior sentence is applied by comparing the beneficial owners' ownership interest in the first transferor entity and the last transferee entity. For purposes of this paragraph (c)(2)(i), each beneficial owner of a trust is deemed to have an ownership interest determined by the broadest possible exercise of a trustee's discretion in that beneficial owner's favor. *Example 10* in paragraph (g)(10) of this section provides an illustration of the application of this paragraph (c)(2)(i).

(ii) A transfer between corporations that are members of an affiliated group (as defined in section 1504(a)) that files a consolidated U.S. income tax return for the taxable year in which the transfer occurs.

(iii) The indirect acquisition of an interest in a life insurance contract by a person if—

(A) The partnership, trust, or other entity that directly holds the interest in the life insurance contract acquired that interest in a reportable policy sale reported in compliance with section 6050Y(a) and §1.6050Y-2; or

(B) Immediately before the acquisition, no more than 50 percent of the gross value of the assets (as determined under paragraph (f)(4) of this section) of the partnership, trust, or other entity that directly holds the interest in the life insurance contract consists of life insurance contracts, and with respect to that partnership, trust, or other entity, the person indirectly acquiring the interest in the contract (acquirer) and his or her family members own, in the aggregate—

(1) With respect to an S corporation, stock possessing 5 percent or less of the total combined voting power of all classes of stock entitled to vote and 5 percent or less of the total value of shares of all classes of stock of the S corporation;

(2) With respect to a trust or decedent's estate, 5 percent or less of the corpus and 5 percent or less of the annual income (taking into account, for the purpose of determining any person's ownership interest, the maximum amount of income and corpus that could be distributed to or held for the benefit of that person); or

(3) With respect to a partnership or other entity that is not a corporation or a trust, 5 percent or less of the capital interest and 5 percent or less of the profits interest.

(d) *Substantial relationship*—(1) *Substantial family relationship.* For purposes of this section, a substantial family relationship means the relationship between an individual and any family member of that individual as defined in paragraph (f)(3) of this section. In addition, a substantial family relationship exists between an individual and his or her former spouse with regard to the transfer of an interest in a life insurance contract to (or in trust for the benefit of) that former spouse incident to divorce. A substantial family relationship also exists between the insured and a partnership, trust, or other entity if all of the beneficial owners of that partnership, trust, or other entity have a substantial family relationship with the insured. For example, a substantial family relationship exists between the insured and an entity that acquires an interest in a life insurance contract on the insured's life if the insured is the sole beneficial owner of the entity or each beneficial owner of the entity is either the insured or a family member of the insured.

(2) *Substantial business relationship.* For purposes of this section, a substantial business relationship between the insured and the acquirer exists in each of the following situations:

(i) The insured is a key person (as defined in section 264) of, or materially participates (within the meaning of section 469) in, an active trade or business as an owner, employee, or contractor, and at least 80% of that trade or business is owned (directly or indirectly, through one or more partnerships, trusts, or other enti-

ties) by the acquirer or the beneficial owners of the acquirer.

(ii) The acquirer acquires an active trade or business and acquires the interest in the life insurance contract either as part of that acquisition or from a person owning significant property leased to the acquired trade or business or life insurance policies held to facilitate the succession of the ownership of the business if—

(A) The insured—

(1) Is an employee within the meaning of section 101(j)(5)(A) of the acquired trade or business immediately preceding the acquisition; or

(2) Was a director, highly compensated employee, or highly compensated individual within the meaning of section 101(j)(2)(A)(ii) of the acquired trade or business, and the acquirer, immediately after the acquisition, has ongoing financial obligations to the insured with respect to the insured's employment by the trade or business (for example, the life insurance contract is maintained by the acquirer to fund current or future retirement, pension, or survivorship obligations based on the insured's relationship with the entity or to fund a buy-out of the insured's interest in the acquired trade or business); and

(B) The acquirer either carries on the acquired trade or business or uses a significant portion of the acquired business assets in an active trade or business that does not include investing in interests in life insurance contracts.

(3) *Substantial financial relationship.* For purposes of this section, a substantial financial relationship between the insured and the acquirer exists in each of the following situations:

(i) The acquirer (directly or indirectly, through one or more partnerships, trusts, or other entities of which it is a beneficial owner) has, or the beneficial owners of the acquirer have, a common investment (other than the interest in the life insurance contract) with the insured and a buy-out of the insured's interest in the common investment by the co-investor(s) after the insured's death is reasonably foreseeable.

(ii) The acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets or satisfy liabilities following the death of the insured.

(iii) The acquirer is an organization described in sections 170(c), 2055(a), and 2522(a) that previously received financial support in a substantial amount or significant volunteer support from the insured.

(4) *Special rules.* Paragraphs (d)(4)(i) and (ii) of this section apply for purposes of determining whether a substantial business relationship exists under paragraph (d)(2) of this section and for purposes of determining whether a substantial financial relationship exists under paragraph (d)(3) of this section.

(i) *Indirect acquisitions.* The acquirer in an indirect acquisition of an interest in a life insurance contract is deemed to have a substantial business or financial relationship with the insured if the direct holder of the interest in the life insurance contract has a substantial business or financial relationship with the insured immediately before and after the date the acquirer acquires its interest.

(ii) *Acquisitions by certain persons.* The sole fact that an acquirer is a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, is not sufficient to establish a substantial business or financial relationship with the insured. In addition, an acquirer need not be a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer to have a substantial business or financial relationship with the insured.

(e) *Interest in a life insurance contract—(1) Definition.* For purposes of this section and section 6050Y, the term *interest in a life insurance contract* means the interest held by any person that has taken title to or possession of the life insurance contract (also referred to as a life insurance policy), in whole or part, for state law purposes, including any person that has taken title or possession as nominee for another person, and the interest held by any person that has an enforceable right to receive all or a part of the proceeds of a life insurance contract or to any other economic benefits of the policy as described in §20.2042-1(c) (2) of this chapter, such as the enforceable right to designate a contract beneficiary. Any person named as the owner in the life insurance contract generally is the owner

(or an owner) of the contract and holds an interest in the contract.

(2) *Transfer of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the term *transfer of an interest in a life insurance contract* means the transfer of any interest in the life insurance contract, including any transfer of title to, possession of, or legal or beneficial ownership of the life insurance contract itself. The creation of an enforceable right to receive all or a part of the proceeds of a life insurance contract constitutes the transfer of an interest in the life insurance contract. The following events are not a transfer of an interest in a life insurance contract: the revocable designation of a beneficiary of the policy proceeds (until the designation becomes irrevocable other than by reason of the death of the insured); the pledging or assignment of a policy as collateral security; and the issuance of a life insurance contract to a policyholder, other than the issuance of a policy in an exchange pursuant to section 1035.

(3) *Acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the acquisition of an interest in a life insurance contract may be direct or indirect.

(i) *Direct acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the transfer of an interest in a life insurance contract results in the direct acquisition of the interest by the transferee (acquirer).

(ii) *Indirect acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, an indirect acquisition of an interest in a life insurance contract occurs when a person (acquirer) becomes a beneficial owner of a partnership, trust, or other entity that holds (whether directly or indirectly) the interest in the life insurance contract. For purposes of this paragraph (e)(3)(ii), the term *other entity* does not include a C corporation, unless more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts (as determined under paragraph (f) (4) of this section) immediately before the indirect acquisition.

(f) *Definitions.* The following definitions apply for purposes of this section:

(1) *Beneficial owner.* A beneficial owner of a partnership, trust, or other entity

is an individual or C corporation with an ownership interest in that entity. The interest may be held directly or indirectly, through one or more other partnerships, trusts, or other entities. For instance, an individual that directly owns an interest in a partnership (P1), which directly owns an interest in another partnership (P2), is an indirect beneficial owner of P2 and any assets or other entities owned by P2 directly or indirectly. For purposes of this paragraph (f)(1), the beneficial owners of a trust include those who may receive current distributions of trust income or corpus and those who could receive distributions if the trust were to terminate currently.

(2) *C corporation.* The term *C corporation* has the meaning given to it in section 1361(a)(2).

(3) *Family member.* With respect to any individual, the term *family member* refers to any person described in paragraphs (f) (3)(i) through (vii) of this section. For purposes of this paragraph (f)(3), full effect is given to a legal adoption, and a step-child is deemed to be a descendant. The family members of an individual include:

(i) The individual;

(ii) The individual's spouse or a person with whom the individual is in a registered domestic partnership, civil union, or other similar relationship established under state law;

(iii) Any parent, grandparent, or great-grandparent of the individual or of the person described in paragraph (f)(3) (ii) of this section and any spouse of such parent, grandparent, or great-grandparent, or person with whom the parent, grandparent, or great-grandparent is in a registered domestic partnership, civil union, or other similar relationship established under state law;

(iv) Any lineal descendant of the individual or of any person described in paragraph (f)(3)(ii) or (iii) of this section;

(v) Any spouse of a lineal descendant described in paragraph (f)(3)(iv) of this section and any person with whom such a lineal descendant is in a registered domestic partnership, civil union, or other similar relationship established under state law;

(vi) Any lineal descendant of a person described in paragraph (f)(3)(v) of this section; and

(vii) Any trust established and maintained for the primary benefit of the individual or one or more persons described in paragraph (f)(3)(i) through (vi) of this section.

(4) *Gross value of assets*—(i) *Determination of gross value of assets*. Except as otherwise provided in paragraph (f)(4)(ii) and (iii) of this section, for purposes of paragraphs (c)(2)(iii)(B) and (e)(3)(ii) of this section, the term *gross value of assets* means, with respect to any entity, the fair market value of the entity's assets.

(ii) *Determination of gross value of assets of publicly traded entity*. For purposes of determining the gross value of assets of an entity that is publicly traded, if the entity's annual Form 10-K filed with the United States Securities and Exchange Commission (or equivalent annual filing if the entity is publicly traded in a non-U.S. jurisdiction) for the period immediately preceding a person's acquisition of an ownership interest in the entity does not contain information demonstrating that more than 50 percent of the gross value of the entity's assets consist of life insurance contracts, that person may assume that no more than 50 percent of the gross value of the entity's assets consist of life insurance contracts, unless that person has actual knowledge or reason to know that more than 50 percent of the gross value of the entity's assets consist of life insurance contracts.

(iii) *Safe harbor definition of gross value of assets*. An entity may choose to determine the gross value of all the entity's assets for purposes of this section using the following alternative definition of *gross value of assets*:

(A) In the case of assets that are life insurance policies or annuity or endowment contracts that have cash values, the cash surrender value as defined in section 7702(f)(2)(A); and

(B) In the case of assets not described in paragraph (f)(4)(iii)(A) of this section, the adjusted bases (within the meaning of section 1016) of such assets.

(5) *Transfer for valuable consideration*. A transfer for valuable consideration means any transfer of an interest in a life insurance contract for cash or other consideration reducible to a money value.

(g) *Examples*. The application of this section is illustrated by the following ex-

amples, all of which assume that the transferee did not receive any amounts under the life insurance contract other than the amounts described in the examples:

(1) *Example 1*. A is the initial policyholder of a \$100,000 insurance policy on A's life. A sells the policy to B, A's child, for \$6,000, its fair market value. B is not a partner in a partnership in which A is a partner. B receives the proceeds of \$100,000 upon the death of A. Because the transfer to B was for valuable consideration, and none of the exceptions in paragraph (b)(1)(ii) of this section applies, the amount of the proceeds B may exclude from B's gross income under this section is limited under paragraph (b)(1)(i) of this section to \$6,000 plus any premiums and other amounts paid by B subsequent to the transfer.

(2) *Example 2*. The facts are the same as in *Example 1* in paragraph (g)(1) of this section except that, before A's death, B gratuitously transfers the policy back to A. A's estate receives the proceeds of \$100,000 on A's death. Because the transfer from B to A is a gratuitous transfer, the amount of the proceeds A's estate may exclude from gross income under this section is limited under paragraph (b)(2)(i) of this section to the sum of the amount B could have excluded had the transfer back to A not occurred (\$6,000 plus any premiums and other amounts paid by B subsequent to the transfer to B, as described in *Example 1* in paragraph (g)(1) of this section) plus any premiums and other amounts paid by A subsequent to the transfer to A.

(3) *Example 3*. The facts are the same as in *Example 1* in paragraph (g)(1) of this section except that, before A's death, B sells the policy back to A for its fair market value. A's estate receives the proceeds of \$100,000 on A's death. The transfer from A to B is not a reportable policy sale because the acquirer B has a substantial family relationship with the insured A. The transfer from B to A is also not a reportable policy sale because the acquirer A has a substantial family relationship with the insured A. Accordingly, paragraph (b)(1)(ii)(B)(I) of this section applies to the transfer to A. The amount of the proceeds A's estate may exclude from gross income is not limited by paragraph (b) of this section.

(4) *Example 4*. A is the initial policyholder of a \$100,000 insurance policy on A's life. A transfers the policy for \$6,000, its fair market value, to an individual, C, who does not have a substantial family, business, or financial relationship with A. The transfer from A to C is a reportable policy sale. C receives the proceeds of \$100,000 on A's death. The amount of the proceeds C may exclude from C's gross income under this section is limited under paragraph (b)(1)(i) of this section to \$6,000 plus any premiums and other amounts paid by C subsequent to the transfer.

(5) *Example 5*. The facts are the same as in *Example 4* in paragraph (g)(4) of this section, except that before A's death, C transfers the policy back to A for \$8,000, its fair market value. A's estate receives the proceeds of \$100,000 on A's death. The transfer from C to A is not a reportable policy sale because the acquirer A has a substantial family relationship with the insured A. Because that transfer follows a reportable policy sale (the transfer from A to C), the amount of the proceeds that A's estate may exclude from gross income under this section is limited by

paragraph (b)(1)(ii)(B)(2) of this section to the sum of—

(i) The higher of the amount C could have excluded had the transfer back to A not occurred (\$6,000 plus any premiums and other amounts paid by C subsequent to the transfer to C, as described in *Example 4* in paragraph (g)(4) of this section) or the actual value of the consideration for that transfer paid by A (\$8,000); and

(ii) Any premiums and other amounts paid by A subsequent to the transfer to A.

(6) *Example 6*. The facts are the same as in *Example 4* in paragraph (g)(4) of this section, except that before A's death, C gratuitously transfers the policy to A. A's estate receives the proceeds of \$100,000 on A's death. Because the transfer from C to A was gratuitous, the amount of the proceeds A's estate may exclude from gross income is limited under paragraph (b)(2)(i) of this section to the sum of the amount C could have excluded had the transfer back to A not occurred (\$6,000 plus any premiums and other amounts paid by C subsequent to the transfer to C, as described in *Example 4* in paragraph (g)(4) of this section), plus any premiums and other amounts paid by A subsequent to the transfer back to A.

(7) *Example 7*. A is the initial policyholder of a \$100,000 insurance policy on A's life. A contributes the policy to Corporation X in exchange for stock. Corporation X's basis in the policy is determinable in whole or in part by reference to A's basis in the policy. Corporation X conducts an active trade or business that it wholly owns, and A materially participates in that active trade or business as an employee of Corporation X. Corporation X receives the proceeds of \$100,000 on A's death. A's contribution of the policy to Corporation X is not a reportable policy sale because Corporation X has a substantial business relationship with A under paragraph (d)(2)(i) of this section. Accordingly, under paragraph (b)(1)(ii)(B)(I) of this section, Corporation X may exclude the full amount of the proceeds from gross income because Corporation X's exclusion is not limited by paragraph (b) of this section.

(8) *Example 8*. The facts are the same as in *Example 7* in paragraph (g)(7) of this section, except that Corporation X transfers its active trade or business and the policy on A's life to Corporation Y in a tax-free reorganization at a time when A is still employed by Corporation X, but is no longer a shareholder of Corporation X. Corporation Y's basis in the policy is determinable in whole or in part by reference to Corporation X's basis in the property, and Corporation Y carries on the trade or business acquired from Corporation X. Corporation Y receives the proceeds of \$100,000 on A's death. The transfer from Corporation X to Corporation Y is not a reportable policy sale because Corporation Y has a substantial business relationship with A under paragraph (d)(2)(ii) of this section. The amount of the proceeds that Corporation Y may exclude from gross income is limited under paragraph (b)(1)(ii)(A) of this section to the sum of the amount that would have been excludable by Corporation X had the transfer to Corporation Y not occurred (the full amount of the proceeds, as described in *Example 7* in paragraph (g)(7) of this section), plus any premiums and other amounts paid by Corporation Y subsequent to the transfer. Accord-

ingly, Corporation Y may exclude the full amount of the proceeds from gross income.

(9) *Example 9.* A is the initial policyholder of a \$100,000 insurance policy on A's life. A contributes the policy to a C corporation, Corporation W, in exchange for stock. Before and after the acquisition, A and A's family members own less than 5% of the total combined voting power of all classes of Corporation W stock entitled to vote and less than 5% of the total value of all classes of Corporation W stock. Corporation W's basis in the policy is determinable in whole or in part by reference to A's basis in the property. However, no substantial family, business, or financial relationship exists between A and Corporation W. Corporation W receives the proceeds of \$100,000 on A's death. A's contribution of the policy to Corporation W is a reportable policy sale. Under paragraph (b)(1)(i) of this section, the amount of the proceeds Corporation W may exclude from gross income is limited to the actual value of the stock exchanged for the policy, plus any premiums and other amounts paid by Corporation W subsequent to the transfer.

(10) *Example 10.* Partnership X and Partnership Y are owned by individuals A, B, and C. A holds 40% of the capital and profits interest of Partnership X and 20% of the capital and profits interest of Partnership Y. B holds 35% of the capital and profits interest of Partnership X and 40% of the capital and profits interest of Partnership Y. C holds 25% of the capital and profits interest of Partnership X and 40% of the capital and profits interest of Partnership Y. Partnership X is the initial policyholder of a \$100,000 insurance policy on the life of A. Partnership Y purchases the policy from Partnership X. Under paragraph (c)(2)(i) of this section, this transfer is not a reportable policy sale because the ownership interest of each beneficial owner in Partnership X does not vary from that owner's interest in Partnership Y by more than a 20% ownership interest. A's ownership varies by a 20% interest, B's ownership varies by a 5% interest, and C's ownership varies by a 15% interest.

(11) *Example 11.* Partnership X conducts an active trade or business and is the initial policyholder of a \$100,000 insurance policy on the life of its full-time employee, A. A materially participates in Partnership X's active trade or business in A's capacity as an employee. Individual B acquires a 10% profits interest in Partnership X in exchange for a cash payment of \$1,000,000. Under paragraphs (d)(1) through (3) of this section, B does not have a substantial family, business, or financial relationship with A. Under paragraph (d)(4)(i) of this section, B is deemed to have a substantial business relationship with A because, under paragraph (d)(2)(i) of this section, Partnership X (the direct policyholder) has a substantial business relationship with A. Accordingly, although the acquisition of the 10% partnership interest by B is an indirect acquisition of a 10% interest in the insurance policy covering A's life, the acquisition is not a reportable policy sale.

(12) *Example 12.* The facts are the same as in *Example 11* in paragraph (g)(11) of this section, except that A is no longer an employee of Partnership X when B acquires the profits interest in Partnership X, and Partnership X does not have any ongoing financial obligations to A. Also, B acquires only a 5% partnership interest in exchange for a cash payment

of \$500,000. Partnership X does not own an interest in any other life insurance policies, and the gross value of its assets is \$10 million. Although neither Partnership X nor B has a substantial family, business, or financial relationship with A at the time of B's indirect acquisition of an interest in the policy covering A's life, because B's profits interest in Partnership X does not exceed 5%, and because no more than 50% of Partnership X's asset value consists of life insurance contracts, the exception in paragraph (c)(2)(iii)(B) of this section applies, and B's indirect acquisition of an interest in the policy covering A's life is not a reportable policy sale.

Par. 3. Section 1.101-6 is amended by revising paragraph (b) to read as follows:

§1.101-6 Effective date.

* * * * *

(b) Notwithstanding paragraph (a) of this section, for purposes of section 6050Y, §1.101-1(b), (c), (d), (e), (f), and (g) apply to reportable policy sales made after December 31, 2017, and to reportable death benefits paid after December 31, 2017. For any other purpose, §1.101-1(b), (c), (d), (e), (f), and (g) apply to transfers of life insurance contracts, or interests therein, made after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Par. 4. Section 1.6050Y-1 is added to read as follows:

§1.6050Y-1 Information reporting for reportable policy sales, transfers of life insurance contracts to foreign persons, and reportable death benefits.

(a) *Definitions.* The following definitions apply for purposes of this section and §§1.6050Y-2 through 1.6050Y-4:

(1) *Acquirer.* The term *acquirer* means any person that acquires an interest in a life insurance contract (through a direct acquisition or indirect acquisition of the interest) in a reportable policy sale.

(2) *Buyer.* The term *buyer* means, with respect to any interest in a life insurance contract that has been transferred in a reportable policy sale, the person that was the most recent acquirer of that interest in a reportable policy sale as of the date reportable death benefits are paid under the contract.

(3) *Direct acquisition of an interest in a life insurance contract.* The term *direct acquisition of an interest in a life insurance contract* has the meaning given to it in §1.101-1(e)(3)(i).

(4) *Foreign person.* The term *foreign person* means a person that is not a United States person, as defined in section 7701(a)(30).

(5) *Indirect acquisition of an interest in a life insurance contract.* The term *indirect acquisition of an interest in a life insurance contract* has the meaning given to it in §1.101-1(e)(3)(ii).

(6) *Interest in a life insurance contract.* The term *interest in a life insurance contract* has the meaning given to it in §1.101-1(e)(1).

(7) *Investment in the contract—(i) Definition of investment in the contract.* With respect to the original policyholder of a life insurance contract, the term *investment in the contract* on any date means that person's investment in the contract under section 72(e)(6) on that date. With respect to any other person, the term *investment in the contract* on any date means the *estimate of investment in the contract* on that date.

(ii) *Definition of estimate of investment in the contract.* The term *estimate of investment in the contract* with respect to any person, other than the original policyholder, means, on any date, the aggregate amount of premiums paid for the contract by that person before that date, less the aggregate amount received under the contract by that person before that date to the extent such information is known to or can reasonably be estimated by the issuer or payor.

(8) *Issuer—(i) In general.* Except as provided in paragraphs (a)(8)(ii) and (iii) of this section, the term *issuer* generally means, on any date, with respect to any interest in a life insurance contract, any person that bears any part of the risk with respect to the life insurance contract on that date and any person responsible on that date for administering the contract, including collecting premiums and paying death benefits. For instance, if a reinsurer reinsures on an indemnity basis all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract, both the reinsurer and the original issuer of the contract are issuers of the life insurance contract for purposes of this paragraph (a)(8)(i). Any designee of an issuer is also considered an issuer for purposes of this paragraph (a)(8)(i).

(ii) *6050Y(a) issuer*. For purposes of information reporting under section 6050Y(a) and §1.6050Y-2, the 6050Y(a) issuer is the issuer that is responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date of the reportable policy sale.

(iii) *6050Y(b) issuer*. For purposes of information reporting under section 6050Y(b) and §1.6050Y-3, a 6050Y(b) issuer is:

(A) Any person that receives a RPSS with respect to a life insurance contract or interest therein (or, in the case of a designee, receives notice that the issuer for whom it serves as designee received a RPSS), and is or was, on or before the date of receipt of the RPSS, an issuer with respect to the life insurance contract; or

(B) Any person that receives notice of a transfer to a foreign person of the life insurance contract and is or was, on the date of transfer or on the date of receipt of the notice, an issuer with respect to the life insurance contract, unless:

(1) That person (or, in the case of a designee, the issuer for whom it serves as designee) is not responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date the notice of a transfer to a foreign person of a life insurance contract is received; and

(2) That person, or its designee, provides the issuer that is responsible on that date for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, with such notice and with any available information necessary to accomplish reporting under section 6050Y(b) and §1.6050Y-3.

(iv) *Designee*. A person is treated as the designee of an issuer for purposes of this paragraph (a)(8) only if so designated in writing, including electronically. The designation must be signed and acknowledged, in writing or electronically, by the person named as designee, or that person's representative, and by the issuer making the designation, or its representative.

(9) *Life insurance contract*. The term *life insurance contract* has the meaning given to it in section 7702(a). A life insurance contract may also be referred to as a life insurance policy.

(10) *Notice of a transfer to a foreign person*. The term *notice of a transfer to a foreign person* means any notice of a transfer of title to, possession of, or legal ownership of a life insurance contract received by a 6050Y(b) issuer, including information provided for nontax purposes such as a change of address notice for purposes of sending statements or for other purposes, and information relating to loans, premiums, or death benefits with respect to the contract unless the 6050Y(b) issuer knows that no transfer of the life insurance contract has occurred or knows that the transferee is a United States person. For this purpose, a 6050Y(b) issuer may rely on a Form W-9, Request for Taxpayer Identification Number and Certification, or a valid substitute form, that meets the requirements of §1.1441-1(d)(2) (substituting "6050Y(b) issuer" for "withholding agent"), that indicates the transferee is a United States person. For instance, a change of address notice that changes the address to a foreign address or other updates to the information relating to the payment of premiums that includes foreign banking or other foreign financial institution information is notice of a transfer to a foreign person unless the 6050Y(b) issuer knows that no transfer has occurred or the transferee is a United States person.

(11) *Payor*. The term *payor* means any person making a payment of reportable death benefits.

(12) *Reportable death benefits*. The term *reportable death benefits* means amounts paid by reason of the death of the insured under a life insurance contract that are attributable to an interest in the life insurance contract that was transferred in a reportable policy sale.

(13) *Reportable death benefits payment recipient*. The term *reportable death benefits payment recipient* means any person that receives reportable death benefits as a beneficiary under a life insurance contract or as the holder of an interest in a life insurance contract.

(14) *Reportable policy sale*. The term *reportable policy sale* has the meaning given to it in §1.101-1(c).

(15) *Reportable policy sale payment*. The term *reportable policy sale payment* generally means the total amount of cash

and the fair market value of any other consideration transferred, or to be transferred, in a reportable policy sale, including any amount of a reportable policy sale payment recipient's debt assumed by the acquirer in a reportable policy sale. In the case of an indirect acquisition of an interest in a life insurance contract that is a reportable policy sale, the reportable policy sale payment is the amount of cash and the fair market value of any other consideration transferred for the ownership interest in the entity, including the amount of any debt assumed by the acquirer, that is appropriately allocable to the interest in the life insurance contract held by the entity.

(16) *Reportable policy sale payment recipient*. The term *reportable policy sale payment recipient* means any person that receives a reportable policy sale payment in a reportable policy sale. A broker or other intermediary that retains a portion of the cash or other consideration transferred in a reportable policy sale is also a reportable policy sale payment recipient.

(17) *Reportable policy sale statement*. The term *reportable policy sale statement (RPSS)* means a statement furnished by an acquirer to an issuer under section 6050Y(a)(2) and §1.6050Y-2(d)(2)(i).

(18) *Seller*. The term *seller* means any person that—

(i) Holds an interest in a life insurance contract and transfers that interest, or any part of that interest, to an acquirer in a reportable policy sale; or

(ii) Owns a life insurance contract and transfers title to, possession of, or legal ownership of that life insurance contract to a foreign person.

(19) *Transfer of an interest in a life insurance contract*. The term *transfer of an interest in a life insurance contract* has the meaning given to it in §1.101-1(e)(2).

(20) *United States person*. The term *United States person* has the meaning given to it in section 7701(a)(30).

(b) *Applicability date*. This section and §§1.6050Y-2 through 1.6050Y-3 apply to reportable policy sales made after December 31, 2017. This section and §1.6050Y-4 apply to reportable death benefits paid after December 31, 2017. However, for reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before the date

final regulations are published in the **Federal Register**, transition relief will be provided as follows:

(1) For reportable policy sales occurring after December 31, 2017, and before the date final regulations are published in the **Federal Register**, statements required to be furnished to issuers under section 6050Y(a)(2) and §1.6050Y-2 must be furnished by the later of the applicable deadline set forth in final regulations or 60 days after the date final regulations are published in the **Federal Register**.

(2) For reportable policy sales occurring after December 31, 2017, and before the date final regulations are published in the **Federal Register**, returns required to be filed under section 6050Y(a)(1) and (b)(1), §1.6050Y-2, and §1.6050Y-3 and statements required to be furnished to payment recipients and sellers under section 6050Y(a)(2) and (b)(2), §1.6050Y-2, and §1.6050Y-3 must be filed or furnished by the later of the applicable deadline set forth in final regulations or 90 days after the date final regulations are published in the **Federal Register**.

(3) For payments of reportable death benefits paid after December 31, 2017, and before the date final regulations are published in the **Federal Register**, returns required to be filed under section 6050Y(c)(1) and §1.6050Y-4 and statements required to be furnished to payment recipients under section 6050Y(c)(2) and §1.6050Y-4 must be filed or furnished by the later of the applicable deadline set forth in final regulations or 90 days after the date final regulations are published in the **Federal Register**.

Par. 5. Section 1.6050Y-2 is added to read as follows:

§1.6050Y-2 Information reporting by acquirers for reportable policy sale payments.

(a) *Requirement of reporting.* Except as provided in paragraph (f) of this section, every person that is an acquirer in a reportable policy sale during any calendar year must file a separate information return with the Internal Revenue Service (IRS) in the form and manner as required by the IRS for each reportable policy sale payment recipient, including any seller that is a reportable policy sale payment

recipient. Each return must include the following information with respect to the seller or other reportable policy sale payment recipient to which the return relates:

(1) The name, address, and taxpayer identification number (TIN) of the acquirer;

(2) The name, address, and TIN of the seller or other reportable policy sale payment recipient to which the return relates;

(3) The date of the reportable policy sale;

(4) The name of the 6050Y(a) issuer of the life insurance contract acquired and the policy number of the life insurance contract;

(5) The aggregate amount of reportable policy sale payments made, or to be made, to the seller or other reportable policy sale payment recipient to which the return relates with respect to the reportable policy sale; and

(6) Any other information that is required by the form or its instructions.

(b) *Unified reporting.* The information reporting requirement of paragraph (a) of this section applies to each acquirer in a series of prearranged transfers of an interest in a life insurance contract. In a series of prearranged transfers, an acquirer's reporting obligation is deemed satisfied if the information required by paragraph (a) of this section with respect to that acquirer is timely reported on behalf of that acquirer in a manner that is consistent with forms, instructions, and other IRS guidance by one or more other acquirers or by a third party information reporting contractor.

(c) *Time and place for filing.* Returns required to be made under paragraph (a) of this section must be filed with the Internal Revenue Service Center designated on the prescribed form or in its instructions on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reportable policy sale occurred. However, see §1.6050Y-1(b)(2) for transition rules.

(d) *Requirement of and time for furnishing statements—*(1) *Statements to reportable policy sale payment recipients—*

(i) *Requirement of furnishing statement.* Every person required to file an information return under paragraph (a) of this section with respect to a reportable policy sale payment recipient must furnish in the

form and manner prescribed by the IRS to the reportable policy sale payment recipient whose name is set forth in that return a written statement showing the information required by paragraph (a) of this section with respect to the reportable policy sale payment recipient and the name, address, and phone number of the information contact of the person furnishing the written statement. The contact information of the person furnishing the written statement must provide direct access to a person that can answer questions about the statement. The statement is not required to include information with respect to any other reportable policy sale payment recipient in the reportable policy sale or information about reportable policy sale payments to any other reportable policy sale payment recipient.

(ii) *Time for furnishing statement.* Each statement required by paragraph (d)(1)(i) of this section to be furnished to any reportable policy sale payment recipient must be furnished on or before February 15 of the year following the calendar year in which the reportable policy sale occurred. However, see §1.6050Y-1(b)(2) for transition rules.

(2) *Statements to 6050Y(a) issuers—*
(i) *Requirement of furnishing RPSS—*(A) *In general.* Except as provided in paragraph (d)(2)(i)(B) of this section, every person required to file a return under paragraph (a) of this section must furnish in the form and manner prescribed by the IRS to the 6050Y(a) issuer whose name is required to be set forth in the return a RPSS with respect to each reportable policy sale payment recipient that is also a seller. Each RPSS must show the information required by paragraph (a) of this section with respect to the seller named therein, except that the RPSS is not required to set forth the amount of any reportable policy sale payment. Each RPSS must also show the name, address, and phone number of the information contact of the person furnishing the RPSS. This contact information must provide direct access to a person that can answer questions about the RPSS.

(B) *Exception from reporting.* A RPSS is not required to be furnished to the 6050Y(a) issuer by an acquirer acquiring an interest in a life insurance contract in an indirect acquisition.

(ii) *Time for furnishing RPSS.* Except as otherwise provided in this paragraph (d)(2)(ii), each RPSS required by paragraph (d)(2)(i) of this section to be furnished to a 6050Y(a) issuer must be furnished by the later of 20 calendar days after the reportable policy sale, or 5 calendar days after the end of the applicable state law rescission period. However, if the later date is after January 15 of the year following the calendar year in which the reportable policy sale occurred, the RPSS must be furnished by January 15 of the year following the calendar year in which the reportable policy sale occurred. See §1.6050Y-1(b)(1) for transition rules.

(3) *Unified reporting.* The information reporting requirements of paragraphs (d)(1)(i) and (d)(2)(i) of this section apply to each acquirer in a series of prearranged transfers of an interest in a life insurance contract, as described in paragraph (b) of this section. In a series of prearranged transfers of an interest in a life insurance contract, an acquirer's obligation to furnish statements is deemed satisfied if the information required by paragraphs (d)(1)(i) and (d)(2)(i) of this section with respect to that acquirer is timely reported on behalf of that acquirer consistent with forms, instructions, and other IRS guidance by one or more other acquirers or by a third party information reporting contractor.

(e) *Notice of rescission of a reportable policy sale.* Any person that has filed a return required by section 6050Y(a)(1) and this section with respect to a reportable policy sale must file a corrected return within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale. Any person that has furnished a written statement under section 6050Y(a)(2) and this section with respect to the reportable policy sale must furnish the recipient of that statement with a corrected statement within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale.

(f) *Exceptions to requirement to file.* An acquirer that is a foreign person is not required to file an information return under paragraph (a) of this section with respect to a reportable policy sale unless—

(1) The life insurance contract (or interest therein) transferred in the sale is on the life of an insured who is a United States person at the time of the sale; or

(2) The sale is subject to the laws of one or more States of the United States that pertain to acquisitions or sales of life insurance contracts (or interests therein).

(g) *Cross-reference to penalty provisions—*(1) *Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(a)(1) and this section, see section 6721 and §301.6721-1 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish a correct statement to identified persons under section 6050Y(a)(2) and this section, see section 6722 and §301.6722-2 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 6. Section 1.6050Y-3 is added to read as follows:

§1.6050Y-3 Information reporting by 6050Y(b) issuers for reportable policy sales and transfers of life insurance contracts to foreign persons.

(a) *Requirement of reporting.* Except as provided in paragraph (f) of this section, each 6050Y(b) issuer, that receives a RPSS or any notice of a transfer to a foreign person must file an information return with the Internal Revenue Service (IRS) with respect to each seller in the form and manner prescribed by the IRS. The return must include the following information with respect to the seller:

(1) The name, address, and taxpayer identification number (TIN) of the seller;

(2) The investment in the contract with respect to the seller;

(3) The amount the seller would have received if the seller had surrendered the life insurance contract on the date of the reportable policy sale or the transfer of the contract to a foreign person, or if the date of the transfer to a foreign person is not known to the 6050Y(b) issuer, the date the 6050Y(b) issuer received notice of the transfer; and

(4) Any other information that is required by the form or its instructions.

(b) *Unified reporting.* Each 6050Y(b) issuer subject to the information reporting requirement of paragraph (a) of this section must satisfy that requirement, but a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by paragraph (a) of this section with respect to that 6050Y(b) issuer is timely reported on behalf of that 6050Y(b) issuer in a manner that is consistent with forms, instructions, and other IRS guidance by one or more other 6050Y(b) issuers or by a third party information reporting contractor.

(c) *Time and place for filing.* Except as otherwise provided in this paragraph (c), returns required to be made under paragraph (a) of this section must be filed with the Internal Revenue Service Center designated on the prescribed form or in its instructions on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reportable policy sale or the transfer of the contract to a foreign person occurred. If the 6050Y(b) issuer does not receive notice of a transfer to a foreign person until after January 31 of the calendar year following the year in which the transfer occurred, returns required to be made under paragraph (a) of this section must be filed by the later of February 28 (March 31 if filed electronically) of the calendar year following the year in which the transfer occurred or thirty days after the date notice is received. See §1.6050Y-1(b)(2) for transition rules.

(d) *Requirement of and time for furnishing statements—*(1) *Requirement of furnishing statement.* Every 6050Y(b) issuer filing a return required by paragraph (a) of this section must furnish to each seller that is a reportable policy sale payment recipient or makes a transfer to a foreign person and whose name is required to be set forth in the return a written statement showing the information required by paragraph (a) of this section with respect to that seller and the name, address, and phone number of the information contact of the person filing the return. This contact information must provide direct access to a person that can answer questions about the statement.

(2) *Time for furnishing statement.* Except as otherwise provided in this paragraph (d)(2), each statement required by paragraph (d)(1) of this section to be furnished to any seller must be furnished on or before February 15 of the year following the calendar year in which the reportable policy sale or transfer to a foreign person occurred. If a 6050Y(b) issuer does not receive notice of a transfer to a foreign person until after January 31 of the calendar year following the year in which the transfer occurred, each statement required to be made under paragraph (d) of this section must be furnished by the date thirty days after the date notice is received. See §1.6050Y-1(b)(2) for transition rules.

(3) *Unified reporting.* Each 6050Y(b) issuer subject to the information reporting requirement of paragraph (d)(1) of this section must satisfy that requirement, but a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by paragraph (d)(1) of this section with respect to that 6050Y(b) issuer is timely reported on behalf of that 6050Y(b) issuer consistent with forms, instructions, and other IRS guidance by one or more other 6050Y(b) issuers or by a third party information reporting contractor.

(e) *Notice of rescission of a reportable policy sale or transfer of an insurance contract to a foreign person.* Any 6050Y(b) issuer that has filed a return required by section 6050Y(b)(1) and this section with respect to a reportable policy sale or transfer of an insurance contract to a foreign person must file a corrected return within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale or transfer of the insurance contract to a foreign person. Any 6050Y(b) issuer that has furnished a written statement under section 6050Y(b)(2) and this section with respect to the reportable policy sale or transfer of the insurance contract to a foreign person must furnish the recipient of that statement with a corrected statement within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale or transfer of the insurance contract to a foreign person.

(f) *Exceptions to requirement to file.* A 6050Y(b) issuer is not required to file an information return under paragraph (a) of this section when either paragraph (f)(1) or (2) of this section applies.

(1) Except as otherwise provided in this paragraph (f)(1), the 6050Y(b) issuer obtains documentation upon which it may rely to treat a seller of the contract as a foreign beneficial owner in accordance with §1.1441-1(e)(1)(ii), applying in such case the provisions of §1.1441-1 by substituting the term “6050Y(b) issuer” for the term “withholding agent” and without regard to the fact that these provisions apply only to amounts subject to withholding under chapter 3 of subtitle A of the Internal Revenue Code. A 6050Y(b) issuer may also obtain from a seller that is a partnership or trust, in addition to documentation establishing the entity's foreign status, a written certification from the entity that no beneficial owner of any portion of the proceeds of the sale is a United States person. In such a case, the issuer may rely upon the written certification to treat the partnership or trust as a foreign beneficial owner for purposes of this paragraph (f)(1) provided that the seller does not have actual knowledge that a United States person is the beneficial owner of all or a portion of the proceeds of the sale. See §1.1441-1(c)(6)(ii) for the definition of beneficial owner that applies for purposes of this paragraph (f)(1). Additionally, for certifying its status as a foreign beneficial owner (as applicable) for purposes of this paragraph (f)(1), a seller that is required to report any of the income from the sale as effectively connected with the conduct of a trade or business in the United States under section 864(b) is required to provide to the 6050Y(b) issuer a Form W-8ECI, Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States. If a 6050Y(b) issuer obtains a Form W-8ECI from a seller with respect to the sale or has reason to know that income from the sale is effectively connected with the conduct of a trade or business in the United States under section 864(b), the exception to reporting described in this paragraph (f)(1) does not apply.

(2) The 6050Y(b) issuer receives notice of a transfer to a foreign person, but does not receive a RPSS with respect to the transfer, provided that, at the time the notice is received—

(i) The 6050Y(b) issuer is not a United States person;

(ii) The life insurance contract (or interest therein) transferred is not on the life of a United States person; and

(iii) The 6050Y(b) issuer has not classified the seller as a United States person in its books and records.

(g) *Cross-reference to penalty provisions—(1) Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(b)(1) and this section, see section 6721 and §301.6721-1 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish a correct statement to identified persons under section 6050Y(b)(2) and this section, see section 6722 and §301.6722-2 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 7. Section 1.6050Y-4 is added to read as follows:

§1.6050Y-4 Information reporting by payors for reportable death benefits.

(a) *Requirement of reporting.* Except as provided in paragraph (e) of this section, every person that is a payor of reportable death benefits during any calendar year must file a separate information return for such calendar year with the Internal Revenue Service (IRS) for each reportable death benefits payment recipient in the form and manner prescribed by the IRS. The return must include the following information with respect to the reportable death benefits payment recipient to which the return relates:

(1) The name, address, and taxpayer identification number (TIN) of the payor;

(2) The name, address, and TIN of the reportable death benefits payment recipient;

(3) The date of the payment;

(4) The gross amount of payments made to the reportable death benefits payment recipient during the taxable year;

(5) The payor's estimate of the investment in the contract with respect to the

buyer, limited to the payor's estimate of the buyer's investment in the contract with respect to the interest for which the reportable death benefits payment recipient was paid; and

(6) Any other information that is required by the form or its instructions.

(b) *Time and place for filing.* Except as otherwise provided in §1.6050Y-1(b)(3), returns required to be made under this section must be filed with the Internal Revenue Service Center designated in the instructions for the form on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the payment of reportable death benefits was made.

(c) *Requirement of and time for furnishing statements—(1) Requirement of furnishing statement.* Every person required to file an information return under paragraph (a) of this section must furnish to each reportable death benefits payment recipient whose name is required to be set forth in that return a written statement showing the information required by paragraph (a) of this section with respect to that reportable death benefits payment recipient and the name, address, and phone number of the information contact of the payor. This contact information must provide direct access to a person that can answer questions about the statement.

(2) *Time for furnishing statement.* Each statement required by paragraph (c)(1) of this section to be furnished to any reportable death benefits payment recipient must be furnished on or before January 31 of the year following the calendar year in which the payment of reportable death benefits was made. However, see §1.6050Y-1(b)(3) for transition rules.

(d) *Notice of rescission of a reportable policy sale.* Any person that has filed a return required by section 6050Y(c) and this section with respect to a payment of reportable death benefits must file a corrected return within 15 calendar days of the receipt of notice of the rescission of the buyer's reportable policy sale. Any person that has furnished a written statement under section 6050Y(c)(2) and this section with respect to a payment of reportable death benefits must furnish the recipient of that statement with a corrected statement within 15 calendar days of the receipt of notice of the rescission of the buyer's reportable policy sale.

(e) *Exceptions to requirement to file.* A payor is not required to file an information return under paragraph (a) of this section with respect to a payment of reportable death benefits when either paragraph (e)(1) or (2) of this section applies.

(1) Except as otherwise provided in this paragraph (e)(1), the payor obtains documentation in accordance with §1.1441-1(e)(1)(ii) upon which it may rely to treat the reportable death benefits payment recipient as a foreign beneficial owner of the reportable death benefits, applying in such case the provisions of §1.1441-1 by substituting the term "payor" for the term "withholding agent" and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of subtitle A of the Internal Revenue Code. A payor may also obtain from a partnership or trust that is a reportable death benefits recipient, in addition to documentation establishing the entity's foreign status, a written certification from the entity that no beneficial owner of any portion of the reportable death benefits payment is a United States person. In such a case, a payor may rely upon the written certification to treat the partnership or trust as a foreign beneficial owner for purposes of this paragraph (e)(1) provided that the payor does not have actual knowledge that a United States person is the beneficial owner of all or a portion of the reportable death benefits payment. See §1.1441-1(c)(6)(ii) for the definition of beneficial owner that applies for purposes of this paragraph (e)(1). Additionally, for certifying its status as a foreign beneficial owner (as applicable) for purposes of this paragraph (e)(1), a reportable death benefits payment recipient that is required to report any of the income from the sale as effectively connected with the conduct of a trade or business in the United States under section 864(b) is required to provide to the payor a Form W-8ECI, Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States. If a payor obtains a Form W-8ECI from a reportable death benefits payment recipient with respect to the payment of reportable death benefits or has reason to know that the payment is effectively connected with the conduct of a trade or business of the recipient in the United States under section 864(b), the exception to reporting de-

scribed in this paragraph (e)(1) does not apply.

(2) The buyer obtained the life insurance contract (or interest therein) under which reportable death benefits are paid in a reportable policy sale to which the exception to reporting described in §1.6050Y-3(f)(2) applies.

(f) *Cross-reference to penalty provisions—(1) Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(c)(1) and this section, see section 6721 and §301.6721-1 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish a correct statement to identified persons under section 6050Y(c)(2) and this section, see section 6722 and §301.6722-2 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

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

(Filed by the Office of the Federal Register on March 22, 2019, 8:45 a.m., and published in the issue of the Federal Register for March 25, 2019, 84 F.R. 11009)

Partial Withdrawal of Notice of Proposed Rulemaking and Notice of Proposed Rulemaking

Certain Transfers of Property to Real Estate Investment Trusts [REITs]

REG-113943-17

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document withdraws a portion of a notice of proposed rulemaking published in the Proposed Rules section of the Federal Register on June 8, 2016. If adopted, the proposed rules would have provided guidance for transactions in which property of a C corporation becomes the property of a REIT following certain corporate distributions of controlled corporation stock. This document also contains a notice of proposed rulemaking that provides revised guidance on the same subject. These proposed regulations would affect REITs, C corporations the property of which becomes property of a REIT, and their respective shareholders.

DATES: Comments and requests for a public hearing must be received by May 10, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113943-17), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-113943-17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-113943-17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Austin Diamond-Jones, (202) 317-5363; concerning the submission of comments or to request a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Background

This document contains proposed amendments to 26 CFR part 1 under section 337(d) of the Internal Revenue Code (Code).

On June 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (TD 9770) under section 337(d) (Temporary Regulations) in the **Federal Register**

(81 FR 36793) concerning certain transfers of property to regulated investment companies (RICs) and real estate investment trusts (REITs). A notice of proposed rulemaking (REG-126452-15) was published in the **Federal Register** (81 FR 36816) on the same day (2016 Proposed Regulations). The text of the Temporary Regulations served as the text for part of the 2016 Proposed Regulations, which also included an amendment not addressed in the Temporary Regulations. A correction to the Temporary Regulations was published in the **Federal Register** (81 FR 41800) on June 28, 2016.

The Treasury Department and the IRS received one written comment and a letter addressed to the Secretary of the Treasury (Secretary) by the Chairmen and Ranking Members of the Ways and Means Committee of the U.S. House of Representatives and the Finance Committee of the U.S. Senate in response to the 2016 Proposed Regulations. The comment requested a public hearing, and a hearing was held on November 9, 2016.

After consideration of the letter, the written comment, and the comments made at the public hearing, the Treasury Department and the IRS adopted the 2016 Proposed Regulations, in part, in final regulations (TD 9810) published in the **Federal Register** (82 FR 5387) on January 18, 2017 (Final Regulations). The Final Regulations adopted a definition of the term “recognition period” that is consistent with that used in section 1374(d) relating to S corporations. The Final Regulations amended and removed the corresponding provisions in the Temporary Regulations and indicated that the Treasury Department and the IRS would continue to study other issues addressed in the Temporary Regulations and the 2016 Proposed Regulations.

Executive Order 13789 (E.O. 13789), issued on April 21, 2017, instructed the Secretary to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the federal tax laws; or (iii) exceed the statutory authority of the IRS. E.O. 13789 further instructed the Secretary to submit to the President within 60 days an interim

report identifying regulations that meet these criteria.

Notice 2017-38 (2017-30 I.R.B. 147 (July 24, 2017)) included the Temporary Regulations in a list of eight regulations identified by the Secretary in the interim report as meeting at least one of the first two criteria specified in E.O. 13789. In particular, Notice 2017-38 mentioned a concern raised by commenters that the Temporary Regulations “could result in over-inclusion of gain in some cases, particularly where a large corporation acquires a small corporation that engaged in a Section 355 spinoff and the large corporation subsequently makes a REIT election.” *See also* Executive Order 13789—Second Report to the President on Identifying and Reducing Tax Regulatory Burdens (Second Report), 82 FR 48013 (October 16, 2017) (stating that the Treasury Department and the IRS “agree that the temporary regulations may produce inappropriate results in some cases”). The Treasury Department and the IRS received three written comments in response to Notice 2017-38 and the Second Report that addressed the Temporary Regulations and the 2016 Proposed Regulations.

Explanation of Provisions

I. Gain Recognized by Successor Corporations

Pursuant to §1.337(d)-7(c)(6) of the 2016 Proposed Regulations, if a C corporation is the distributing corporation or the controlled corporation in a “related section 355 distribution” (within the meaning of proposed §1.337(d)-7(f)(1)(i)), and the C corporation or its successor (within the meaning of proposed §1.337(d)-7(f)(2)) engages in a conversion transaction (as defined in §1.337(d)-7(a)(2)(ii)) involving a REIT, the C corporation or its successor will be treated as making a deemed sale election (within the meaning of proposed §1.337(d)-7(c)). Commenters suggested that application of proposed §1.337(d)-7(c)(6) to successors (within the meaning of proposed §1.337(d)-7(f)(2)) could result in recognition of gain greatly in excess of the amount that would have been recognized if the distributing corporation or the controlled corporation had directly engaged in a conversion transaction.

To illustrate the issue, consider the following example (Example One): Each of Distributing and Acquiring is a C corporation, and each holds real estate assets with \$1 billion fair market value and \$0 adjusted basis. Distributing and Acquiring are unrelated. Distributing owns 100 percent of the stock of Controlled, which holds assets with \$20 million fair market value and \$0 adjusted basis. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution (as defined in proposed §1.337(d)-7(a)(2)(vi)). In Year 3, Acquiring acquires Controlled in a transaction in which Acquiring becomes a successor of Controlled (within the meaning of proposed §1.337(d)-7(f)(2)). At that time, Acquiring has no plan to convert to a REIT. No asset held by Distributing, Controlled, or Acquiring appreciates or depreciates in value between Year 1 and Year 9. In Year 9, Acquiring merges into a REIT and does not make a deemed sale election under §1.337(d)-7(c)(5).

As a successor to Controlled, Acquiring itself was ineligible to make a REIT election until Year 11. Section 856(c)(8). However, the merger of Acquiring into a REIT is not addressed by section 856(c)(8). On the other hand, if Acquiring were not a successor to a distributing corporation or a controlled corporation, its assets would be subject to section 1374 treatment upon the merger (unless Acquiring actually made a deemed sale election).

Because Acquiring is a successor to a controlled corporation and engages in a conversion transaction within ten years of a related section 355 distribution, the 2016 Proposed Regulations would treat Acquiring as making a deemed sale election and require Acquiring to recognize \$1.02 billion gain (\$1.02 billion fair market value less \$0 adjusted bases of all its property at the time of the merger). This gain would greatly exceed the \$20 million gain (\$20 million fair market value less \$0 adjusted basis) Controlled would have recognized if Acquiring had been a REIT when it acquired Controlled's converted property. The Treasury Department and the IRS agree with the commenters that this result is inappropriate.

To address the concern described in the previous paragraph, the Treasury Department and the IRS propose adopting a new limitation to the general rule in newly

proposed §1.337(d)-7(c)(6)(i) (the general rule) (which is the same as the general rule in the 2016 Proposed Regulations). As a result of the limitation, gain immediately recognized by a C corporation engaging in a section 355 distribution and a later conversion transaction will be limited to gain on property traceable to the section 355 distribution.

The limitation is based on a comment received and would be available to a distributing corporation or a controlled corporation (and a successor) that engages in a conversion transaction within the ten-year period following a related section 355 distribution. The limitation would provide that, if a C corporation is treated as making a deemed sale election but has not actually made such an election, the C corporation would be treated as making the election only with respect to its distribution property. "Distribution property" would be defined as property owned by a distributing corporation or a controlled corporation or a member of the separate affiliated group of the distributing corporation or the controlled corporation (SAG member) immediately after a section 355 distribution, and other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to that property. However, no formulation of the step transaction doctrine will be used to determine whether property acquired after the distribution is distribution property. The C corporation's property that is not distribution property would be subject to section 1374 treatment under §1.337(d)-7(b) instead of deemed sale treatment under §1.337(d)-7(c)(6). In general, the C corporation must establish that any particular property is not distribution property. However, property with built-in loss as of the date of the conversion transaction will be presumed to not be distribution property unless the C corporation establishes that it owned such property immediately after the related section 355 distribution.

To illustrate the limitation, consider the following example (Example Two): Distributing is a C corporation that owns 100 percent of the stock of Controlled. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution. At the time of the section 355 distribution, Controlled has one asset (Asset 1) with \$5 million fair market value and \$0 adjusted

basis. In Year 2, Controlled purchases a second asset (Asset 2), which has \$1 million fair market value and \$1 million adjusted basis. In Year 5, Controlled engages in a conversion transaction when it merges into a REIT in a transaction described in section 368(a)(1). At the time of the merger, Asset 1 has \$5.5 million fair market value, and Asset 2 has \$1.1 million fair market value. The adjusted bases of Asset 1 and Asset 2 are both unchanged.

If the limitation is available and Controlled does not make a deemed sale election, Controlled would be treated as making a deemed sale election only with respect to Asset 1 (and not Asset 2) because Asset 1 was held by Controlled immediately after the related section 355 distribution and is therefore distribution property. Because Controlled can establish that it did not own Asset 2 immediately after the related section 355 distribution (and the basis of Asset 2 was not determined, directly or indirectly, in whole or in part, by reference to the basis of an asset held by Controlled immediately after the related section 355 distribution in Year 1), Asset 2 is not distribution property, and Controlled will not be treated as electing deemed sale treatment with respect to Asset 2. Accordingly, Controlled would recognize \$5.5 million gain on Asset 1 (\$5.5 million fair market value less \$0 adjusted basis), and the REIT would be subject to section 1374 treatment with respect to Asset 2 and its \$0.1 million built-in gain.

However, if Controlled had elected deemed sale treatment or was unable to establish that Asset 2 was not distribution property, then all of its assets that became converted property, rather than only the distribution property, would be treated as sold upon Controlled's merger into a REIT in Year 5. Controlled would recognize \$5.6 million gain (\$5.5 million gain on Asset 1 (\$5.5 million fair market value less \$0 adjusted basis at the time of the merger) and \$0.1 million gain on Asset 2 (\$1.1 million fair market value less \$1 million adjusted basis at the time of the merger)). Neither Asset 1 nor Asset 2 would be subject to section 1374 treatment.

As a result of the combination of the general rule and the limitation, a C corporation that engages in a section 355 distribution and a later conversion transaction recognizes immediate gain only on prop-

erty that is traceable to the section 355 distribution. Application of the limitation could cause a single conversion transaction to result in some property being subject to deemed sale treatment and other property being subject to section 1374 treatment. However, the Treasury Department and the IRS have determined that this approach is administrable by both taxpayers and the IRS and that it satisfies the concerns expressed by E.O. 13789, Notice 2017-38, and the Second Report. Because application of the limitation results in only property held immediately after the related section 355 distribution being subject to deemed sale treatment, the property of a successor to the distributing corporation, the controlled corporation, or a SAG member will not be subject to deemed sale treatment unless such property is distribution property from a related section 355 distribution involving the successor.

A commenter suggested an approach pursuant to which distribution property subject to deemed sale treatment as a result of the general rule could be deemed to be sold for its fair market value at the time of the related section 355 distribution. However, the commenter stated that this approach “may be objectionable given [E.O. 13789’s] focus on reducing complexity and taxpayer burdens in Treasury regulations,” because it would require taxpayers to perform a valuation of their assets at the time of a related section 355 distribution and to keep records of the valuation in case the taxpayer engages in a later conversion transaction. In the commenter’s view, this valuation and record keeping would be burdensome and result in administrative difficulties for both taxpayers and the IRS. The Treasury Department and the IRS agree.

In addition, section 1374 treatment would need to be applied to post-distribution appreciation to prevent it from inappropriately escaping corporate-level taxation. As a result, an individual asset that is distribution property would be subject to deemed sale treatment on the gain inherent in the asset at the time of the related section 355 distribution, and to section 1374 treatment on the appreciation in such asset after the post-distribution period. This result further increases the burdens and administrative difficulties imposed by the alternative approach. Because this approach

is inconsistent with the goal of reducing administrative burdens described in E.O. 13789 and reflected in Notice 2017-38 and the Second Report, the Treasury Department and the IRS decline to adopt this approach.

II. *Predecessors and Successors of SAG Members*

The Treasury Department and the IRS are aware of certain situations in which the predecessor or successor to a SAG member would not itself be a SAG member immediately before or after, respectively, the transaction giving rise to the predecessor-successor relationship. To prevent avoidance, the proposed regulations would expand the rule of proposed §1.337(d)-7(f)(2) so that references to a member of the separate affiliated group of the distributing corporation or the controlled corporation include references to any successor of such member.

III. *Additional Comments*

A commenter described an example similar to the following example (Example Three): Distributing is a C corporation that holds real estate assets with \$1 billion fair market value and \$0 adjusted basis. Distributing owns 100 percent of the stock of Controlled, which holds assets with \$100,000 fair market value and \$0 adjusted basis. In Year 1, Distributing distributes the stock of Controlled in a section 355 distribution. In Year 10, Distributing merges into a REIT.

Under the 2016 Proposed Regulations, Distributing would have been treated as making a deemed sale election as a result of engaging in a conversion transaction (the merger) during the ten-year period following a section 355 distribution. Accordingly, Distributing would have recognized \$1 billion gain as a result of being treated as selling all of its real estate assets. The commenter argued that requiring a C corporation to recognize the built-in gain on assets worth \$1 billion because of a distribution of assets worth \$100,000 in an earlier year “seems absurd.” The Treasury Department and the IRS disagree. Section 856(c)(8), which was added by section 311 of the Protecting Americans Against Tax Hikes Act of 2015 (PATH

Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114-113, 129 Stat. 2422, prevents the distributing corporation, the controlled corporation, and any successor to the distributing corporation or the controlled corporation from electing REIT status for ten years following a section 355 distribution. Section 856(c)(8) applies regardless of any disparity in size between the distributing corporation and the controlled corporation. The commenter did not identify any reason a merger into a REIT should be treated more favorably than a conversion to a REIT. Accordingly, the Treasury Department and the IRS have determined that application of the 2016 Proposed Regulations in the hypothetical presented by the commenter is consistent with the intent of Congress expressed by the PATH Act. The newly proposed regulations would not change this rule.

The Treasury Department and the IRS continue to study the Temporary Regulations and the 2016 Proposed Regulations, including issues raised by the comments, and welcome further comments on those issues.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect transactions in which property of a C corporation becomes the property of a REIT following a section 355 distribution of controlled C corporation stock. Generally, these section 355 distributions involve publicly traded C corporations, which typically are not small entities as defined by the Regulatory Flexibility Act. Transactions in which the property of such C corporation becomes the property of a REIT generally involve the transfer of all of the assets of the C corporation. Therefore, the transferee REIT likely also would not be a small entity, as

defined by the Regulatory Flexibility Act. As a result, this certification is based on the conclusion that these proposed regulations would primarily affect large C corporations and REITs that have substantial numbers of shareholders. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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 (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

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. The Treasury Department and the IRS request comments on all aspect of the proposed rules. In particular, the Treasury Department and the IRS are requesting comments whether further guidance is necessary regarding how taxpayers should be permitted to establish whether property is or is not distribution property. All comments will be available at <http://www.regulations.gov> or upon request. A public hearing will be scheduled in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Austin Diamond-Jones, Office of Associate Chief Counsel (Corporate). However, other personnel from the Treas-

ury Department and the IRS participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 337(d), §§ 1.337(d)-7(c)(6), 1.337(d)-7(f), 1.337(d)-7(g)(2)(ii), and 1.337(d)-7(g)(2)(iv) of the notice of proposed rulemaking that was published in the **Federal Register** on June 8, 2016 (81 FR 36816), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

* * * * *

Par. 2. Section 1.337(d)-7 is amended by adding paragraph (a)(2)(viii) and revising paragraphs (c)(6), (f), and (g)(2)(ii).

§1.337(d)-7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) * * *

(2) * * *

(viii) *Distribution property.* The term *distribution property* means—

(A) property owned immediately after a section 355 distribution by the distributing corporation, a controlled corporation (as those terms are defined in section 355(a)(1)), or a member of a separate affiliated group (as defined in section 355(b)(3)(B)) of which the distributing corporation or a controlled corporation is the common parent (but no formulation of the step transaction doctrine will be used to determine whether property acquired after the distribution is distribution property pursuant to this paragraph (a)(2)(viii)(A)), and

(B) property with a basis determined, directly or indirectly, in whole or in part, by reference to property described in paragraph (a)(2)(viii)(A) of this section.

* * * * *

(c) * * *

(6) *Conversion transaction following a section 355 distribution—(i) In general.* Except as provided in paragraph (c)

(6)(ii) of this section, a C corporation described in paragraph (f)(1) of this section is treated as having made the election under paragraph (c)(5) of this section with respect to a conversion transaction if the conversion transaction occurs following the related section 355 distribution (as defined in paragraph (f)(1)(i) of this section) and the C corporation has not made such an election.

(ii) *Limitation.* A C corporation treated as having made the election under paragraph (c)(5) of this section as a result of paragraph (c)(6)(i) of this section is not treated as having made the election with respect to property that the taxpayer establishes is not distribution property with respect to the related section 355 distribution. For purposes of this paragraph (c)(6)(ii), any property with an adjusted basis in excess of its fair market value as of the date of the conversion transaction will not be treated as distribution property unless the taxpayer establishes that it owned such asset immediately after the related section 355 distribution. If the limitation applies, then paragraph (b) of this section will apply to the property that is not distribution property with respect to the related section 355 distribution.

* * * * *

(f) *Conversion transaction preceding or following a section 355 distribution—(1) In general.* A C corporation or a REIT is described in this paragraph (f)(1) if—

(i) The C corporation or the REIT engages in a conversion transaction involving a REIT during the twenty-year period beginning on the date that is ten years before the date of a section 355 distribution (the related section 355 distribution); and

(ii) The C corporation or the REIT engaging in the related section 355 distribution is either—

(A) The distributing corporation or the controlled corporation, as those terms are defined in section 355(a)(1); or

(B) A member of the separate affiliated group (as defined in section 355(b)(3)(B)) of the distributing corporation or the controlled corporation.

(2) *Predecessors and successors.* For purposes of this paragraph (f), any reference to a controlled corporation, a distributing corporation, or a member of the separate affiliated group of a distributing corporation or a controlled corporation in-

cludes a reference to any predecessor or successor of such corporation. Predecessors and successors include corporations which succeed to and take into account items described in section 381(c) of the distributing corporation or the controlled corporation, and corporations having such items to which the distributing corporation or the controlled corporation succeeded and took into account.

(3) *Exclusion of certain conversion transactions.* A C corporation or a REIT is not described in paragraph (f)(1) of this section if—

(i) The distributing corporation and the controlled corporation are both REITs immediately after the related section 355 distribution (including by reason of elections under section 856(c)(1) made after the related section 355 distribution that are effective before the related section 355 distribution) and at all times during the two years thereafter;

(ii) Section 355(h)(1) does not apply to the related section 355 distribution by reason of section 355(h)(2)(B); or

(iii) The related section 355 distribution is described in a ruling request referred to in section 311(c) of Division Q of the Consolidated Appropriations Act, 2016, Public Law 114-113, 129 Stat. 2422.

(g) * * *

(2) * * *

(ii) *Conversion transactions occurring on or after the date these regulations are published in the Federal Register as final regulations.* Paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section will apply to conversion transactions occurring 30 days after the date these regulations are published in the **Federal Register** as final regulations, and to conversion transactions and related section 355 distributions for which the conversion transaction occurs before, and the related section 355 distribution occurs on or after, the date that is 30 days after the date these regulations are published in the **Federal Register** as final regulations. For conversion transactions that occurred on or after June 7, 2016 and before the date that is 30 days after these regulations are published in the **Federal Register** as final regulations, see §§1.337(d)-7 and 1.337(d)-7T as contained in 26 CFR part 1 in effect on April 1, 2018.

However, taxpayers may consistently apply paragraphs (a)(1), (a)(2)(vi), (a)(2)(vii), (a)(2)(viii), (b)(4), (c)(1), (c)(6), and (f) of this section in their entirety for all conversion transactions described in the preceding sentence. For conversion transactions that occurred on or after January 2, 2002 and before June 7, 2016, see §1.337(d)-7 as contained in 26 CFR part 1 in effect on April 1, 2016.

* * * * *

Kirsten Wielobob
*Deputy Commissioner for Services
and Enforcement*

(Filed by the Office of the Federal Register on March 25, 2019, 8:45 a.m., and published in the issue of the Federal Register for March 26, 2019, 84 F.R. 11259)

Proposed Rule; Withdrawal

The Allocation of Consideration and Allocation and Recovery of Basis in Transactions Involving Corporate Stock or Securities; Withdrawal.

REG-143686-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking containing proposed regulations under numerous sections of the Internal Revenue Code (Code). The proposed regulations being withdrawn would have provided guidance on the recovery of stock basis in distributions of property made by a corporation to a shareholder and certain transactions treated as dividend-equivalents, as well as guidance regarding the determination of gain and the basis of stock or securities received in certain transactions. The proposed regulations being withdrawn would have affected shareholders and security holders of corporations.

DATES: As of March 28, 2019, the notice of proposed rulemaking that was published in the **Federal Register** (74 FR 3509) on

January 21, 2009, with corrections published in the **Federal Register** (74 FR 9575) on March 5, 2009, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kevin M. Jacobs at (202) 317-5332 or Aglaia Ovtchinnikova at (202) 317-6975 (neither a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2009, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-143686-07) in the **Federal Register** (74 FR 3509) containing proposed regulations under sections 301, 302, 304, 351, 354, 355, 356, 358, 368, 861, 1001, and 1016 of the Code. On March 5, 2009, the Treasury Department and the IRS published corrections to the notice of proposed rulemaking in the **Federal Register** (74 FR 9575) (collectively, the 2009 Proposed Regulations).

The 2009 Proposed Regulations generally would have provided a single model for stock basis recovery by a shareholder that receives a distribution to which section 301 applies and a single model for sale and exchange transactions to which section 302(a) applies, including certain elements of an exchange in pursuance of a plan of reorganization under section 368. The 2009 Proposed Regulations also would have defined the scope of the exchange that must be analyzed under particular Code provisions and provided a methodology for determining gain under section 356 and stock basis under section 358.

The 2009 Proposed Regulations responded to comments received by the Treasury Department and the IRS regarding the then-recently published section 358 regulations. These comments included suggestions to expand the tracing rules of the section 358 regulations to stock transfers that are subject to section 351 but do not qualify as reorganizations, as well as questions regarding whether (and, if so, to what extent) shareholder elections constitute terms of an exchange and whether the terms of an exchange control for purposes of qualifying a transaction as a reorganization under section 368.

Finally, the 2009 Proposed Regulations included amendments to the current regulations under section 304 that would have updated those regulations to reflect statutory amendments to that section. See section 226 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248 (96 Stat. 325, 490) (September 3, 1982), section 712(l) of the Deficit Reduction Act of 1984, Pub. L. 98-369 (98 Stat. 494, 953-55) (July 18, 1984), section 1875(b) of the Tax Reform Act of 1986, Pub. L. 99-514 (100 Stat. 2085, 2894) (October 22, 1986), and section 1013 of the Taxpayer Relief Act of 1997, Pub. L. 105-34 (111 Stat. 788, 918) (August 5, 1997).

The Treasury Department and the IRS received many comments regarding the 2009 Proposed Regulations. The chief concern raised by commenters was that the approach taken in the 2009 Proposed Regulations represented an unwarranted departure from current law as a result of which minor changes to an overall business transaction could cause meaningful changes to the tax consequences, thereby elevating the form of the transaction over its substance.

After thoroughly considering the comments received, the Treasury Department and the IRS have determined that it is unlikely that the approach of the 2009 Proposed Regulations can be implemented in comprehensive final regulations without significant modifications. As a result, the Treasury Department and the IRS have decided to withdraw the 2009 Proposed Regulations. The Treasury Department and the IRS are continuing to study the issues addressed in the 2009 Proposed Regulations, with a particular focus on issues surrounding sections 301(c)(2) and 304, and §1.302-2(c) of the Income Tax Regulations.

The Treasury Department and the IRS continue to believe that under current law, the results of a section 301 distribution should derive from the consideration received by a shareholder in respect of each share of stock, notwithstanding designations otherwise. See *Johnson v. United States*, 435 F.2d 1257 (4th Cir. 1971). The Treasury Department and the IRS also continue to believe that, under current law, with respect to redemptions governed by section 302(d), any unrecovered basis in the redeemed stock of a shareholder may be shifted to other stock only if such an

adjustment is a proper adjustment within the meaning of §1.302-2(c). Not all shifts of a redeemed shareholder's unrecovered basis result in proper adjustments, and certain basis adjustments can lead to inappropriate results. See, e.g., Notice 2001-45, 2001-33 I.R.B. 129.

Drafting Information

The principal author of this withdrawal notice is Aglaia Ovtchinnikova of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the Treasury Department and the IRS withdraw the notice of proposed rulemaking (REG-143686-07) that was published in the **Federal Register** (74 FR 3509) on January 21, 2009, with corrections that were published in the **Federal Register** (74 FR 9575) on March 5, 2009.

Kirsten Wielobob,
Deputy Commissioner for Services
and Enforcement.

(Filed by the Office of the Federal Register on March 27, 2019, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2019, 84 F.R. 11686)

Withdrawal of Notice of Proposed Rulemaking

REG-124627-11

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking that would have provided guidance on how to determine whether certain transactions satisfy the continuity of interest (COI) requirement under §1.368-1(e), applicable to certain corporate reorganizations described in section 368 of the Internal Revenue Code of 1986 (Code). The proposed regulations being withdrawn would have affected corporations and their shareholders.

DATES: As of April 1, 2019, the proposed amendment to §1.368-1 in the notice of proposed rulemaking (REG-124627-11) that was published in the **Federal Register** (76 FR 78591) on December 19, 2011, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jean R. Broderick at (202) 317-6848 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The provisions of subchapter C, chapter 1, of the Code generally provide nonrecognition treatment for corporate transactions that are described as reorganizations in section 368. The COI requirement is one of a number of requirements that a transaction must satisfy in order to qualify as a reorganization. The COI requirement prevents transactions that resemble sales from qualifying as reorganizations. *Pinnellas Ice & Cold Storage Co. v. Commissioner*, 287 U.S. 462 (1933).

The COI requirement requires that, in substance, a substantial part of the value of the target corporation (Target) shareholders' proprietary interests (*i.e.*, stock) in Target be preserved. Section 1.368-1(e)(1)(i); *John A. Nelson Co. v. Helvering*, 296 U.S. 374 (1935). A Target shareholder's proprietary interest in Target is preserved to the extent it is exchanged for either the stock of the acquiring corporation (Acquiror) or, in the case of a triangular reorganization (as defined in §1.358-6(b)(2)), the stock of a corporation in control (within the meaning of section 368(c)) of Acquiror (in either case, Issuing Cor-

poration stock). To the extent the Target shareholders' proprietary interests are exchanged for money or other property, their proprietary interests are not preserved. Section 1.368-1(e)(1)(i).

To determine whether a substantial part of the Target shareholders' proprietary interests has been preserved, the value of the Issuing Corporation stock the Target shareholders received is compared to the aggregate value of the consideration the Target shareholders received. Prior to 2011, the determination of whether the COI requirement is satisfied had been based on the value of the Issuing Corporation stock "as of the effective date of the reorganization" (Closing Date). Rev. Proc. 77-37 (1977-2 C.B. 568).

On December 19, 2011, the Department of the Treasury (Treasury Department) and the IRS issued final regulations (TD 9565, 76 FR 78540) that include a special rule (Signing Date Rule) that applies if a binding contract to effect a potential reorganization provides for fixed consideration (as defined in §1.368-1(e)(2)(iii)(A)) to be exchanged for the Target shareholders' proprietary interests. Section 1.368-1(e)(2)(i). If the Signing Date Rule applies, the consideration is valued as of the end of the last business day before the first date there is a binding contract (Pre-signing Date), rather than on the Closing Date.

On the same date, the Treasury Department and the IRS published proposed

regulations (2011 Proposed Regulations) (REG-124627-11, 76 FR 78591) that identified situations, other than those covered by the Signing Date Rule, in which the value of Issuing Corporation stock could be determined based on a value other than its actual trading price on the Closing Date. In one of these situations, the 2011 Proposed Regulations would have allowed the parties to use an average of the trading prices of Issuing Corporation stock over a number of days, in lieu of its actual trading price on the Closing Date, for purposes of determining whether the COI requirement is satisfied.

The Treasury Department and the IRS have determined that current law generally provides sufficient guidance to taxpayers with respect to the COI requirement. Therefore, the Treasury Department and the IRS have decided to withdraw the 2011 Proposed Regulations. However, after considering comments received on the 2011 Proposed Regulations, the IRS has concluded that, in certain circumstances, taxpayers should be able to rely on certain average stock valuation methods for purposes of measuring COI. Accordingly, the IRS issued a revenue procedure effective January 23, 2018, that provides the circumstances under which the IRS will not challenge a taxpayer's use of certain stock valuation methods to value certain Issuing Corporation stock for purposes of determining whether the COI requirement is satisfied. *See* Rev. Proc. 2018-12, I.R.B. 2018-6.

Statement of Availability of IRS Documents

Rev. Proc. 2018-12 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of this withdrawal notice is Jean Broderick of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-124627-11) that was published in the **Federal Register** (76 FR 78591) on December 19, 2011, is withdrawn.

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

(Filed by the Office of the Federal Register on March 29, 2019, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2019, 84 F.R. 12169)

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 substance 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.
FR.—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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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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

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