

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2019-20
May 13, 2019

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

ADMINISTRATIVE, SPECIAL ANNOUNCEMENT

NOT 2019-30, page 1180.

This notice solicits public comments recommending guidance projects that should be included in the 2019-2020 Priority Guidance Plan.

EMPLOYEE PLANS

REV PROC 2019-20, page 1182.

This revenue procedure provides for a limited expansion of the determination letter program with respect to individually designed plans. This revenue procedure also provides for a limited extension of the remedial amendment period under § 401(b) of the Internal Revenue Code and Rev. Proc. 2016-37 under specified circumstances, and for special sanction structures that apply to certain plan document failures discovered by the IRS during the review of a plan submitted for a determination letter pursuant to this revenue procedure.

INCOME TAX

REV RUL 2019-13, page 1179.

This revenue ruling provides guidance on the application of subchapters C and S of chapter 1 of subtitle A of the Internal Revenue Code (Code) to cash distributions made in redemption of the stock of C corporations formerly classified as S corporations and during the post-termination transition period as defined under section 1377(b) of the Code. Specifically, the revenue ruling holds that to the extent a corporation makes such a cash distribution that is subject to section 301 of the Code by reason of section 302(d) of the Code, the cash distribution should reduce the corporation's accumulated adjustments account (within the meaning of section 1368(e) of the Code) to the extent of the proceeds of the redemption pursuant to section 1368 of the Code.

NOT 2019-31, page 1181.

The notice publishes the inflation adjustment factor for the carbon oxide sequestration credit under § 45Q for calendar year 2019. Also, the notice includes a statement of the amount of qualified carbon oxide that has been taken into account by taxpayers filing an annual report pursuant to section 6 of Notice 2009-83, 2009-2 C.B. 588.

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.

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Part I.

Section 1368.— Distributions

*26 CFR 1.1368-1: Distributions by S corporations
(Also: §§ 301, 302, 1362, 1367, 1371, 1377, 26 CFR 1.1368-2)*

Rev. Rul. 2019-13

ISSUE

If, during a former S corporation's post-termination transition period, the corporation distributes cash in redemption of a shareholder's stock and the distribution is characterized as a distribution under § 301 of the Internal Revenue Code (Code), should the corporation reduce its accumulated adjustments account (AAA) pursuant to § 1368 of the Code?

FACTS

X is a corporation that once was a C corporation and later elected to be an S corporation under § 1362(a) of the Code. X's S election terminated under § 1362(d), such that it is now a C corporation. A, an individual, owns all 100 shares of the outstanding stock of X. X is a calendar-year taxpayer. At the time of its conversion to an S corporation, X had accumulated earnings

and profits (E&P) of \$600x and no current E&P. At the time of the termination of its S election, X's AAA was \$800x and its accumulated E&P was still \$600x. During X's post-termination transition period, X redeems 50 of A's 100 shares of X stock for \$1,000x. X makes no other distributions during the post-termination transition period. Pursuant to § 302(d) of the Code, the redemption is characterized as a distribution subject to § 301. For the taxable period that includes the redemption, X has current E&P of \$400x.

LAW AND ANALYSIS

Section 1371(e) of the Code provides that, in general, any distribution of cash by a former S corporation with respect to its stock during the post-termination transition period (as defined in § 1377(b) of the Code) is applied against and reduces the adjusted basis of the stock to the extent the distribution does not exceed the corporation's AAA (within the meaning of § 1368(e)). Section 1368(e) defines the AAA as an account of the S corporation, which is adjusted for the S period in a manner similar to the adjustments under § 1367 of the Code (except that no adjustment is made for income (and related expenses) that is exempt from tax under the Code; the phrase "(but not below

zero)" is disregarded in § 1367(a)(2)); and no adjustment is made for Federal taxes attributable to any taxable year in which the corporation was a C corporation. The term "S period" is defined in § 1368(e)(2) as the most recent continuous period during which the corporation has been an S corporation.

HOLDING

If, during a former S corporation's post-termination transition period, the corporation distributes cash in redemption of a shareholder's stock, which is characterized as a distribution subject to § 301, the corporation should reduce its AAA to the extent of the proceeds of the redemption pursuant to § 1368. The redemption of 50 of A's 100 shares of X stock for \$1,000x is characterized as a reduction of X's \$800x of AAA with the remaining \$200x characterized as a dividend under § 301(c)(1).

DRAFTING INFORMATION

The principal author of this revenue ruling is Margaret Burow of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Margaret Burow at (202) 317-5279 (not a toll-free number).

Part III.

Public Comment Invited on Recommendations for 2019-2020 Priority Guidance Plan

Notice 2019-30

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (Service) invite public comment on recommendations for items that should be included on the 2019-2020 Priority Guidance Plan.

The Treasury Department's Office of Tax Policy and the Service use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2019-2020 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to actively work on as priorities during the period from July 1, 2019, through June 30, 2020.

The Treasury Department and the Service recognize the importance of public input in formulating a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law. The published guidance process is most successful if the Treasury Department and the Service have the benefit of the experience and knowledge of taxpayers and practitioners who must apply the rules implementing the tax laws.

On December 22, 2017, P.L. 115-97, "An Act to provide for the reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," commonly referred to as the Tax Cuts and Jobs Act (TCJA), was enacted. Since that time, the Treasury Department and the Service have focused their efforts on guidance projects necessary to implement the TCJA and published 111 items, including 30 regularly scheduled

items, during the first two quarters of the 2018-2019 plan year.

The Treasury Department and the Service expect to continue to prioritize guidance implementing the TCJA during the 2019-2020 plan year and that the plan will reflect this priority. The Treasury Department and the Service expect that, even though many important projects not related to the TCJA were published during the 2018-2019 plan year, a number of other non-TCJA guidance projects on the 2018-2019 Priority Guidance Plan will not be completed by June 30, 2019. These projects may be carried over to the 2019-2020 Priority Guidance Plan. Due to resource limitations, the Treasury Department and the Service also expect that not all of the uncompleted projects will be carried over to the 2019-2020 Priority Guidance Plan, and only a limited number of new non-TCJA guidance projects will be added to the plan.

In reviewing recommendations and selecting additional projects for inclusion on the 2019-2020 Priority Guidance Plan, the Treasury Department and the Service will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to many taxpayers;
2. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the Service;
3. Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn;
4. Whether the recommended guidance would be in accordance with Executive Order 13771 (82 FR 9339), Executive Order 13777 (82 FR 12285), Executive Order 13789 (82 FR 19317), or other executive orders.
5. Whether the recommended guidance promotes sound tax administration;
6. Whether the Service can administer the recommended guidance on a uniform basis; and

7. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Please submit recommendations by Friday, June 7, 2019, for possible inclusion on the original 2019-2020 Priority Guidance Plan. Taxpayers may, however, submit recommendations for guidance at any time during the year. The Treasury Department and the Service will update the 2019-2020 Priority Guidance Plan periodically to reflect additional guidance that the Treasury Department and the Service intend to publish during the plan year. The periodic updates allow the Treasury Department and the Service to respond in a timely manner to the need for additional guidance that may arise during the plan year.

Taxpayers are not required to submit recommendations for guidance in any particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. For recommendations to modify, streamline, or withdraw existing regulations or other guidance, taxpayers should explain how the changes would reduce taxpayer cost and/or burden or benefit tax administration. It would be helpful if taxpayers suggesting more than one guidance project prioritize the projects by order of importance. If a large number of projects are being suggested, it would be helpful if the projects were grouped by subject matter and then in terms of high, medium, or low priority. Requests for guidance in the form of petitions for rulemaking will be considered with other recommendations for guidance in accordance with the considerations described in this notice.

Taxpayers may submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2019-0019 in the search field on the www.regulations.gov homepage to find this notice and submit comments).

Alternatively, taxpayers may mail comments to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2019-30) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. For further information regarding this notice, contact Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-3400 (not a toll-free number).

Credit for Carbon Oxide Sequestration 2019 Section 45Q Inflation Adjustment Factor

Notice 2019-31

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon oxide sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2019. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q.

SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765, 3829 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended by § 1131 of the American Recovery and Reinvestment Tax Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115 (February 17, 2009) and more recently by section 41119 of the Bipartisan

Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018). As a result of the modifications made by the BBA amendment, the credit under § 45Q now applies to the sequestration of “qualified carbon oxide,” a broader term than qualified carbon dioxide. The amount of the credit is also increased for carbon oxide captured with equipment originally placed in service on or after the date of enactment of BBA.

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, (ii) disposed of by the taxpayer in secure geological storage, and (iii) not used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project.

Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized by the taxpayer in a manner described in § 45Q(f)(5).

Section 45Q(a)(3) allows a credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA during the 12-year period beginning on the date the equipment was originally placed in service, (ii) disposed of by the taxpayer in secure geological storage, and (iii) neither used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project nor utilized in a manner described in § 45Q(f)(5).

Section 45Q(a)(4) allows credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the

enactment of BBA, during the 12-year period beginning on the date the equipment was originally placed in service, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized in a manner described in § 45Q(f)(5).

For purposes of determining the carbon oxide sequestration credit under § 45Q, a taxpayer may elect under § 45Q(b)(3) to have the dollar amounts applicable under § 45Q(a)(1) or (2) apply in lieu of the dollar amounts applicable under § 45Q(a)(3) or (4) for each metric ton of qualified carbon oxide which is captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA.

Section 45Q(c) defines the term “qualified carbon oxide” as (i) any carbon dioxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; (ii) any carbon dioxide or other carbon oxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; or (iii) in the case of a direct air capture facility, any carbon dioxide which (I) is captured directly from the ambient air, and (II) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

Section 45Q(d) defines the term “qualified facility” as any industrial facility or direct air capture facility (i) the construction of which begins before January 1, 2024, and (I) construction of carbon capture equipment begins before such date, or (II) the original planning and design for such facility includes installation of carbon cap-

ture equipment; and (ii) which captures (I) in the case of a facility which emits not more than 500,000 metric tons of carbon oxide into the atmosphere during the taxable year, not less than 25,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in § 45Q(f)(5), (II) in the case of an electricity generating facility which is not described in § 45Q(d)(2)(A), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or (III) in the case of a direct air capture facility or any facility not described in § 45Q(d)(2)(A) or (B), not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

Under § 45Q(f)(7), for taxable years beginning in a calendar year after 2009, the dollar amounts contained in § 45Q(a)(1) and (2) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(f)(7), for the 2019 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2018 (110.308) and the denominator of which is the GNP implicit price deflator for 2008 (94.268).

Section 45Q(g) provides that in the case of any carbon capture equipment placed in service before the date of the enactment of BBA, the credit under § 45Q shall apply with respect to qualified carbon oxide captured using such equipment before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with (i) § 45Q(a), as in effect on the day before the date of the enactment of BBA, and (ii) § 45Q(a)(1) and (2).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2019 is 1.1702. The § 45Q credit for calendar year 2019 is \$23.40 per metric ton of qualified carbon oxide under § 45Q(a)(1) and \$11.70 per metric ton of qualified carbon oxide under § 45Q(a)(2).

SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83 requires taxpayers to file annual reports that provide (among other information) the amounts (in metric tons) of qualified carbon oxide for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the most recent annual reports filed with the Internal Revenue Service, the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q is 62,740,171 metric tons.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Maggie Stehn at (202) 317-6853 (not a toll-free number).

Rev. Proc. 2019-20

SECTION 1. PURPOSE

This revenue procedure, consistent with the process described in Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides for a limited expansion of the determination letter program with respect to individually designed plans. Under this limited expansion, the Internal Revenue Service (IRS) will accept determination letter

applications for (i) individually designed statutory hybrid plans during a 12-month period beginning September 1, 2019, and (ii) individually designed Merged Plans (as defined in section 5.01(2) of this revenue procedure) on an ongoing basis. As provided by Rev. Proc. 2016-37, a plan sponsor continues to be permitted to submit a determination letter application for initial plan qualification and for qualification upon plan termination. This revenue procedure also provides for a limited extension of the remedial amendment period under § 401(b) of the Internal Revenue Code (Code) and Rev. Proc. 2016-37 under specified circumstances, and for special sanction structures that apply to certain plan document failures discovered by the IRS during the review of a plan submitted for a determination letter pursuant to this revenue procedure.

SECTION 2. BACKGROUND

.01 Effective January 1, 2017, Rev. Proc. 2016-37 provides the circumstances under which plan sponsors may submit determination letter applications to the IRS. In general, a sponsor of an individually designed plan may submit a determination letter application only for initial plan qualification and for qualification upon plan termination. However, as described in section 4.03(3) of Rev. Proc. 2016-37, the Department of the Treasury (Treasury Department) and the IRS will consider each year whether to accept determination letter applications for individually designed plans in specified circumstances other than for initial qualification and qualification upon plan termination.

.02 In Notice 2018-24, 2018-17 I.R.B. 507, the Treasury Department and the IRS requested comments on the potential expansion of the scope of the determination letter program for individually designed plans.

.03 Section 401(b) of the Code and the regulations thereunder provide a remedial amendment period during which a plan may be amended retroactively to comply with the Code’s qualification requirements. Section 1.401(b)-1(e)(3) provides, in part, that the submission of a determination letter application extends the remedial amendment period until the expiration of 91 days after the date a determination

letter is issued. Section 1.401(b)-(1)(f) provides that the Commissioner also may extend the remedial amendment period.

.04 Rev. Proc. 2016-37 extended the remedial amendment period that would otherwise apply under § 1.401(b)-1 for certain disqualifying provisions, as described in § 1.401(b)-1(b) and Rev. Proc. 2016-37. Section 5.05(3) of Rev. Proc. 2016-37 provides that the remedial amendment period for a disqualifying provision with respect to a change in qualification requirements (a statutory change or a change in the requirements provided in regulations or other guidance, as noted in section 5.04 of that revenue procedure) is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements appears. A later date may apply to a governmental plan (as defined in § 414(d)), as provided in section 5.06 of Rev. Proc. 2016-37. As provided in Rev. Proc. 2016-37, the Treasury Department and the IRS intend to publish a Required Amendments List annually. Section 5.05(2) of Rev. Proc. 2016-37 also provides that the remedial amendment period for a disqualifying provision with respect to an amendment to an existing plan (other than a disqualifying provision with respect to a change in qualification requirements) is extended to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

.05 Notice 2017-72, 2017-52 I.R.B. 601, sets forth the 2017 Required Amendments List. The 2017 Required Amendments List provides that December 31, 2019, is generally the last day of the remedial amendment period with respect to a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2017 Required Amendments List. December 31, 2019, is also generally the plan amendment deadline for a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2017 Required Amendments List. A later date may apply to a governmental plan (as defined in § 414(d)).¹

.06 Prior to the issuance of Rev. Proc. 2016-37, an annual Cumulative List of Changes in Retirement Plan Qualification Requirements (Cumulative List) was issued to identify changes in the qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin, that were required to be taken into account in a written plan document submitted for a determination letter.

.07 Section 411(a)(13)(C)(i) defines the term “applicable defined benefit plan” as a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant’s final average compensation. Section 411(a)(13)(C)(ii) provides that the Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan. Notice 2007-6, 2007-1 C.B. 272, refers to a plan described in either § 411(a)(13)(C)(i) or in regulations or other guidance issued pursuant to § 411(a)(13)(C)(ii) as a statutory hybrid plan. Section 1.411(a)(13)-1(d)(5) defines a “statutory hybrid plan” as a defined benefit plan that contains a statutory hybrid benefit formula.

.08 Section 411(b)(5)(B)(i)(I) provides, in part, that an applicable defined benefit plan shall be treated as failing to meet the requirements of § 411(b)(1)(H) (which provides that the rate of an employee’s benefit accrual must not be reduced because of the attainment of any age) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate that is not greater than a market rate of return. Final regulations providing rules regarding statutory hybrid retirement plans and transitional amendments to satisfy the market rate of return rules for statutory hybrid retirement plans were issued in 2010 (75 Fed. Reg. 64123), 2014 (79 Fed. Reg. 56442), and 2015 (80 Fed. Reg. 70680), herein referred to individually and collectively as “final hybrid plan reg-

ulations.” The 2014 and 2015 final hybrid plan regulations appear on the 2017 Required Amendments List.

.09 Section 411(d)(6) provides, in part, that a plan does not satisfy § 411 if an amendment to the plan decreases a participant’s accrued benefit.

.10 Notwithstanding the requirements of § 411(d)(6), § 1.411(b)(5)-1(e)(3)(vi) permits a plan with an interest crediting rate that does not comply with the 2010 and 2014 final hybrid plan regulations (a noncompliant interest crediting rate) to be amended with respect to benefits that have already accrued so that its interest crediting rate complies with the market rate of return rules of § 411(b)(5)(B)(i) and § 1.411(b)(5)-1(d). Pursuant to § 1.411(b)(5)-1(e)(3)(vi)(B)(3), in order to qualify for this treatment, the amendment had to be adopted prior to, and effective no later than, the applicability date of the regulatory market rate of return rules (generally, the first day of the first plan year that began on or after January 1, 2017, with a delayed applicability date for collectively bargained plans).

SECTION 3. EXPANSION OF DETERMINATION LETTER PROGRAM

The Treasury Department and the IRS received numerous comments in response to the request for comments in Notice 2018-24. After consideration of the comments, the Treasury Department and the IRS have determined that the determination letter program will be expanded to permit plan sponsors to submit (i) determination letter applications for individually designed statutory hybrid plans, as defined in § 1.411(a)(13)-1(d)(5), during the 12-month period beginning September 1, 2019, and ending August 31, 2020, and (ii) determination letter applications for certain individually designed Merged Plans (as defined in section 5.01(2) of this revenue procedure) on an ongoing basis. Sections 6, 7, and 8 of this revenue procedure provide for a limited extension of the remedial amendment period and special sanction structures applicable to plans submitted for a determination letter pursuant to this revenue procedure.

¹Notice 2018-91, 2018-50 I.R.B. 985, sets forth the 2018 Required Amendments List. There were no changes in qualification requirements listed on the 2018 Required Amendments List.

SECTION 4. STATUTORY HYBRID PLANS

.01 *Expansion of Determination Letter Program for Statutory Hybrid Plans.*

(1) *In general.* The IRS will accept a determination letter application for an individually designed statutory hybrid plan, as defined in § 1.411(a)(13)-1(d)(5), during the 12-month period beginning September 1, 2019, and ending August 31, 2020 (statutory hybrid plan submission period).

(2) *Applicable procedures.* The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4, 2019-1 I.R.B. 146 (and its annual successors), and Rev. Proc. 2016-37 apply to determination letter applications submitted pursuant to this section 4, except as otherwise provided by this revenue procedure.

(3) *Scope of plan review.* The IRS's review of individually designed statutory hybrid plans that are submitted for a determination letter pursuant to this revenue procedure will be based on the 2017 Required Amendments List (Notice 2017-72). The review will also take into account all Required Amendments Lists and Cumulative Lists issued prior to 2016.

SECTION 5. MERGED PLANS

.01 *Definitions for Guidance Related to Merged Plans.*

(1) *Plan Merger.* The term "Plan Merger" means a merger or consolidation, as described in § 1.414(l)-1(b)(2), that combines two or more plans maintained by previously Unrelated Entities into a single individually designed plan, and that occurs in connection with a corporate merger, acquisition, or other similar business transaction among Unrelated Entities that each maintained its own plan or plans prior to the Plan Merger.

(2) *Merged Plan.* The term "Merged Plan" means a plan that results from the merger or consolidation of two or more plans into a single individually designed plan pursuant to a Plan Merger.

(3) *Unrelated Entities.* The term "Unrelated Entities" means entities that are not members of the same controlled group under § 414(b), the same set of trades or businesses under common control under §

414(c), or members of the same affiliated service group under § 414(m).

(4) *Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction.* The "Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction" is the effective date of the transaction as evidenced by a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved.

(5) *Date of the Plan Merger.* The "Date of the Plan Merger" is the effective date of the Plan Merger as evidenced by (a) a corporate board resolution or written documentation signed and dated by persons duly authorized to represent the entities involved, or (b) a plan amendment.

.02 *Expansion of Determination Letter Program for Merged Plans.*

(1) *In general.* Beginning September 1, 2019, the IRS will accept a determination letter application that satisfies the conditions set forth in section 5.02(2) with respect to a Merged Plan. Determination letter applications submitted for a Merged Plan will be accepted on an ongoing basis and are not limited to a specific submission period.

(2) *Eligible plans.* A determination letter application for a Merged Plan satisfies the conditions of this section 5.02(2) if the following requirements are satisfied:

(a) The Date of the Plan Merger occurs no later than the last day of the first plan year that begins after the plan year that includes the Date of a Corporate Merger, Acquisition, or Other Similar Business Transaction between Unrelated Entities, and

(b) A determination letter application for the Merged Plan is submitted within a period beginning on the Date of the Plan Merger and ending on the last day of the first plan year of the Merged Plan that begins after the Date of the Plan Merger (Merged Plan submission period).

.03 *Applicable Procedures.* The procedures relating to the submission of determination letter applications for individually designed plans set forth in Rev. Proc. 2019-4 (and its annual successors) and Rev. Proc. 2016-37 apply to determination letter applications submitted pursuant to this section 5, except as otherwise provided by this revenue procedure.

.04 *Scope of Plan Review.* The IRS's review of individually designed Merged Plans that are submitted for a determination letter pursuant to this revenue procedure will be based on the Required Amendments List that was issued during the second full calendar year preceding the submission of the determination letter application. The review will also take into account all previously issued Required Amendments Lists and Cumulative Lists.

SECTION 6. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD

.01 *Extension of Remedial Amendment Period.* With respect to a plan submitted for a determination letter pursuant to this revenue procedure, any remedial amendment period that is open as of the beginning of the applicable submission period defined in section 4.01(1) or 5.02(2)(b) of this revenue procedure is extended to the end of such applicable submission period. Section 1.401(b)-1(e)(3) (which provides that the submission of a determination letter application extends the remedial amendment period until the expiration of 91 days after the date a determination letter is issued) will continue to apply.

.02 *No Relief Provided Under § 411(d)(6).* Section 1.411(b)(5)-1(e)(3)(vi) provides relief from the anti-cutback requirements of § 411(d)(6) with respect to the modification of a plan's interest crediting rate under certain circumstances. However, pursuant to § 1.411(b)(5)-1(e)(3)(vi)(B)(3), that relief applies only to plan amendments that were adopted prior to, and effective no later than, the applicability date of the regulatory market rate of return rules (generally, the first day of the first plan year that begins on or after January 1, 2017, with a delayed applicability date for collectively bargained plans). Although this revenue procedure extends the remedial amendment period applicable to statutory hybrid plans that are submitted for a determination letter pursuant to this revenue procedure, it does not provide additional relief from the anti-cutback requirements of § 411(d)(6).

SECTION 7. APPLICABLE SANCTIONS – STATUTORY HYBRID PLANS

.01 *In General.* A plan sponsor that has applied for a determination letter pursuant to this revenue procedure with respect to a statutory hybrid plan that has a plan document failure, as defined in section 5.01(2)(a) of Rev. Proc. 2019-19, 2019-19 I.R.B. 1086, (which includes the failure to adopt an amendment to correct a disqualifying provision within the applicable remedial amendment period), must amend the plan to comply with applicable qualification requirements. In addition, except as provided in section 7.02 of this revenue procedure, the plan sponsor must pay the applicable sanction described in section 7.03 or 7.04 of this revenue procedure, and enter into a closing agreement with the IRS.

.02 *No Sanctions for Plan Document Failures Related to Final Hybrid Plan Regulations.* The Treasury Department and the IRS are mindful that the IRS's scope of review during a statutory hybrid plan's most recent remedial amendment cycle did not include all the provisions related to the final hybrid plan regulations under § 1.411(a)(13)-1 and § 1.411(b)(5)-1. As a result, plan sponsors of statutory hybrid plans did not have the opportunity to have their plans reviewed for all provisions related to those regulations. Accordingly, the IRS will not impose a sanction for any plan document failure with respect to a plan provision required to meet the requirements of § 1.411(a)(13)-1 and § 1.411(b)(5)-1 that is discovered by the IRS in its review of a plan submitted for a determination letter pursuant to this revenue procedure.

.03 *Special Sanction Structure for Plan Document Failures Unrelated to Final Hybrid Plan Regulations.* This section 7.03 sets forth a sanction structure that applies to a statutory hybrid plan submitted for a determination letter pursuant to this revenue procedure that has a plan document failure other than a plan document failure with respect to a plan provision that is required to meet the requirements of § 1.411(a)(13)-1 or § 1.411(b)(5)-1, provided the conditions in section 7.03(1)(a) or (b) of this revenue procedure are satisfied. The amount of the sanction is equal to the applicable Employee Plans

Voluntary Compliance Resolution System (EPCRS) Voluntary Correction Program user fee that would have applied had the plan sponsor identified the failure and submitted the plan for consideration under the Voluntary Correction Program.

(1) *Conditions for special sanction structure.*

(a) The amendment that creates the failure (without regard to whether that amendment was required to be adopted) was adopted timely and in good faith with the intent of maintaining the qualified status of the plan; or

(b) In the case of an amendment required because of a change in qualification requirements, the plan sponsor reasonably and in good faith determined that no amendment was required because the qualification change does not impact provisions of the written plan document.

(2) *Other rules for special sanction structure.*

(a) The IRS will make the final determination in all cases as to whether an amendment was adopted in good faith with the intent of maintaining the qualified status of the plan, or whether a plan sponsor reasonably and in good faith determined that no amendment was required.

(b) If the conditions of section 7.03(1)(a) or (b) of this revenue procedure are not satisfied, the sanction set forth in section 7.04 will apply.

.04 *General Sanction Structure Under EPCRS.* This section 7.04 sets forth a general sanction structure that applies to a statutory hybrid plan submitted for a determination letter pursuant to this revenue procedure that (1) has a plan document failure other than a plan document failure with respect to a plan provision that is required to meet § 1.411(a)(13)-1 or § 1.411(b)(5)-1 and (2) does not satisfy the conditions of section 7.03(1)(a) or (b) of this revenue procedure. The amount of the sanction is equal to the applicable sanction amount set forth in section 14.04 of Rev. Proc. 2019-19. Section 14.04 of Rev. Proc. 2019-19 provides for a sanction for certain plan document failures that are discovered by the IRS during the determination letter process that is equal to 150% or 250% (depending on the duration of the failure) of the applicable user fee that would apply to the plan had it been submitted under the EPCRS Voluntary Cor-

rection Program. See Appendix A of Rev. Proc. 2019-4 (and its annual successors) for the applicable Voluntary Correction Program user fee.

SECTION 8. APPLICABLE SANCTIONS – MERGED PLANS

.01 *In General.* A plan sponsor that has applied for a determination letter pursuant to this revenue procedure with respect to a Merged Plan that has a plan document failure, as defined in section 5.01(2)(a) of Rev. Proc. 2019-19 (which includes the failure to adopt an amendment to correct a disqualifying provision within the applicable remedial amendment period), must amend the plan to comply with applicable qualification requirements. In addition, except as provided in section 8.02 of this revenue procedure, the plan sponsor must pay the applicable sanction as described in section 8.03 or 8.04 of this revenue procedure, and enter into a closing agreement with the IRS.

.02 *No Sanctions for Plan Provisions Included to Effectuate the Plan Merger.* For Merged Plans submitted for a determination letter pursuant to this revenue procedure, the IRS will not impose a sanction for any plan document failure with respect to a plan provision included to effectuate the Plan Merger.

.03 *Special Sanction Structure for Plan Provisions Other Than Those Included to Effectuate the Plan Merger.* This section 8.03 sets forth a sanction structure that applies to a Merged Plan submitted for a determination letter pursuant to this revenue procedure that has a plan document failure other than a plan document failure with respect to a plan provision included to effectuate the Plan Merger, provided the conditions in section 8.03(1)(a) or (b) of this revenue procedure are satisfied. The amount of the sanction is equal to the applicable EPCRS Voluntary Correction Program user fee that would have applied had the plan sponsor identified the failure and submitted the plan for consideration under the Voluntary Correction Program.

(1) *Conditions for special sanction structure.*

(a) The amendment that creates the failure (without regard to whether that amendment was required to be adopted) was adopted timely and in good faith with

the intent of maintaining the qualified status of the plan; or

(b) In the case of an amendment required because of a change in qualification requirements, the plan sponsor reasonably and in good faith determined that no amendment was required because the qualification change does not impact provisions of the written plan document.

(2) *Other rules for special sanction structure.*

(a) The IRS will make the final determination in all cases as to whether an amendment was adopted in good faith with the intent of maintaining the qualified status of the plan, or whether a plan sponsor reasonably and in good faith determined that no amendment was required.

(b) If the conditions of section 8.03(1) (a) or (b) of this revenue procedure are not satisfied, the sanction set forth in section 8.04 will apply.

.04 *General Sanction Structure Under EPCRS.* This section 8.04 sets forth a general sanction structure that applies to a Merged Plan submitted for a determination letter pursuant to this revenue procedure that (1) has a plan document failure other than a plan document failure with

respect to a plan provision included to effectuate the Plan Merger and (2) does not satisfy the conditions of section 8.03(1) (a) or (b) of this revenue procedure. The amount of the sanction is equal to the applicable sanction amount set forth in section 14.04 of Rev. Proc. 2019-19. Section 14.04 of Rev. Proc. 2019-19 provides for a sanction for certain plan document failures that are discovered by the IRS during the determination letter process that is equal to 150% or 250% (depending on the duration of the failure) of the applicable user fee that would apply to the plan had it been submitted under the EPCRS Voluntary Correction Program. See Appendix A of Rev. Proc. 2019-4 (and its annual successors) for the applicable Voluntary Correction Program user fee.

SECTION 9. CONTINUED CONSIDERATION OF COMMENTS

The Treasury Department and the IRS will continue to consider comments received in response to Notice 2018-24 and any other comments received regarding additional situations in which the submission of a determination letter application

may be appropriate. Also, the Treasury Department and the IRS will continue to request, on a periodic basis, comments on additional situations in which the submission of a determination letter application may be appropriate.

SECTION 10. EFFECT ON OTHER DOCUMENTS

This revenue procedure amplifies and modifies Rev. Proc. 2016-37.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective September 1, 2019.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

Definition of Terms

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

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

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

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

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

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

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

new ruling does more than restate the 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.

Numerical Finding List¹

Bulletin 2019–17

Action on Decision:

2019-1, 2019-08 I.R.B. 569

Announcements:

2019-1, 2019-06 I.R.B. 566

2019-2, 2019-12 I.R.B. 910

2019-3, 2019-15 I.R.B. 965

Notices:

2019-01, 2019-02 I.R.B. 275

2019-02, 2019-02 I.R.B. 281

2019-03, 2019-03 I.R.B. 350

2019-04, 2019-02 I.R.B. 282

2019-05, 2019-02 I.R.B. 283

2019-06, 2019-03 I.R.B. 353

2019-07, 2019-09 I.R.B. 740

2019-08, 2019-03 I.R.B. 354

2019-09, 2019-04 I.R.B. 403

2019-10, 2019-13 I.R.B. 913

2019-11, 2019-05 I.R.B. 430

2019-13, 2019-08 I.R.B. 580

2019-16, 2019-10 I.R.B. 763

2019-17, 2019-12 I.R.B. 907

2019-18, 2019-13 I.R.B. 915

2019-19, 2019-12 I.R.B. 907

2019-20, 2019-14 I.R.B. 927

2019-21, 2019-14 I.R.B. 927

2019-22, 2019-14 I.R.B. 931

2019-23, 2019-15 I.R.B. 941

2019-24, 2019-14 I.R.B. 932

2019-25, 2019-15 I.R.B. 942

2019-26, 2019-15 I.R.B. 943

2019-28, 2019-18 I.R.B. 1077

2019-30, 2019-20 I.R.B. 1180

2019-31, 2019-20 I.R.B. 1181

Proposed Regulations:

REG-104259-18, 2019-02 I.R.B. 300

REG-104352-18, 2019-03 I.R.B. 357

REG-106089-18, 2019-05 I.R.B. 431

REG-134652-18, 2019-09 I.R.B. 747

REG-141739-08, 2019-09 I.R.B. 757

REG-121694-16, 2019-16 I.R.B. 1032

REG-135671-17, 2019-16 I.R.B. 1035

REG-103083-18, 2019-17 I.R.B. 1046

REG-113943-17, 2019-17 I.R.B. 1067

REG-143686-07, 2019-17 I.R.B. 1072

REG-124627-11, 2019-17 I.R.B. 1073

Revenue Procedures:

2019-1, 2019-01 I.R.B. 1

2019-2, 2019-01 I.R.B. 106

Revenue Procedures:—Continued

2019-3, 2019-01 I.R.B. 130

2019-4, 2019-01 I.R.B. 146

2019-5, 2019-01 I.R.B. 230

2019-6, 2019-02 I.R.B. 284

2019-7, 2019-01 I.R.B. 268

2019-8, 2019-03 I.R.B. 347

2019-9, 2019-02 I.R.B. 293

2019-10, 2019-02 I.R.B. 296

2019-11, 2019-09 I.R.B. 742

2019-12, 2019-04 I.R.B. 401

2019-13, 2019-09 I.R.B. 744

2019-14, 2019-15 I.R.B. 948

2019-15, 2019-14 I.R.B. 939

2019-17, 2019-17 I.R.B. 1045

2019-18, 2019-18 I.R.B. 1077

2019-20, 2019-20 I.R.B. 1182

Revenue Rulings:

2019-03, 2019-02 I.R.B. 272

2019-04, 2019-07 I.R.B. 567

2019-05, 2019-11 I.R.B. 766

2019-06, 2019-14 I.R.B. 919

2019-07, 2019-10 I.R.B. 761

2019-08, 2019-14 I.R.B. 923

2019-09, 2019-14 I.R.B. 925

2019-10, 2019-16 I.R.B. 1010

2019-11, 2019-17 I.R.B. 1041

2019-13, 2019-20 I.R.B. 1179

Treasury Decisions:

9844, 2019-11 I.R.B. 781

9845, 2019-08 I.R.B. 570

9846, 2019-09 I.R.B. 583

9847, 2019-09 I.R.B. 670

9848, 2019-11 I.R.B. 897

9850, 2019-12 I.R.B. 904

9852, 2019-16 I.R.B. 1010

9853, 2019-16 I.R.B. 1026

9855, 2019-17 I.R.B. 1042

9854, 2019-18 I.R.B. 1075

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.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2019–20

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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