

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. 2019-32
August 5, 2019

ADMINISTRATIVE

ANN 2019-08, page 621.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

REV PROC 2019-28, page 596.

This procedure provides specifications for the private printing of red-ink substitutes for the 2019 Forms W-2 and W-3. This procedure will be produced as the next revision of Publication 1141. Rev. Proc. 2018-37 is superseded.

ADMINISTRATIVE, INCOME TAX

REV PROC 2019-29, page 620.

Rev. Proc. 2019-29 provides indexing adjustments required by statute for certain provisions under section 36B. Specifically, this revenue procedure updates the applicable percentage table used to calculate an individual's premium tax credit for taxable years beginning in calendar year 2020 and updates the required contribution percentage for plan years beginning after calendar year 2019.

INCOME TAX

NOT 2019-45, page 593.

This notice expands upon previous guidance (Notice 2004-23, Notice 2004-50 and Notice 2013-57) by providing an appendix with a limited list of additional preventive care services and items for certain chronic conditions that may be treated as preventive care for purposes of section § 223(c)(2)(C). These additional services and items are treated as preventive only when prescribed to treat an individual diagnosed with the specified chronic condition, and only when prescribed for the purpose of preventing the exacerbation of the chronic condition or the development of a secondary condition.

REV RUL 2019-17, page 583.

Federal rates; adjusted federal rates; adjusted federal long-term rate, the long-term exempt rate, and the blended annual rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for August 2019.

T.D. 9872, page 585.

These final regulations provide guidance on the income inclusion rules under section 50(d)(5) of the Internal Revenue Code that are applicable to a lessee of investment credit property when a lessor of the property elects to treat the lessee as having acquired the property. The regulations address the operation of the income inclusion rules when a partnership or S corporation is treated as having acquired the property. The regulations also coordinate the recapture rules with the income inclusion rules and provide rules for the income inclusion when there is a disposition or lease termination outside of the recapture period.

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 1274.— Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7872.)

Rev. Rul. 2019-17

This revenue ruling provides various prescribed rates for federal income tax

purposes for August 2019 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the ap-

propriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

| REV. RUL. 2019-17 TABLE 1 | | | | |
|--|-------------------------------|-------------------|------------------|----------------|
| Applicable Federal Rates (AFR) for August 2019 | | | | |
| | <i>Period for Compounding</i> | | | |
| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| | | <i>Short-term</i> | | |
| AFR | 1.91% | 1.90% | 1.90% | 1.89% |
| 110% AFR | 2.10% | 2.09% | 2.08% | 2.08% |
| 120% AFR | 2.29% | 2.28% | 2.27% | 2.27% |
| 130% AFR | 2.49% | 2.47% | 2.46% | 2.46% |
| | | <i>Mid-term</i> | | |
| AFR | 1.87% | 1.86% | 1.86% | 1.85% |
| 110% AFR | 2.06% | 2.05% | 2.04% | 2.04% |
| 120% AFR | 2.24% | 2.23% | 2.22% | 2.22% |
| 130% AFR | 2.43% | 2.42% | 2.41% | 2.41% |
| 150% AFR | 2.81% | 2.79% | 2.78% | 2.77% |
| 175% AFR | 3.29% | 3.26% | 3.25% | 3.24% |
| | | <i>Long-term</i> | | |
| AFR | 2.33% | 2.32% | 2.31% | 2.31% |
| 110% AFR | 2.57% | 2.55% | 2.54% | 2.54% |
| 120% AFR | 2.80% | 2.78% | 2.77% | 2.76% |
| 130% AFR | 3.04% | 3.02% | 3.01% | 3.00% |

| REV. RUL. 2019-17 TABLE 2 | | | | |
|------------------------------|-------------------------------|-------------------|------------------|----------------|
| Adjusted AFR for August 2019 | | | | |
| | <i>Period for Compounding</i> | | | |
| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
| Short-term adjusted AFR | 1.45% | 1.44% | 1.44% | 1.44% |
| Mid-term adjusted AFR | 1.41% | 1.41% | 1.41% | 1.41% |
| Long-term adjusted AFR | 1.77% | 1.76% | 1.76% | 1.75% |

REV. RUL. 2019-17 TABLE 3
Rates Under Section 382 for August 2019

| | |
|--|-------|
| Adjusted federal long-term rate for the current month | 1.77% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 2.09% |

REV. RUL. 2019-17 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for August 2019

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

| | |
|--|-------|
| Appropriate percentage for the 70% present value low-income housing credit | 7.48% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.21% |

REV. RUL. 2019-17 TABLE 5
Rate Under Section 7520 for August 2019

| | |
|---|------|
| Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest | 2.2% |
|---|------|

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 7520.—Valuation Tables

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2019. See Rev. Rul. 2019-17, page 583.

26 CFR 1.50-1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

T.D. 9872

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance concerning the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. These final regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules. In addition, these final regulations provide rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period. Accordingly, these regulations will affect lessees of investment credit property when the lessor of the property makes an election to treat the lessee as having acquired the property and an investment credit is determined under section 46 with respect to such lessee.

DATES: *Effective date:* These regulations are effective on July 17, 2019.

Applicability date: For date of applicability, see §1.50-1(f).

FOR FURTHER INFORMATION CONTACT: Barbara J. Campbell or Michael J. Torruella Costa, (202) 317-4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document amends the Income Tax Regulations (26 CFR part 1) to finalize rules under section 50(d)(5) of the Code. On July 22, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** a notice of proposed rulemaking by cross-reference to temporary regulations ((REG-102516-15) (81 FR 47739)) (proposed regulations) and final and temporary regulations ((TD 9776) (81 FR 47701))(temporary regulations) that amended §1.50-1 of the Income Tax Regulations. On September 23, 2016, the Treasury Department and the IRS published corrections to the temporary regulations in the **Federal Register** (81 FR 65541). (Subsequent references in this preamble to the temporary regulations are to the temporary regulations as so corrected.) The Treasury Department and the IRS received two written comments on the proposed regulations. No requests for a public hearing were made, and no public hearing was held. After consideration of the comments received, these final regulations adopt the proposed regulations without modification.

II. Section 50 Background

Section 50(d) provides special rules applicable to the investment credit determined under section 46 (investment credit property). Section 50(d)(5) provides the income inclusion rules applicable to a lessee of investment credit property when a lessor elects to treat the lessee as having acquired the property. Section 50(d)(5) provides that, for purposes of the investment credit, rules similar to former section 48(d) (as in effect prior to the enactment of the Revenue Reconciliation Act of 1990 (Public Law 101-508, 104 Stat 1388 (November 5, 1990))) apply.

Former section 48(d)(1) permitted a lessor of new section 38 property to elect to treat that property as having been acquired by the lessee for an amount equal to its fair market value (or, if the lessor and lessee were members of a controlled group of corporations, equal to the lessor's basis). Former section 48(d)(3) provided that if the lessor made the election provided in former section 48(d)(1) with respect to any such property, the lessee would be treated for all purposes of subpart E, part IV, subchapter A, Chapter 1, subtitle A, as having acquired such property. Section 50(a)(5)(A) replaced the term "section 38 property" with the term "investment credit property."

Under former section 48(q), if a credit was determined under section 46 with respect to section 38 property, the basis of the property was reduced by 50 percent of the amount of the credit determined (or 100 percent of the amount of the credit determined in the case of a credit for qualified rehabilitation expenditures). Former section 48(d)(5) provided specific rules coordinating the effect of the former section 48(d) election with the basis adjustment rules under former section 48(q). Because the lessee would have no basis in the property that the lessee was deemed to have acquired pursuant to the election, former section 48(d)(5)(A) provided that the basis adjustment rules under former section 48(q) did not apply. Section 50(c) replaced former section 48(q) and provides the current basis adjustment rules.

In lieu of a basis adjustment, former section 48(d)(5)(B) provided that the lessee was required to include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to the property, an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property. In the case of the rehabilitation credit, former section 48(q)(3) provided that former section 48(d)(5)(B) was to be applied without the phrase "50 percent of."

Former section 48(d)(5)(C) provided that, in the case of a disposition of property to which former section 47 (the former recapture rules) applied, the income inclusion rules of former section 48(d)(5) applied in accordance with regulations prescribed by the Secretary. Section 50(a)

replaced former section 47 and provides the current recapture rules.

The temporary regulations provide the applicable rules that the Secretary determined are similar to the rules of former section 48(d)(5). The temporary regulations are limited in scope to the income inclusion rules that apply when a lessor elects under §1.48-4 to treat the lessee as having acquired investment credit property.

The temporary regulations provide general rules for coordinating the basis adjustment rules under section 50(c) (the successor to former section 48(q)) with the rules under §1.48-4 pursuant to which a lessor may elect to treat the lessee of investment credit property as having acquired such property for purposes of calculating the investment credit. Similar to the rule in former section 48(d)(5)(A), which provided that the basis adjustment rules under former section 48(q) did not apply when a §1.48-4 election was made, the temporary regulations provide that section 50(c) does not apply when the election is made. Thus, the lessor is not required to reduce its basis in the property by the amount of the investment credit (or 50 percent of the amount of the credit in the case of the energy credit under section 48) determined under section 46.

The temporary regulations require that, in lieu of a basis adjustment, and similar to the rule contained in former section 48(d)(5)(B), a lessee must include in gross income an amount equal to the amount of the credit (or 50 percent of the amount of the credit in the case of the energy credit under section 48) determined under section 46. The lessee includes the amount ratably over the shortest recovery period applicable under the accelerated cost recovery system provided in section 168, beginning on the date the investment credit property is placed in service and continuing on each one-year anniversary date thereafter until the end of the applicable recovery period. The amount required to be included by the lessee is not subject to any limitations under section 38(c) on the amount of the credit allowed based on the amount of the lessee's income tax.

Because section 50(c) replaces the old basis adjustment rules under former section 48(q), the amount the lessee is re-

quired to include in gross income under the temporary regulations corresponds to the current basis adjustment amounts required under section 50(c), rather than the former basis adjustment amounts provided in former section 48(q).

The temporary regulations include special rules for partnerships and S corporations. In the case of a partnership (other than an electing large partnership) or an S corporation for which an election is made under §1.48-4 to treat such entity as having acquired the investment credit property, each partner or S corporation shareholder that is the ultimate credit claimant is treated as the lessee for purposes of the income inclusion rules under the temporary regulations. The term *ultimate credit claimant* is defined in the temporary regulations as any partner or S corporation shareholder that files (or that would file) Form 3468, "Investment Credit" (or its successor form), with such partner's or S corporation shareholder's income tax return to claim the investment credit determined under section 46 that results in the corresponding income inclusion under the temporary regulations. Each partner or S corporation shareholder that is the ultimate credit claimant must include in gross income the amount required under the temporary regulations in proportion to the amount of the credit determined under section 46 (or 50 percent of the amount of the credit in the case of the energy credit under section 48) with respect to the partner or S corporation shareholder.

The temporary regulations also coordinate the income inclusion rules with the credit recapture rules in section 50(a). The temporary regulations provide that, when the investment credit recapture rules under section 50(a) are triggered (including when there is a lease termination), causing a recapture of the credit or a portion of the credit, an adjustment will be made to the lessee's (or, as applicable, the ultimate credit claimant's) gross income for any discrepancies between the total amount included in gross income under the income inclusion requirement in the temporary regulations and the total credit allowable after recapture. The adjustment amount is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment cred-

it property. The temporary regulations provide rules for when the amount of the unrecaptured credit (that is, the allowable credit after taking into account the recapture amount, or 50 percent of the unrecaptured credit in the case of the energy credit) exceeds the income inclusion, and when the income inclusion exceeds the unrecaptured credit.

The temporary regulations also allow a lessee or an ultimate credit claimant to make an irrevocable election to include in gross income any remaining income required to be taken into account under §1.50-1T(b)(2) in the taxable year in which the lease terminates or is otherwise disposed of. Similarly, the temporary regulations provide that if an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a partnership (other than an electing large partnership) or an S corporation, the ultimate credit claimant may make an irrevocable election to include in gross income any remaining income required to be taken into account by the temporary regulations in the taxable year of the disposition. The availability of this election allows a lessee or an ultimate credit claimant to account for any remaining required gross income inclusion in the taxable year in which the lease terminates or is otherwise disposed of or in which an ultimate credit claimant exits its investment.

This election is available only outside of the section 50(a) recapture period, and only if the lessee or the ultimate credit claimant was not already required to accelerate the gross income required to be included under §1.50-1T(b)(2) because of a recapture event during the recapture period. Additionally, a former partner or S corporation shareholder that no longer owns a direct or indirect interest in the lessee partnership or S corporation may not elect to accelerate the gross income required to be included under the temporary regulations at the time of a termination or disposition of the lease by the lessee partnership or S corporation. The appropriate time for a former partner or S corporation shareholder that is an ultimate credit claimant to elect income acceleration is the taxable year that it disposes of its entire interest in a lessee partnership or S corporation.

Summary of Comments and Explanation of Provisions

I. Reconsideration of the Special Rule for Partnerships and S Corporations

The temporary regulations (§1.50-1T(b)(3)) clarify that the gross income inclusion is not an item of partnership income or an item of S corporation income to which the rules of subchapter K or subchapter S apply. One commenter requested that the Treasury Department and the IRS reconsider the rules in §1.50-1T(b)(3) based on a concern that the operation of the rules will decrease the amount of investment that flows into the credit programs, which will result in less cash available for projects. The commenter also expressed a related concern that requiring credit claimants to identify and track the income inclusion will add additional complexity to the investments.

As explained in the preamble to the temporary regulations, because the investment credit and any limitations on the credit itself are determined at the partner or S corporation shareholder level it is appropriate that the income inclusion occurs at the partner or shareholder level. In the case of a partnership that owns the investment credit property, a partner in a partnership is treated as the taxpayer with respect to the partner's share of the basis of partnership investment credit property under §1.46-3(f)(1) and separately computes the investment credit based on its share of the partnership's basis in the investment credit property. Similarly, in the case of a lessee partnership where the lessor makes an election under §1.48-4 to treat the partnership as having acquired investment credit property, each partner in the lessee partnership is the taxpayer with respect to whom the investment credit is determined under section 46. Each partner in the lessee partnership will separately compute the investment credit based on each partner's share of the investment credit property. The credit is therefore computed at the partner level based on partner level limitations. Section 1.704-1(b)(4)(ii), which requires allocations with respect to the investment tax credit provided by section 38 to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or quali-

fied investment (as opposed to the investment credit itself, which is not determined at the partnership level) made in accordance with §1.46-3(f) shall be deemed to be made in accordance with the partners' interests in the partnership.

Under similar principles, in the case of a lessor that makes an election under §1.48-4 to treat a lessee S corporation as having acquired investment credit property, each shareholder in the lessee S corporation is the taxpayer with respect to whom the investment credit is determined under section 46. The credit is therefore computed at the S corporation shareholder level based on shareholder level limitations.

The Treasury Department and the IRS have determined that the burden of income inclusion should match the benefits of the allowable credit. Therefore, because the investment credit and any limitations on the credit are determined at the partner or shareholder level, these final regulations adopt the rule from the proposed regulations that provides that the gross income required to be ratably included is not an item of partnership income for purposes of subchapter K or an item of S corporation income for purposes of subchapter S. Accordingly, the basis adjustment rules that would apply if such gross income was an item of income under section 702 or section 1366, such as section 705(a) (providing for an increase in a partner's outside basis for items of partnership income) or section 1367(a) (providing for an increase in an S corporation shareholder's stock basis for items of S corporation income), do not apply.

When the temporary regulations were issued, the Treasury Department and the IRS were aware that some partnerships and S corporations had taken the position that this income is includible by the partnership or S corporation and that their partners or S corporation shareholders were entitled to increase their bases in their partnership interests or S corporation stock as a result of the income inclusion. The Treasury Department and the IRS determined that such basis increases are inconsistent with Congressional intent as they thwart the purpose of the income inclusion requirement in former section 48(d)(5)(B) and confer an unintended benefit upon partners and S corporation shareholders of lessee partnerships and

S corporations that is not available to any other credit claimant.

The investment credit rules operate to allow a taxpayer to claim the benefit of the credit in exchange for the recoupment of that amount (or 50 percent of that amount in the case of the section 48 energy credit) over time. Where the taxpayer claiming the credit owns the investment credit property, the basis reduction provided in section 50(c) results in reduced cost recovery deductions over the life of the property or the realization of gain (or a reduction in the amount of loss realized) upon the disposition of the property. In the case of a lessor that elects under §1.48-4 to treat the lessee of investment credit property as having acquired such property, §1.50-1T(b)(2) instead requires the lessee to ratably include this amount in gross income over the life of the property.

If that lessee is a partnership or an S corporation, however, some partnerships and S corporations contend that this income inclusion is treated as an item of partnership or S corporation income that entitles their partners or S corporation shareholders to a corresponding outside basis increase under section 705(a) or section 1367(a). If these partners or S corporation shareholders were entitled to an outside basis increase equal to their share of the income inclusion, they would be able to claim an offsetting loss (or reduce the amount of gain realized) upon the disposition of their partnership interests or S corporation shares.

As noted, the Treasury Department and the IRS have concluded that the income inclusion is not properly treated as an item of partnership income or of S corporation income. Nonetheless, had the Treasury Department and the IRS determined otherwise, the Treasury Department and the IRS have decided that in addition to being inconsistent with the purpose of section 48(d)(5)(B), allowing a basis increase for the income inclusion would also be inconsistent with the purpose of sections 705 and 1367. The income to be included is a notional amount, which has no current or future economic effect on the basis of assets held by a partnership or S corporation. In general, Congress intended for sections 705 and 1367 to preserve inside and outside basis parity for partnerships and S corporations so as

to prevent any unintended tax benefit or detriment to the partners or shareholders. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A225 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 384 (1954); H.R. Rep. No. 97-826, 97th Cong., 2d Sess. p. 17 (1982); S. Rep. No. 97-640, 97th Cong., 2d Sess. 16, 18 (1982); and Rev. Rul. 96-11 (1996-1 CB 140). Ultimately, the Treasury Department and the IRS have determined that, under any approach, allowing partners and S corporation shareholders a basis increase to offset the income inclusion required by the temporary regulations upon disposition of their partnership interests or S corporation shares is inappropriate, and that Congress did not intend to allow partners and S corporation shareholders the full benefit of the credit without any of the corresponding burden.

Additionally, the Treasury Department and the IRS are aware that one practitioner questioned whether the Supreme Court's holding in *U.S. v. Basye*, 410 U.S. 441 (1973), is contrary to the position taken in the temporary regulations that the notional income created under section 50(d)(5) is not an item of partnership income computed under section 703. In *Basye*, the partnership entered into a contractual arrangement whereby a portion of the payments it received for services rendered was redirected to a trust established for the benefit of the partnership's partner and non-partner physicians. The payments were not forfeitable by the partnership or recoverable by the payor upon the happening of any contingency. The Court held that because the payments represented compensation for services rendered by the partnership, the partnership was required to include them in current income and each partner was required to include his distributive share of those amounts in his income. The Court stated:

This conclusion rests on two familiar principles of income taxation, first, that income is taxed to the party who earns it and that liability may not be avoided through an anticipatory assignment of that income, and, second, that partners are taxable on their distributive or proportionate shares of current partnership income irrespective of whether that income is actually distributed to them.

Basye at 447-448.

The Treasury Department and the IRS believe that *Basye* is inapplicable to the determination that the notional income created under section 50(d)(5) is not an item of partnership income computed under section 703. Unlike the income at issue in *Basye*, the income created under section 50(d)(5) is not "earned" by the partnership. It has no economic effect as it is merely a notional item created to mimic the effect of the basis adjustment under former section 48(q) with respect to a lessee. Further, treating it as a partnership income item would generate an inappropriate basis increase to the partners under section 705 that would allow them to take a non-economic loss.

II. Basis Reduction Election

The temporary regulations (§1.50-1T(c)) allow a lessee or an ultimate credit claimant, under certain circumstances, to elect to accelerate the income inclusion outside of the section 50(a) recapture period (income acceleration election). This income acceleration election is available in the taxable year in which the lease terminates or is otherwise disposed of or when an ultimate credit claimant disposes of their entire interest in the partnership or the S corporation. One commenter requested that the final regulations permit the lessor and lessee of investment credit property, together with the ultimate credit claimant, to make an irrevocable "basis reduction election." This election would allow the lessor of investment credit property to reduce the basis of the property by the remaining amount of the ultimate credit claimant's income inclusion in lieu of requiring the ultimate credit claimant to continue to account for the income inclusion or make the income acceleration election. The commenter suggested that the "basis reduction election" be permitted after the recapture period when a lease termination occurs or when an ultimate credit claimant disposes of their entire interest in the partnership or S corporation. The commenter requested that the Treasury Department and the IRS adopt the "basis reduction election" based on policy considerations the Treasury Department and the IRS took into account when incorporating the income acceleration election in the temporary regulations.

As previously noted, the investment credit rules operate to allow a taxpayer to claim the benefit of the credit in exchange for the recoupment of that amount (or 50 percent of that amount in the case of the section 48 energy credit) over time. In the case of a lessee, in lieu of a basis adjustment, and similar to the rule contained in former section 48(d)(5)(B), the lessee (or an ultimate credit claimant) must include in gross income an amount equal to the amount of the credit (or 50 percent of the amount of the credit in the case of the energy credit under section 48) determined under section 46. The Treasury Department and the IRS did consider the administrative convenience and reduced reporting burden for taxpayers when permitting the income acceleration election. The Treasury Department and the IRS also determined that such an election is consistent with the applicable rules in former section 48(d)(5)(B), because a lessee (or an ultimate credit claimant) that benefitted from the credit is the appropriate party to recognize the gross income inclusion described in the statute.

The Treasury Department and the IRS have determined that the suggested "basis reduction election" is inconsistent with the applicable rules in former section 48(d)(5)(B) because the election would allow the lessee or ultimate credit claimant that recognized the benefit of the credit to transfer the burden of the offsetting income inclusion to the lessor. The suggested "basis reduction election" would essentially permit participants in investment credit leasing transactions to unwind the transactions after the section 50(a) recapture period. For these reasons, the Treasury Department and the IRS do not adopt this recommendation in the final regulations.

III. Amount of Credit Included Ratably in Gross Income

The temporary regulations (§§1.50-1T(b)(2) and (3)) require a lessee or an ultimate credit claimant to include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to that property, an amount equal to the amount of the credit (or 50 percent of the amount of the energy credit under section 48). The temporary regulations made applicable the rule

in former section 48(d)(5) that required the lessee of investment credit property to recognize the gross income inclusion over the shortest applicable recovery period under section 168. One commenter suggested that the final regulations allow a lessee or ultimate credit claimant to calculate the income inclusion based on the depreciation methods and conventions applicable to the underlying investment credit property. The commenter described an example where an owner-lessor of investment credit property elects to depreciate rental property over 40 years instead of over the usual 27½ year recovery period, and the lessee or ultimate credit claimant reports the offsetting income inclusion over the same 40-year period instead of the shortest recovery period. The commenter suggested that the approach is equitable and can be justified under the “rules similar to” language in section 50(d)(5), which provides that for purposes of the investment credit, rules similar to former section 48(d) apply.

The Treasury Department and the IRS have determined that the applicable rules from the temporary regulations (§§1.50-1T(b)(2) and (3)) are the correct interpretation of the language in section 50(d)(5). A rule that permits a lessee or ultimate credit claimant to calculate the income inclusion based on the depreciation methods and conventions applicable to the underlying investment credit property is dissimilar to the rule in former section 48(d)(5)(B), because it contradicts the plain language of the statute. Adopting a rule that would allow a lessor or an ultimate credit claimant to recognize the income inclusion over a longer recovery period would facilitate an inappropriate income deferral, and create additional reporting and monitoring burden. For these reasons, the Treasury Department and the IRS are not adopting this recommendation in the final regulations.

IV. Request for Comments in the Proposed Regulations

The preamble to the proposed regulations included a specific request for comments regarding whether guidance is needed to address the applicability of the income inclusion rules under section 50(d)(5) to trusts, estates, and/or electing large

partnerships. No comments were received in response to this request. However, the Treasury Department and the IRS are aware that, given the reference to electing large partnerships, some questioned how the temporary regulations would interact with the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015. Such guidance is beyond the scope of these final regulations.

V. Effective and Applicability Dates

The temporary regulations were effective on July 22, 2016, and applicable to investment credit property placed in service on or after the date that is 60 days after the date of filing in the **Federal Register** (September 19, 2016). The preamble to the temporary regulations states that the effective date of the regulations should not be construed to create any inference concerning the proper interpretation of section 50(d) prior to the effective date of the regulations. Both commenters requested that the final regulations clarify the treatment of pre-effective date transactions.

Both commenters also requested that the effective date be modified to limit the application of the rules for investment partnership transactions entered into in prior years. Both commenters noted that different portions of a project could be placed in service both before and after the effective date, because some historic rehabilitation projects involve multiple placed in service dates (for example, if a project involves renovating multiple buildings over a period of years). One commenter proposed to deem an entire project as placed in service on the first placed in service date when contemporaneous evidence shows that the project will include more than one building. The other commenter suggested that the effective date be based on timing of investment in the investment partnership, rather than the placed in service date.

The Treasury Department and the IRS do not adopt these recommendations in the final regulations. These final regulations are effective on July 17, 2019, and are applicable to investment credit property placed in service on or after September 19, 2016. Section 7805(b)(1)(B) provides that a final regulation may apply to a taxable period ending on or after the date on which a proposed or temporary regu-

lation to which the final regulation relates was filed with the **Federal Register**. The applicability date of the rules in the final regulations is September 19, 2016, the same date as the applicability date of the rules as set forth in the temporary regulations. Those regulations were issued as temporary regulations to address investment credit transactions in which partnerships and S corporations treated the income inclusion as an item of partnership or S corporation income that entitled their partners or S corporation shareholders to a corresponding outside basis increase under section 705(a) or section 1367(a). Such a basis increase would allow these partners or S corporation shareholders to claim an inappropriate loss (or reduce the amount of gain realized) upon the disposition of their partnership interests or S corporation shares. Revising the rules in accordance with commenters’ suggestions would conflict with the purpose of these regulations. Accordingly, the applicability date of the final regulations corresponds to the applicability date of the temporary regulations. Similar to the temporary regulations, the applicability date of these final regulations should not be construed to create any inference concerning the proper interpretation of section 50(d) prior to the applicability date of these regulations.

VI. Revenue Procedure 2014-12

As explained in the Effect on Other Documents section of TD 9776, the temporary regulations modified Revenue Procedure 2014-12 (2014-3 IRB 415). Because these final regulations remove the temporary regulations from the **Federal Register**, this Treasury decision includes an identical modification to Rev. Proc. 2014-12 in the Effect on Other Documents section. Rev. Proc. 2014-12 establishes the requirements under which the IRS will not challenge partnership allocations of section 47 rehabilitation credits by a partnership to its partners. Section 3 states that Rev. Proc. 2014-12 does not address how a partnership is required to allocate the income inclusion required by section 50(d)(5). Furthermore, section 4.07 of Rev. Proc. 2014-12 provides that, solely for purposes of determining whether a partnership meets the requirements of that section, the partnership’s allocation to its

partners of the income inclusion required by section 50(d)(5) shall not be taken into account.

Because §1.704-1(b)(4)(ii) provides that allocations of cost or qualified investment, and not the investment credit itself (which is not determined at the partnership level), made in accordance with §1.46-3(f) shall be deemed to be made in accordance with the partners' interests in a partnership, this Treasury decision modifies Rev. Proc. 2014-12 by changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2). Additionally, because §1.50-1(b)(3) provides that the gross income required to be included under section 50(d)(5) is not an item of partnership income to which the rules of subchapter K apply, this Treasury decision modifies Rev. Proc. 2014-12 by deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

VII. Recapture of the Rehabilitation Credit

These regulations finalize the rules described in §1.50-1T(c) that coordinate the credit recapture rules in section 50(a) with the income inclusion rules in §§1.50-1T(b) (2) and (3). These final regulations incorporate the rule from the temporary regulations requiring the lessee or ultimate credit claimant to make an adjustment to gross income for any discrepancies between the total amounts included in gross income under the income inclusion rules and the total unrecaptured credit. When the temporary regulations were published in 2016, section 47(a) provided that the rehabilitation credit was 20% of the qualified rehabilitation expenditures (QREs) with respect to a certified historic structure. Section 47(a) was amended by section 13402 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054, 2134 (TCJA). Section 47(a) (1) now provides that for any taxable year during the 5-year period beginning in the taxable year in which the qualified rehabilitated building is placed in service, the rehabilitation credit for the year is an amount equal to the ratable share. Section 47(a)(2) defines the ratable share as 20 percent of the qualified rehabilitation expenditures with respect to the qualified rehabilitated

building, as allocated ratably to each year during the period. The TCJA did not amend section 47(b), which provides that qualified rehabilitation expenditures with respect to any qualified rehabilitated building are taken into account for the taxable year in which the building is placed in service. These final regulations adopt the rules from the temporary regulations, but the Treasury Department and the IRS request comments addressing whether additional guidance under section 50(a) is needed to coordinate recapture of the rehabilitation credit.

Effect on Other Documents

Rev. Proc. 2014-12 (2014-3 IRB 415) is modified by: (1) changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2); and (2) deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

Statement of Availability of IRS Documents

Rev. Proc. 2014-12 (2014-3 IRB 415) is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

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. Therefore, a regulatory impact assessment is not required. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

No comments were received from the Small Business Administration.

Drafting Information

The principal authors of these temporary regulations are Barbara J. Campbell and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.50-1T to read in part as follows:

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

Par. 2. Section 1.50-1 is revised to read as follows:

§1.50-1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

(a) *In general.* Section 50(d)(5) provides that, for purposes of computing the investment credit, rules similar to the rules of former section 48(d) (relating to certain leased property) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388 (November 5, 1990))) apply. This section provides rules similar to the rules of former section 48(d)(5) that the Secretary has determined shall apply for purposes of determining the inclusion in gross income required when a lessor elects to treat a lessee as having acquired investment credit property.

(b) *Coordination with basis adjustment rules.* In the case of any property with respect to which an election is made under §1.48-4 by a lessor of investment credit

property to treat the lessee as having acquired the property—

(1) *Basis adjustment.* Section 50(c) does not apply with respect to such property.

(2) *Amount of credit included ratably in gross income—(i) In general.* A lessee of the property must include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to that property, an amount equal to the amount of the credit determined under section 46 with respect to that property. The ratable income inclusion under this paragraph begins on the date the investment credit property is placed in service and continues on each one year anniversary date thereafter until the end of the applicable recovery period. The lessee will include in gross income the amount of its credit determined under section 46 regardless of limitations on the amount of the credit allowed under section 38(c) based on the amount of the lessee's income tax.

(ii) *Special rule for the energy credit.* In the case of any energy credit determined under section 48(a), paragraph (b)(2)(i) of this section applies only to the extent of 50 percent of the amount of the credit determined under section 46.

(3) *Special rule for partnerships and S corporations—(i) In general.* For purposes of paragraph (b)(2) of this section, if the lessee of the property is a partnership (other than an electing large partnership) or an S corporation, the gross income includible under such paragraph is not an item of partnership income to which the rules of subchapter K of Chapter 1, subtitle A of the Code apply or an item of S corporation income to which the rules of subchapter S of Chapter 1, subtitle A of the Code apply. Any partner or S corporation shareholder that is an ultimate credit claimant (as defined in paragraph (b)(3)(ii) of this section) is treated as a lessee that must include in gross income the amounts required under paragraph (b)(2) of this section in proportion to the credit determined under section 46 with respect to such partner or S corporation shareholder.

(ii) *Definition of ultimate credit claimant.* For purposes of this section, the term *ultimate credit claimant* means any partner or S corporation shareholder that files (or that would file) Form 3468, "Invest-

ment Credit," with such partner's or S corporation shareholder's income tax return to claim an investment credit determined under section 46 with respect to such partner or S corporation shareholder.

(c) *Coordination with the recapture rules—(1) In general.* If section 50(a) requires an increase in the lessee's or the ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under §1.48-4, the lessee or the ultimate credit claimant is required to include in gross income an amount equal to the excess, if any, of the amount of the credit that is not recaptured over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property. Such amount is in addition to the amounts the lessee or the ultimate credit claimant previously included in gross income under paragraph (b)(2) of this section.

(2) *Income inclusion exceeds unrecaptured credit.* If section 50(a) requires an increase in the lessee's or ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under §1.48-4, the lessee's or the ultimate credit claimant's gross income shall be reduced by an amount equal to the excess, if any, of the total increases in gross income previously included under paragraph (b)(2) of this section over the amount of the credit that is not recaptured.

(3) *Special rule for the energy credit.* In the case of any energy credit determined under section 48(a), paragraphs (c)(1) and (2) of this section apply by substituting the phrase "50 percent of the amount of the credit that is not recaptured" for the phrase "the amount of the credit that is not recaptured."

(4) *Timing of income inclusion or reduction following recapture.* Any adjustment required by paragraphs (c)(1) and (2) of this section is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment credit property.

(d) *Election to accelerate income inclusion outside of the recapture period—*

(1) *In general.* If after the recapture period described in section 50(a), but prior to the expiration of the recovery period described in paragraph (b)(2) of this section, there is a lease termination, the lessee otherwise disposes of the lease, or a partner or S corporation shareholder that is an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a lessee partnership (other than an electing large partnership) or S corporation, the lessee, or, in the case of a partnership or S corporation, the ultimate credit claimant may irrevocably elect to take into account the remaining amount required to be included in gross income under this section in the taxable year of the disposition or termination.

(2) *Exceptions.* The election provided under paragraph (d)(1) of this section is not available to—

(i) Lessees or ultimate credit claimants required by paragraph (c) of this section to account for the remaining amount required to be included in gross income after accounting for recapture in the taxable year in which the property was disposed of or otherwise ceased to be investment credit property under section 50(a); or

(ii) Former partners or S corporation shareholders that own no interest, either direct or indirect, in a lessee partnership or S corporation at the time of a lease termination or disposition.

(3) *Manner and time for making election.* The election under paragraph (d)(1) of this section is made by including the remaining amount required to be included under this section in gross income in the taxable year of the lease termination or disposition or the disposition of the ultimate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation. The election must be made on or before the due date (including any extension of time) of the lessee's income tax return, or, in the case of a partnership or S corporation, the ultimate credit claimant's income tax return for the taxable year in which the lease termination or disposition or the disposition of the ultimate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation occurs.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

(1) *Example 1.* X, a calendar year C corporation, leases nonresidential real property from Y. The property is placed in service on October 1, 2016. Y elects under §1.48-4 to treat X as having acquired the property. X's investment credit determined under section 46 for 2016 with respect to such property is \$9,750. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat X as having acquired the property, Y does not reduce its basis in the property under section 50(c). Instead, X, the lessee of the property, must include ratably in gross income over 39 years an amount equal to the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 39 years beginning with 2016 is \$250 (\$9,750/39 year recovery period).

(2) *Example 2.* The facts are the same as in *Example 1* in paragraph (e)(1) of this section, except that instead of nonresidential real property, X leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. X's investment credit determined under section 46 for 2016 with respect to the property is \$9,750. The shortest recovery period that could be available to the property under section 168 is 5 years. X, the lessee of the property, must include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 5 years beginning with 2016 is \$975 (\$4,875/5 year recovery period).

(3) *Example 3.* A and B, calendar year taxpayers, form a partnership, the AB partnership, that leases nonresidential real property from Y. The property is placed in service on October 1, 2016. Y elects under §1.48-4 to treat the AB partnership as having acquired the property. A's investment credit determined under section 46 for 2016 is \$3,900 and B's investment credit determined under section 46 for 2016 is \$7,800 with respect to the property. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat the AB partnership as having acquired the property, Y does not reduce its basis in the building under section 50(c). Instead, A and B, the ultimate credit claimants, must include the amount of the credit determined with respect to A and B under section 46 ratably in gross income over 39 years, the shortest recovery period available with respect to such property. Therefore, A and B must include ratably in gross income over 39 years under paragraph (b)(2) of this section an amount equal to \$3,900 and \$7,800, respectively. Under paragraph (b)(2) of this section, A's increase in gross income for each of the 39 years beginning with 2016 is \$100 (\$3,900/39 year recovery period) and B's is \$200 (\$7,800/39 year recovery period). Because the gross income A and B are required to include under paragraph (b)(2) of this section is not an item of partnership income, the rules under subchapter K applicable to items of partnership income do not apply with respect to such income. In particular, A and B are not

entitled to an increase in the outside basis of their partnership interests under section 705(a) and are not entitled to an increase in their capital accounts under section 704(b).

(4) *Example 4.* The facts are the same as in *Example 3* in paragraph (e)(3) of this section, except that on January 1, 2019, the lease between AB partnership and Y terminates (Y retains ownership of the property), which is a recapture event under section 50(a). A's and B's income tax for 2019 is increased under section 50(a) by \$2,340 and \$4,680, respectively (60% of \$3,900 and \$7,800, respectively, assuming that the aggregate decrease in the credits allowed under section 38 was the full amount of the investment credits determined as to A and B under section 46). Therefore, the amount of the unrecaptured credit as to A and B is \$1,560 and \$3,120, respectively (40% of \$3,900 and \$7,800, respectively). The amounts that A and B previously included in gross income under paragraph (b)(2) of this section are \$300 (\$100 for each of 2016, 2017, and 2018) and \$600 (\$200 for each of 2016, 2017, and 2018), respectively. A and B are required under paragraph (c)(1) of this section to include in gross income an amount equal to the excess of the credit that is not recaptured (\$1,560 and \$3,120, respectively) over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property (\$300 and \$600, respectively). Therefore, A and B must include in gross income \$1,260 and \$2,520, respectively, in the taxable year of the lease termination (2019) in addition to the recapture amounts described above.

(5) *Example 5.* (i) The facts are the same as in *Example 4* in paragraph (e)(4) of this section, except that instead of nonresidential real property, the AB partnership leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. Because the shortest recovery period that could be available to the property under section 168 is 5 years, A and B are required under paragraph (b)(2)(ii) of this section to include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property (50% of \$3,900/5, or \$390, per year for A, and 50% of \$7,800/5, or \$780, per year for B).

(ii) The January 1, 2019 lease termination requires A's and B's income tax for 2019 to be increased under section 50(a) by \$2,340 and \$4,680, respectively (60% of \$3,900 and \$7,800, respectively). Therefore, the amount of the unrecaptured credit as to A and B is \$1,560 and \$3,120, respectively (40% of \$3,900 and \$7,800, respectively). Under paragraph (b)(2)(ii) of this section, the amounts A and B previously included in gross income are \$1,170 (\$390 for each of 2016, 2017, and 2018) and \$2,340 (\$780 for each of 2016, 2017, and 2018), respectively. A and B are entitled to a reduction in gross income under paragraph (c)(2) of this section equal to the excess of the total increases in gross income made under paragraph (b)(2)(ii) of this section (\$1,170 and \$2,340, respectively) over 50% of the amount of the credit that is not recaptured (\$780 and

\$1,560, respectively). Therefore, A and B are entitled to a reduction in gross income in the amount of \$390 and \$780, respectively, in the taxable year of the lease termination (2019).

(6) *Example 6.* (i) The facts are the same as in *Example 3* in paragraph (e)(3) of this section, except that on December 1, 2021, A sells its entire interest to C, and on January 1, 2022, the lease between AB partnership and Y terminates. At the time of the lease termination, B is still a partner in the AB partnership. There is no recapture event under section 50(a) because both the lease termination and the disposition of A's interest in the partnership occurred outside of the recapture period.

(ii) At the time that A sold its interest in the AB partnership to C, A had previously included \$500 (\$100 for each of 2016-2020) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, A must continue to include the remaining \$3,400 (including \$100 in 2021) in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, A may irrevocably elect to include the remaining \$3,400 in gross income in the taxable year that A sold its entire interest in the AB partnership to C (2021). Pursuant to paragraph (d)(2) of this section, A cannot make this election in the taxable year of the lease termination (2022).

(iii) At the time of the lease termination, B had previously included \$1,200 (\$200 for each of 2016-2021) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, B must continue to include the remaining \$6,600 required in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, B may irrevocably elect to include the remaining \$6,600 in gross income in the taxable year of the lease termination (2022).

(f) *Applicability date.* This section applies to property placed in service on or after September 19, 2016.

* * * * *

§1.50-1T [Removed]

Par. 3. Section 1.50-1T is removed.

Kirsten Wielobob
Deputy Commissioner for Services
and Enforcement.

Approved: June 21, 2019.

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

(Filed by the Office of the Federal Register on July 17, 2019, 4:15 p.m., and published in the issue of the Federal Register for July 19, 2019, 84 F.R. 34755).

Part III.

Additional Preventive Care Benefits Permitted to be Provided by a High Deductible Health Plan Under § 223

NOTICE 2019-45

PURPOSE

This notice expands the list of preventive care benefits permitted to be provided by a high deductible health plan (HDHP) under section 223(c)(2) of the Internal Revenue Code (Code) without a deductible, or with a deductible below the applicable minimum deductible (self-only or family) for an HDHP.

BACKGROUND

Section 223 of the Code permits eligible individuals to establish Health Savings Accounts (HSAs). Among the requirements to qualify as an eligible individual under section 223(c)(1) is that the individual be covered under an HDHP and have no disqualifying health coverage. Only eligible individuals under section 223(c)(1) are allowed to make contributions to an HSA or to receive contributions from an employer to their HSA. An HDHP is a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, under section 223(c)(2)(A), an HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Under section 223(c)(2)(C), “[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary).” There-

fore, an HDHP may provide preventive care benefits without a deductible or, subject to any applicable requirements under section 2713 of the Public Health Service Act (PHS Act), with a deductible below the minimum annual deductible otherwise required by section 223(c)(2)(A). To be a preventive care benefit as defined for purposes of section 223, the benefit must either be described as preventive care for purposes of section 1861 of the Social Security Act (SSA) or be determined to be preventive care in guidance issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS).¹

Notice 2004-23 (2004-1 C.B. 725), and Q&As 26 and 27 of Notice 2004-50 (2004-2 C.B. 196), provide guidance on preventive care benefits allowed to be provided by an HDHP without regard to the minimum deductible requirement of section 223(c)(2)(A). Notice 2004-23 clarifies that preventive care generally does not include any service or benefit intended to treat an existing illness, injury, or condition.

Notice 2013-57 (2013-40 I.R.B. 293) provides that any item that is a preventive service under section 2713 of the PHS Act will also be treated as preventive care under section 223(c)(2)(C) of the Code.

Section 1001 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010)(PPACA), added section 2713 to the PHS Act, requiring non-grandfathered group health plans and health insurance issuers offering group and individual health insurance coverage to provide benefits for certain preventive health services without imposing cost-sharing requirements.² The PPACA also added section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act, including section 2713, into ERISA and the Code. Guidance under section 2713 of the PHS Act is published jointly by the Tre-

sury Department and IRS and the Departments of Labor and Health and Human Services (HHS).

Notice 2004-50, Q&A 26, provides that any treatment incidental or ancillary to preventive care services described in Notice 2004-23 is within the preventive care safe harbor if it would be unreasonable or impracticable to perform another procedure to treat the condition. Notice 2004-50, Q&A 27, provides that drugs or medications are preventive care when taken by a person who has developed risk factors for a disease that has not manifested itself or become clinically apparent, or to prevent the reoccurrence of a disease from which a person has recovered.

Notice 2018-12 (2018-12 I.R.B. 441) clarified that benefits for male sterilization or male contraceptives are not preventive care under the SSA, and no applicable guidance issued by the Treasury Department and the IRS provides for including these benefits in the definition of preventive care within the meaning of section 223(c)(2)(C). Accordingly, subject to certain transition relief, the notice provides that a health plan that provides benefits for male sterilization or male contraceptives before satisfying the minimum deductible for an HDHP under section 223(c)(2)(A) does not constitute an HDHP, regardless of whether the coverage of such benefits is required by state law.

PREVENTIVE CARE AND CHRONIC CONDITIONS

The Treasury Department and the IRS have been directed to consider ways to expand the use and flexibility of HSAs and HDHPs consistent with the provisions of section 223 and the appropriate standard for preventive care under section 223(c)(2)(C). Specifically, on June 24, 2019, President Trump issued Executive Order 13877,³ “Improving Price and Quality Transparency in American Healthcare to Put Patients First,” including, among other things, an order that the Secretary

¹ The determination of whether an item or service is preventive care for these purposes is unrelated to the determination of whether an amount paid for an item or service is medical care under section 213(d) as an amount paid for the prevention of disease.

² 42 U.S.C. 300gg-13.

³ 84 FR 30849 (Jun. 27, 2019).

of Treasury, to the extent consistent with law, issue guidance to expand the ability of patients to select HDHPs that can be used alongside an HSA, and that cover low-cost preventive care, before the deductible, that helps maintain health status for individuals with chronic conditions. In response to Executive Order 13877, the Treasury Department and the IRS are issuing this notice. The Treasury Department and the IRS continue to consider appropriate standards for differentiating between services and items that would be considered preventive care for purposes of section 223(c)(2)(C) and those that would not.

As explained above, in prior guidance the Treasury Department and the IRS have stated that preventive care generally does not include any service or benefit intended to treat an existing illness, injury, or condition. However, the Treasury Department and the IRS are aware that the cost barriers for care have resulted in some individuals who are diagnosed with certain chronic conditions failing to seek or utilize effective and necessary care that would prevent exacerbation of the chronic condition. Failure to address these chronic conditions has been demonstrated to lead to consequences, such as amputation, blindness, heart attacks, and strokes that require considerably more extensive medical intervention.

The Treasury Department and the IRS, in consultation with HHS, have determined that certain medical care services received and items purchased, including prescription drugs, for certain chronic conditions should be classified as preventive care for someone with that chronic condition. These medical services and items are limited to the specific medical care services or items listed in the attached Appendix for the chronic conditions specified in the Appendix. In making this determination, the Treasury Department and IRS are exercising the Secretary's authority under section 223(c)(2)(C).

In determining that these particular medical services and items are classifiable as preventive care with respect to an individual with the relevant chronic condition, consistent with the structure and purposes of section 223, the Treasury Department and the IRS noted that each medical ser-

vice or item, when prescribed for an individual with the related chronic condition, evidences the following characteristics:

- The service or item is low-cost;
- There is medical evidence supporting high cost efficiency (a large expected impact) of preventing exacerbation of the chronic condition or the development of a secondary condition; and
- There is a strong likelihood, documented by clinical evidence, that with respect to the class of individuals prescribed the item or service, the specific service or use of the item will prevent the exacerbation of the chronic condition or the development of a secondary condition that requires significantly higher cost treatments.

These criteria were used in determining the particular services and items listed in the Appendix, but this notice does not expand the scope of preventive care beyond the list. Therefore, services or items that meet (or may meet) the criteria but are not on the list are not treated as preventive care as a result of this notice or on any other basis (but see the Effect On Other Documents section of this notice regarding the continued applicability of previous guidance).

The Treasury Department and the IRS, in consultation with HHS, will periodically review the list of preventive care services and items listed in the Appendix and similar services and items to determine whether additional services or items should be added or any should be removed from the list. The periodic review is expected to occur approximately every five to ten years to promote stability and to avoid confusion by participants in, or sponsors or providers of, HDHP arrangements.

LIST OF ADDITIONAL PREVENTIVE CARE SERVICES AND ITEMS FOR CHRONIC CONDITIONS THAT MAY BE TREATED AS PREVENTIVE CARE FOR PURPOSES OF SECTION 223(c)(2)(C)

The Treasury Department and the IRS consider benefits for services and items set forth in the Appendix to this notice as preventive care for purposes of section

223(c)(2)(C). These specified services and items are treated as preventive care only when prescribed to treat an individual diagnosed with the associated chronic condition specified in the Appendix, and only when prescribed for the purpose of preventing the exacerbation of the chronic condition or the development of a secondary condition. If an individual is diagnosed with more than one chronic condition, all listed services and items applicable to the two or more conditions are preventive care. However, services and items not listed in the Appendix that are for secondary conditions or complications that occur notwithstanding the preventive care are not treated as preventive care for purposes of section 223(c)(2)(C).

EFFECT ON OTHER DOCUMENTS

Any services and items that constitute preventive care under the guidance in Notice 2004-23, Notice 2004-50, and Notice 2013-57 continue to be treated as preventive care for purposes of section 223. Although this notice clarifies that benefits for the specified services and items for individuals with the specified chronic conditions listed in the Appendix are preventive care for purposes of section 223(c)(2)(C), it does not treat these services and items as preventive care required to be provided without cost sharing for purposes of section 2713 of the PHS Act. Accordingly, this notice does not affect the definition of preventive care provided in § 54.9815-2713.

EFFECTIVE DATE

This notice is effective as of July 17, 2019.

DRAFTING INFORMATION

The principal author of this notice is William Fischer of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Mr. Fischer at (202) 317-5500 (not a toll-free number).

APPENDIX

| Preventive Care for Specified Conditions | For Individuals Diagnosed with |
|---|--|
| Angiotensin Converting Enzyme (ACE) inhibitors | Congestive heart failure, diabetes, and/or coronary artery disease |
| Anti-resorptive therapy | Osteoporosis and/or osteopenia |
| Beta-blockers | Congestive heart failure and/or coronary artery disease |
| Blood pressure monitor | Hypertension |
| Inhaled corticosteroids | Asthma |
| Insulin and other glucose lowering agents | Diabetes |
| Retinopathy screening | Diabetes |
| Peak flow meter | Asthma |
| Glucometer | Diabetes |
| Hemoglobin A1c testing | Diabetes |
| International Normalized Ratio (INR) testing | Liver disease and/or bleeding disorders |
| Low-density Lipoprotein (LDL) testing | Heart disease |
| Selective Serotonin Reuptake Inhibitors (SSRIs) | Depression |
| Statins | Heart disease and/or diabetes |

NOTE. This revenue procedure will be reproduced as the next revision of IRS Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3.

26 CFR 601.602: Tax forms and instructions.

(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041-1, 1.6041-2, 31.6051-1, 31.6051-2, 31.6071(a)-1, 31.6081(a)-1, 31.6091-1.)

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Part 1
General

Section 1.1 – Purpose

.01 The purpose of this revenue procedure is to state the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2019 calendar year.

.02 For purposes of this revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers also should refer to the 2019 General Instructions for Forms W-2 and W-3 for details on how to complete these forms. See Section 3.4 for information on obtaining the official IRS forms and instructions. See Sections 2.3 and 2.4 for requirements for the copies of substitute forms furnished to employees and for electronic delivery of employee copies.

.03 For purposes of this revenue procedure, the official IRS-printed red dropout ink Forms W-2 (Copy A) and W-3, and their exact substitutes, are referred to as “red-ink.” The SSA-approved black-and-white Forms W-2 (Copy A) and W-3 are referred to as “substitute black-and-white Copy A” and “substitute black-and-white W-3” forms.

Any questions about the red-ink Form W-2 (Copy A) and Form W-3 and the substitute employee statements should be emailed to Substituteforms@irs.gov. Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP
1111 Constitution Ave. NW Room 6550
Washington, DC 20224

Any questions about the black-and-white Copy A and W-3 forms should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
Direct Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 341
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Note. You should receive a response from either the IRS or the SSA within 30 days.

.04 Some Forms W-2 that include logos, slogans, and advertisements (including advertisements for tax preparation software) may be considered as suspicious or altered Forms W-2 (also known as “questionable Forms W-2”). An employee may not recognize the importance of the employee copy for tax reporting purposes due to the use of logos, slogans, and advertisements. Thus, the IRS has determined that logos, slogans, and advertising will not be allowed on Copy A of Forms W-2, Forms W-3, or any employee copies reporting wages, with the following exceptions for the employee copies.

- Forms may include the exact name of the employer or agent, primary trade name, trademark, service mark, or symbol of the employer or agent.
- Forms may include an embossment or watermark on the information return (and copies) that is a representation of the name, a primary trade name, trademark, service mark, or symbol of the employer or agent.
- Presentation may be in any typeface, font, stylized fashion, or print color normally used by the employer or agent, and used in a nonintrusive manner.
- These items must not materially interfere with the ability of the recipient to recognize, understand, and use the tax information on the employee copies.

The IRS e-file logo on the IRS official employee copies may be included, but it is not required, on any of the substitute form copies.

The information return and employee copies must clearly identify the employer's name associated with its employer identification number.

Logos and slogans may be used on permissible enclosures, such as a check or account statement, but not on information returns and employee copies.

Forms W-2 and W-3 are subject to annual review and possible change. This revenue procedure may be revised to state other requirements of the IRS and the SSA regarding the preparation and use of substitute forms for Form W-2 and Form W-3 for wages paid during the 2019 calendar year at a future date. If you have comments about the restrictions on including logos, slogans, and advertising on information returns and employee copies, send or email your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:P:TP, 1111 Constitution Ave. NW, Room 6550, Washington, DC 20224, or Substituteforms@irs.gov.

.05 The Internal Revenue Service/Information Returns Branch (IRS/IRB) maintains a centralized customer service call site to answer questions related to information returns (Forms W-2, W-3, W-2c, W-3c, 1099 series, 1096, etc.).

You can reach the call site at 866-455-7438 (toll free) or 304-263-8700 (not a toll-free number). Persons with a hearing or speech disability with access to Telecommunication Device for the Deaf (TDD) can call 304-579-4827 (not a toll-free number). You also may email questions to mccirp@irs.gov. Do not submit employee information via email because it is not secure and the information may be compromised.

File paper or electronic Forms W-2 (Copy A) with the SSA. IRS/IRB does not process Forms W-2 (Copy A). However, IRS/IRB does process Form 8508, Request for Waiver From Filing Information Returns Electronically, and Form 8809, Application for Extension of Time To File Information Returns, for Forms W-2 (Copy A) and requests for an extension of time to furnish the employee copies of Form W-2. See Publication 1220, Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, for information on waivers and extensions of time.

.06 The following form instructions and publications provide more detailed filing procedures for certain information returns.

- General Instructions for Forms W-2 and W-3 (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c).
- Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Section 1.2 – What’s New

.01 Box 9 Verification code. The Verification code pilot program has ended. Box 9 is no longer in use.

.02 Editorial changes. We made editorial changes. Redundancies were eliminated as much as possible.

Section 1.3 – General Rules for Paper Forms W-2 and W-3

.01 Employers not filing electronically must file paper Forms W-2 (Copy A) along with Form W-3 with the SSA by using either the official IRS form or a substitute form that exactly meets the specifications shown in Parts 2 and 3 of this revenue procedure.

Note. Substitute territorial forms (W-2AS, W-2GU, W-2VI, W-3SS) also must conform to the specifications as outlined in this revenue procedure. These forms require the form designation (“W-2AS,” “W-2GU,” “W-2VI”) on Copy A to be in black ink. If you are an employer in the Commonwealth of the Northern Mariana Islands, you must contact Department of Finance, Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, P.O. Box 5234 CHR, Saipan, MP 96950 or www.cnmidof.net to get Form W-2CM and instructions for completing and filing the form. For information on Forms 499R-2/W-2PR, go to www.hacienda.gobierno.pr.

Employers may design their own statements to furnish to employees. Employee statements designed by employers must comply with the requirements shown in Parts 2 and 3.

.02 Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the substitute black-and-white Copy A and W-3 forms need to be submitted to the SSA for approval, prior to their use (see Section 2.2).

.03 As in the past, SSA-approved black-and-white Copy A and Form W-3 may be generated using a printer by following all guidelines and specifications (also see Section 2.2). In general, regardless of the method of entering data, use black ink on Forms W-2 and W-3, which provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and may result in delays or errors in the processing of Forms W-2 (Copy A) and W-3. The printing of the data should be centered within the boxes. The size of the variable data must be printed in a font no smaller than 10-point.

Note. With the exception of the identifying number, the year, the form number for Form W-3, and the corner register marks, the preprinted form layout for the red-ink Forms W-2 (Copy A) and W-3 must be in Flint J-6983 red OCR dropout ink or an exact match.

.04 Substitute forms filed with the SSA and substitute copies furnished to employees that do not conform to these specifications are unacceptable. Penalties may be assessed for not complying with the form specifications. Forms W-2 (Copy A) and W-3 filed with the SSA that do not conform may be returned.

.05 Substitute red-ink forms should not be submitted to either the IRS or the SSA for specific approval. If you are uncertain of any specification and want clarification, do the following.

- Submit a letter or email to the appropriate address in Section 1.1 citing the specification.
- State your understanding of the specification.
- Enclose an example (if appropriate) of how the form would appear if produced using your understanding. Do not use actual employee information in the example.
- Be sure to include your name, complete address, and phone number with your correspondence. If you want the IRS to contact you via email, also provide your email address.

.06 Any questions about the specifications, especially those for the red-ink Form W-2 (Copy A) and Form W-3, should be emailed to Substituteforms@irs.gov.

Please enter “Substitute Forms” on the subject line. Or send your questions to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:P:TP
1111 Constitution Ave. NW Room 6550
Washington, DC 20224

Any questions about the substitute black-and-white Copy A and W-3 should be emailed to copy.a.forms@ssa.gov or sent to:

Social Security Administration
Direct Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 341
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Note. You should receive a response within 30 days from either the IRS or the SSA.

.07 Forms W-2 and W-3 are subject to annual review and possible change. Therefore, employers are cautioned against overstocking supplies of privately printed substitutes.

.08 Separate instructions for Forms W-2 and W-3 are provided in the 2019 General Instructions for Forms W-2 and W-3. Form W-3 should be used only to transmit paper Forms W-2 (Copy A). Form W-3 is a single sheet including only essential filing information. Be sure to make a copy of your completed Form W-3 for your records. You can order current year official IRS Forms W-2, W-2AS, W-2GU, W-2VI, W-3, and W-3SS, and the 2019 General Instructions for Forms W-2 and W-3, online at www.irs.gov/OrderForms. The IRS provides only cut sheet sets of Forms W-2 and cut sheets of Form W-3.

.09 Because substitute Forms W-2 (Copy A) and W-3 are machine-imaged and scanned by the SSA, the forms must meet the same specifications as the official IRS Forms W-2 and W-3 (as shown in the exhibits).

Section 1.4 – General Rules for Filing Forms W-2 (Copy A) Electronically

.01 Employers must file Forms W-2 (Copy A) with the SSA electronically if they are required to file 250 or more for a calendar year unless the IRS grants a waiver. For details, see the 2019 General Instructions for Forms W-2 and W-3. The SSA publication EFW2, Specifications for Filing Forms W-2 Electronically, contains specifications and procedures for electronic filing of Form W-2 information with the SSA. Employers are cautioned to obtain the most recent revision of EFW2 (and supplements) in case there are any subsequent changes in specifications and procedures.

.02 You may obtain a copy of the EFW2 by:

- Accessing the SSA website at www.ssa.gov/employer/EFW2&EFW2C.htm.

.03 Electronic filers do not file a paper Form W-3. See the SSA publication EFW2 for guidance on transmitting Form W-2 (Copy A) information to SSA electronically.

.04 Employers filing fewer than 250 Forms W-2 are encouraged to electronically file Forms W-2 (Copy A) with the SSA. Doing so will enhance the timeliness and accuracy of forms processing. You may visit the SSA's employer website at www.ssa.gov/employer. This helpful site has links to Business Services Online (BSO) and tutorials on registering and using BSO to file your Forms W-2.

.05 Employers who do not comply with the electronic filing requirements for Form W-2 (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2 information with the SSA electronically must not send the same data to the SSA on paper Forms W-2 (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

Part 2
Specifications for Substitute Forms W-2 and W-3

Section 2.1 – Specifications for Red-Ink Substitute Form W-2 (Copy A) and Form W-3 Filed With the SSA

.01 The official IRS-printed red dropout ink Form W-2 (Copy A) and W-3 and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2 (Copy A) and W-3 with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

Note. Even the slightest deviation can result in incorrect scanning, and may affect money amounts reported for employees.

.02 Paper used for cut sheets and continuous-pinfed forms for substitute Form W-2 (Copy A) and Form W-3 that are to be filed with the SSA must be white 100% bleached chemical wood, 18-20 pound paper only, optical character recognition (OCR) bond produced in accordance with the following specifications.

| | |
|--|-------|
| • Acidity: Ph value, average, not less than | 4.5 |
| • Basis weight: 17 x 22 inch 500 cut sheets, pound | 18-20 |
| • Metric equivalent—gm./sq. meter (a tolerance of +5 pct. is allowed) | 68-75 |

| | |
|---|----------|
| • Stiffness: Average, each direction, not less than—milligrams | |
| Cross direction | 50 |
| Machine direction | 80 |
| • Tearing strength: Average, each direction, not less than—grams | 40 |
| • Opacity: Average, not less than—percent | 82 |
| • Reflectivity: Average, not less than—percent | 68 |
| • Thickness: Average—inch | 0.0038 |
| Metric equivalent—mm | 0.097 |
| (a tolerance of +0.0005 inch (0.0127 mm) is allowed). Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other. | |
| • Porosity: Average, not less than—seconds | 10 |
| • Finish (smoothness): Average, each side—seconds | 20-55 |
| (for information only) the Sheffield equivalent—units | 170-d200 |
| • Dirt: Average, each side, not to exceed—parts per million | 8 |

Note. Reclaimed fiber in any percentage is permitted, provided the requirements of this standard are met.

.03 All printing of red-ink substitute Forms W-2 (Copy A) and W-3 must be in Flint red OCR dropout ink except as specified below. The following must be printed in nonreflective black ink.

- Identifying number “22222” or “33333” at the top of the forms.
- Tax year at the bottom of the forms.
- The four (4) corner register marks on the forms.
- The form identification number (“W-3”) at the bottom of Form W-3.
- All the instructions below Form W-3 beginning with “Send this entire page....” line to the bottom of Form W-3.

.04 The vertical and horizontal spacing for all federal payment and data boxes on Forms W-2 and W-3 must meet specifications. On Form W-3 and Form W-2 (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.

.05 The official red-ink Form W-3 and Form W-2 (Copy A) are 7.50 inches wide. Employers filing Forms W-2 (Copy A) with the SSA on paper also must file a Form W-3. Form W-3 must be the same width (7.50 inches) as the Form W-2. One Form W-3 is printed on a standard size, 8.5 x 11-inch page. Two official Forms W-2 (Copy A) are contained on a single 8.5 x 11-inch page (exclusive of any snap-stubs).

.06 The top, left, and right margins for the Form W-2 (Copy A) and Form W-3 are 0.50 inches (1/2 inch). All margins must be free of printing except for the words “DO NOT STAPLE” on red-ink Form W-3. The space between the two Forms W-2 (Copy A) is 1.33 inches.

.07 The identifying numbers are “22222” for Form W-2 (Copies A (and 1)) and “33333” for Form W-3. No printing should appear anywhere near the identifying numbers.

Note. The identifying number must be printed in nonreflective black ink in OCR-A font of 10 characters per inch.

.08 The depth of the individual scannable image on a page must be the same as that on the official IRS forms. The depth from the top line to the bottom line of an individual Form W-2 (Copy A) must be 4.17 inches and the depth from the top line to the bottom line of Form W-3 must be 4.67 inches.

.09 Continuous-pinfed Forms W-2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W-2 (Copy A) are filed with the SSA. The two Forms W-2 (Copy A) on the 11-inch page must not be separated (only the pages are to be separated (burst)). The words “Do Not Cut, Fold, or Staple Forms on This Page” must be printed twice between the two Forms W-2 (Copy A) in Flint red OCR dropout ink. All other copies (Copies 1, B, C, 2, and D) must be able to be distinguished and separated into individual forms.

.10 Box 12 of Form W-2 (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2 to report the additional items (see “Multiple forms” in the 2019 General Instructions for Forms W-2 and W-3). Do not report the same federal tax data to the SSA on more than one Form W-2 (Copy A). However, repeat the identifying information (employee’s name, address, and SSN; employer’s name, address, and EIN) on each additional form.

.11 The checkboxes in box 13 of Form W-2 (Copy A) and in box b of Form W-3 must be 0.14 inches each. The space before the first checkbox is 0.24 inches; the space between the first and second checkbox and between the second and third checkbox must be 0.36 inches; the space between the third checkbox to the right border of box 13 should be 0.32 inches (see Exhibit A).

Note. More than 50% of an applicable checkbox must be covered by an “X.”

.12 All substitute Forms W-2 (Copy A) and W-3 in the red-ink format must have the tax year, form number, and form title printed on the bottom face of each form using type identical to that of the official IRS form. The red-ink substitute Form W-2 (Copy A) and Form W-3 must have the form producer’s EIN entered directly to the left of “Department of the Treasury,” in red.

.13 The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed in Flint red OCR dropout ink in the same location as on the official Form W-2 (Copy A). The words “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” must be printed at the bottom of the page of Form W-3 in black ink.

.14 The Office of Management and Budget (OMB) Number must be printed on substitute Forms W-3 and W-2 (on each ply) in the same location as on the official IRS forms.

.15 All substitute Forms W-3 must include the instructions that are printed on the same sheet below the official IRS form.

.16 The back of substitute Form W-2 (Copy A) and Form W-3 must be free of all printing.

.17 All copies must be clearly legible. Fading must be minimized to assure legibility.

.18 Chemical transfer paper is permitted for Form W-2 (Copy A) only if the following standards are met.

- Only chemically backed paper is acceptable for Form W-2 (Copy A). Front and back chemically treated paper cannot be processed properly by scanning equipment.
- Chemically transferred images must be black.
- Carbon-coated forms are not permitted.

.19 The Government Printing Office (GPO) symbol and the Catalog Number (Cat. No.) must be deleted from substitute Form W-2 (Copy A) and Form W-3.

Section 2.2 – Specifications for Substitute Black-and-White Copy A and W-3 Forms Filed With the SSA

.01 The SSA-approved substitute black-and-white Forms W-2 (Copy A) and W-3 are referred to as substitute black-and-white Copy A and W-3. Specifications for the substitute black-and-white Copy A and W-3 are similar to the red-ink forms (Section 2.1) except for the items that follow (see Exhibits D and E). Exhibits are samples only and must not be downloaded to meet tax obligations.

1. Forms must be printed on 8.5 x 11-inch single-sheet paper only. There must be two Forms W-2 (Copy A) printed on a page. There must be no horizontal perforations between the two Forms W-2 (Copy A) on each page.
2. All forms and data must be printed in nonreflective black ink only.
3. The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.
4. The forms must not contain corner register marks.
5. The forms must not contain any shaded areas, including those boxes that are entirely shaded on the red-ink forms.
6. Identifying numbers on both Form W-2 (“22222”) and Form W-3 (“33333”) must be preprinted in 14-point Arial bold font or a close approximation.
7. The form numbers (“W-2” and “W-3”) must be in 18-point Arial font or a close approximation. The tax year (for example, “2019”) on Forms W-2 (Copy A) and W-3 must be in 20-point Arial font or a close approximation.
8. No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.
9. Do not print any information in the margins of the substitute black-and-white Copy A and W-3 forms (for example, do not print “DO NOT STAPLE” in the top margin of Form W-3).
10. The word “Code” must not appear in box 12 on Form W-2 (Copy A).
11. A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/9876) must appear in 12-point Arial font, or a close approximation, under the tax year, in place of the Cat. No. on Form W-2 (Copy A) and in the bottom right corner of the “For Official Use Only” box at the bottom of Form W-3. Do not display the form producer’s EIN to the left of “Department of the Treasury.” The vendor code will be used to identify the form producer.
12. Do not print Catalog Numbers (Cat. No.) on either Form W-2 (Copy A) or Form W-3.
13. Do not print the checkboxes in:
 - Box 13 of Form W-2 (Copy A). The “X” should be programmed to be printed and centered directly below the applicable box title.

14. Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

15. The space between the two Forms W-2 (Copy A) is 1.33 inches.

.02 You must submit samples of your substitute black-and-white Copy A and W-3 forms to the SSA. Only black-and-white substitute Forms W-2 (Copy A) and W-3 for tax year 2019 will be accepted for approval by the SSA. Questions regarding other red-ink forms (that is, red-ink Forms W-2c, W-3c, 1099 series, 1096, etc.) must be directed to the IRS only.

.03 You will be required to send one set of blank and one set of dummy-data substitute black-and-white Copy A and W-3 forms for approval. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

.04 To receive approval, you may first contact the SSA at copy.a.forms@ssa.gov to obtain a template and further instructions. You may send your 2019 sample substitute black-and-white Copy A and W-3 forms to:

Social Security Administration
Direct Operations Center
Attn: Substitute Black-and-White Copy A Forms, Room 341
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Send your sample forms via private mail carrier or certified mail in order to verify their receipt. You can expect approval (or disapproval) by the SSA within 30 days of receipt of your sample forms.

.05 Vendor codes from the **National Association of Computerized Tax Processors (NACTP)** are required by those companies producing the W-2 family of forms as part of a product for resale to be used by multiple employers and payroll professionals. Employers developing Forms W-2 or W-3 to be used only for their individual company **require a vendor code issued by the Social Security Administration.**

.06 The 4-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted on the sample substitute black-and-white Copy A and W-3 forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you have a valid vendor code provided to you through the NACTP, you should use that code. If you do not have a valid vendor code, contact the Social Security Administration at copy.a.forms@ssa.gov to obtain an SSA-issued code. (Additional information on vendor codes may be obtained from the SSA or the NACTP via email at president@nactp.org.)

.07 **If you use forms produced by a vendor and have questions concerning approval**, do not send the forms to the SSA for approval. Instead, you may contact the software vendor to obtain a copy of SSA's dated approval notice supplied to that vendor.

.08 In response to feedback from the user community, the SSA (and the IRS) have added a 2-D barcoded version for the substitute Form W-2 and Form W-3 to the list of acceptable submission formats. This version is an optional alternative to the nonbarcoded substitute Forms W-2 and W-3. Both versions are fully supported by the SSA. At this time, neither the IRS nor the SSA mandates the use of 2-D barcoded substitute forms.

Note. The data contained in the barcode must not differ from the data displayed on the form. If they differ, the data in the barcode will be ignored and the data displayed on the form will be considered the submission. This also occurs when the barcode is not read correctly. The information on the form needs to be manually keyed into the database.

To get the barcode information:

- See the SSA's BSO website at www.ssa.gov/bso,
- Get the PDF version of the specifications at copy.a.forms@ssa.gov, and
- Download the substitute W3/W2 2-D barcoding standards from www.ssa.gov/employer/sub-BarCodeStd.pdf.

If you are using a form produced by another vendor that contains a 2-D barcode, you must submit the form for approval using your own NACTP code. Prior to sending your first submission for approval, contact the SSA at copy.a.forms@ssa.gov to register your NACTP code and explain what forms you want to submit.

Section 2.3 – Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2)

Note. Rules in Section 2.3 apply only to employee copies of Form W-2 (Copies B, C, and 2). Printers are cautioned that the paper filers who send Forms W-2 (Copy A) to the SSA must follow the requirements in Sections 2.1 and/or 2.2 above.

.01 All employers (including those who file electronically) must furnish employees with at least two copies of Form W-2 (three or more for employees required to file a state, city, or local income tax return). The following rules are guidelines for preparing employee copies.

The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of four items in box 12 of Form W-2 applies only to Copy A, which is filed with the SSA.

Note. Employee copies (Copies B, C, and 2 of Form W-2) may be furnished electronically if employees give their consent (as described in Treasury Regulations *Section 31.6051-1(j)*). See also Publication 15-A, Employer's Supplemental Tax Guide.

.02 The minimum dimensions for employee copies only (not Copy A) of Form W-2 should be 2.67 inches deep by 4.25 inches wide. The maximum dimensions should be no more than 6.50 inches deep by no more than 8.50 inches wide.

Note. The maximum and minimum size specifications in this document are for tax year 2019 only and may change in future years.

.03 Either horizontal or vertical format is permitted (see Exhibit F).

.04 The paper for all copies must be white and printed in black ink. The substitute Copy B, which employees are instructed to attach to their federal income tax returns, should be at least 9-pound paper (basis 17 x 22-500). Other copies furnished to employees also should be at least 9-pound paper (basis 17 x 22-500) unless a state, city, or local government provides other specifications.

.05 Employee copies of Form W-2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, must be easily separated. The best method of separation is to provide perforations between the individual copies. Whatever method of separation is used, each copy should be easily distinguished.

Note. Perforation does not apply to printouts of copies of Forms W-2 that are furnished electronically to employees (as described in Treasury Regulations *Section 31.6051-1(j)*). However, these employees should be cautioned to carefully separate the copies of Form W-2. See Publication 15-A for information on electronically furnishing Forms W-2 to employees.

.06 Interleaved carbon and chemical transfer paper employee copies must be clearly legible. Fading must be minimized to assure legibility.

.07 The electronic tax logo on the IRS official employee copies is not required on any of the substitute form copies. To avoid confusion and questions by employees, employers are encouraged to delete the identifying number (“22222”) from the employee copies of Form W-2.

.08 All substitute employee copies must contain boxes, box numbers, and box titles that match the official IRS Form W-2. Boxes that do not apply can be deleted. However, certain core boxes must be included. The placement, numbering, and size of this information is specified as follows.

- The core boxes must be printed in the exact order shown on the official IRS form. The items and box numbers that constitute the core data are:

Box 1 — Wages, tips, other compensation,

Box 2 — Federal income tax withheld,

Box 3 — Social security wages,

Box 4 — Social security tax withheld,

Box 5 — Medicare wages and tips, and

Box 6 — Medicare tax withheld.

- The core data boxes (1 through 6) must be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form. Boxes or other information definitely will not be permitted to the right of the core data.
- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper right.
- Boxes 1 through 6 must each be a minimum of 1 $\frac{1}{8}$ inches wide x $\frac{1}{4}$ inch deep.
- Other required boxes are:
 - a) Employee’s social security number,
 - b) Employer identification number (EIN),
 - c) Employer’s name, address, and ZIP code,
 - e) Employee’s name, and
 - f) Employee’s address and ZIP code.

Identifying items must be present on the form and be in boxes similar to those on the official IRS form. However, they may be placed in any location other than the top or upper right. You do not need to use the lettering system (a-c, e-f) used on the official IRS form. The employer identification number (EIN) may be included with the employer’s name and address and not in a separate box.

Note. Box d (“Control number”) is not required.

.09 All copies of Form W-2 furnished to employees must clearly show the form number, the form title, and the tax year prominently displayed together in one area of the form. The title of Form W-2 is “Wage and Tax Statement.” It is recommended (but not required) that this be located on the bottom left of substitute Forms W-2. The reference to the “Department of the Treasury — Internal Revenue Service” must be on all copies of substitute Forms W-2 furnished to employees. It is recommended (but not required) that this be located on the bottom right of Form W-2.

.10 If the substitute employee copies are labeled, the forms must contain the applicable description.

- “Copy B, To Be Filed With Employee’s FEDERAL Tax Return.”
- “Copy C, For EMPLOYEE’S RECORDS.”
- “Copy 2, To Be Filed With Employee’s State, City, or Local Income Tax Return.”

It is recommended (but not required) that these be located on the lower left of Form W-2. If the substitute employee copies are not labeled as to the disposition of the copies, then written notification using similar wording must be provided to each employee.

.11 The tax year (for example, 2019) must be clearly printed on all copies of substitute Form W-2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W-2. The use of 24-pt. OCR-A font is recommended (but not required).

.12 Boxes 1 and 2 (if applicable) on Copy B must be outlined in bold 2-point rule or highlighted in some manner to distinguish them. If “Allocated tips” are being reported, it is recommended (but not required) that box 8 also be outlined. If reported, “Social security tips” (box 7) must be shown separately from “Social security wages” (box 3).

Note. Boxes 8 and 9 may be omitted if not applicable.

.13 If employers are required to withhold and report state or local income tax, the applicable boxes also are considered core information and must be placed at the bottom of the form. State information is included in:

- Box 15 (State, Employer’s state ID number)
- Box 16 (State wages, tips, etc.)
- Box 17 (State income tax)

Local information is included in:

- Box 18 (Local wages, tips, etc.)
- Box 19 (Local income tax)
- Box 20 (Locality name)

.14 Boxes 7 through 14 may be omitted from substitute employee copies unless the employer must report any of that information to the employee. For example, if an employee did not have “Social security tips” (box 7), the form could be printed without that box. But if an employer provided dependent care benefits, the amount must be reported separately, shown in box 10, and labeled “Dependent care benefits.”

.15 Employers may enter more than four codes in box 12 of substitute Copies B, C, and 2 (and 1 and D) of Form W-2, but each entry must use Codes A-HH (see the 2019 General Instructions for Forms W-2 and W-3).

.16 If an employer has employees in any of the three categories in box 13, all checkbox headings must be shown and the proper checkmark made, when applicable.

.17 Employers may use box 14 for any other information that they wish to give to their employees. Each item must be labeled. (See the instructions for box 14 in the 2019 General Instructions for Forms W-2 and W-3.)

.18 The front of Copy C of a substitute Form W-2 must contain the note “This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.”

.19 Instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 must be provided to each employee. An employer may modify or delete instructions that do not apply to its employees. (For example, remove Railroad Retirement Tier 1 and Tier 2 compensation information for nonrailroad employees or information about dependent care benefits that the employer does not provide.)

.20 Employers must notify their employees who have no income tax withheld that they may be able to claim a tax refund because of the earned income credit (EIC). They will meet this notification requirement if they furnish a substitute Form W-2 with the EIC notice on the back of Copy B, IRS Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or on their own statement containing the same wording. They also may change the font on Copies B, C, and 2 so that the EIC notification and Form W-2 instructions fit differently. For more information about notification requirements, see Notice 1015, “Have You Told Your Employees About the Earned Income Credit (EIC)?”

Note. An employer does not have to notify any employee who claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate, for the calendar year.

Section 2.4 – Electronic Delivery of Form W-2 and W-2c Recipient Statements

.01 If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms W-2 and W-2c.

If you meet the requirements listed below, you are treated as furnishing the statement timely.

.02 The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after any new hardware or software is put into service.

To furnish Forms W-2 electronically, you must meet the following disclosure requirements as described in Treasury Regulations *Section 31.6051-1(j)* and Publication 15-A and provide a clear and conspicuous statement of each requirement to your employees.

- The employee must be informed that he or she will receive a paper Form W-2 if consent isn't given to receive it electronically.
- The employee must be informed of the scope and duration of the consent.
- The employee must be informed of any procedure for obtaining a paper copy of his or her Form W-2 and whether or not the request for a paper statement is treated as a withdrawal of his or her consent to receiving his or her Form W-2 electronically.
- The employee must be notified about how to withdraw a consent and the effective date and manner by which the employer will confirm the withdrawn consent.
- The employee also must be notified that the withdrawn consent doesn't apply to the previously issued Forms W-2.
- The employee must be informed about any conditions under which electronic Forms W-2 will no longer be furnished (for example, termination of employment).
- The employee must be informed of any procedures for updating his or her contact information that enables the employer to provide electronic Forms W-2.
- The employer must notify the employee of any changes to the employer's contact information.

.03 Additionally, you must:

- Ensure the electronic format complies with the guidelines in this document and contains all the required information described in the 2019 General Instructions for Forms W-2 and W-3.
- If posting the statement on a website, post it for the recipient to access on or before the January 31 due date through October 15 of that year.
- Inform the recipient in person, electronically, or by mail, of the posting and how to access and print the statement.

Part 3 **Additional Instructions**

Section 3.1 – Additional Instructions for Form Printers

.01 If paper copies are used for filing with the SSA, the substitute copies of Forms W-2 (either red-ink or substitute black-and-white forms) must be assembled in the same order as the official IRS Forms W-2. Copy A must be first, followed sequentially by perforated sets (Copies 1, B, C, 2, and D).

.02 The substitute form to be filed by the employer with the SSA must carry the designation "Copy A."

Note. Electronic filers do not submit either red-ink or substitute black-and-white paper Form W-2 (Copy A) or Form W-3 to the SSA.

.03 Employers must retain a copy of Forms W-2 and W-3 (or be able to reconstruct the information) for at least 4 years. Employers also must be able to generate Forms W-2 (Copy A) that meet the requirements of this revenue procedure in case of loss.

.04 Except for copies in the official assembly, described in Section 3.1.01 above, no additional copies that may be prepared by employers should be placed ahead of Form W-2 (Copy C) “FOR EMPLOYEE’S RECORDS.”

.05 You must provide instructions similar to those contained on the back of Copies B, C, and 2 of the official IRS Form W-2 to each employee. You may print them on the back of the substitute Copies B, C, and 2 or provide them to employees on a separate statement. You do not need to use the back of Copy 2. If you do not use Copy 2, you may include all the information that appears on the back of the official Copies B, C, and 2 on the back of your substitute Copies B and C only. As an example, you may use the “Note” on the back of the official Copy C as the dividing point between the text for your substitute Copies B and C. Do not print these instructions on the back of Copy 1. Any Forms W-2 (Copy A) and W-3 that are filed with the SSA must have no printing on the reverse side.

Section 3.2 – Instructions for Employers

.01 Only originals of Form W-2 (Copy A) and Form W-3 may be filed with the SSA. Carbon copies and photocopies are unacceptable.

.02 Employers should type or machine-print data entries on plain paper forms whenever possible. Ensure good quality by using a high-quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images. Black ink must be used with no script type, inverted font, italics, or dual-case alpha characters.

Note. 12-point Courier font is preferred by the SSA.

.03 Form W-2 (Copy A) requires decimal entries for wage data. Do not print dollar signs with money amounts on Forms W-2 (Copy A) and W-3.

.04 The employer must provide a machine-scannable Form W-2 (Copy A). The employer also must provide employee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Do not print any data in the top margin of the payee copies of the forms.

Note. Do not print Forms W-2 (Copy A) on double-sided paper.

.05 Any printing in box d (Control number) on Form W-2 or box a on Form may not touch any vertical or horizontal lines and should be centered in the box.

.06 The filer’s employer identification number (EIN) must be entered in box b of Form W-2 and box e of Form W-3. The EIN entered on Form(s) W-2 (box b) and Form W-3 (box e) must be the same as on Forms 941, 941-SS, 943, 944, CT-1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS. Be sure to use EIN format (00-0000000) rather than SSN format (000-00-0000).

.07 The employer’s name, address, and EIN may be preprinted.

Section 3.3 – OMB Requirements for Both Red-Ink and Black-and-White Substitute Forms W-2 and W-3

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following.

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS printed forms and also are shown on the forms in the Exhibits in Section 3.6.)
- Each IRS form (or its instructions) states:
 1. Why the IRS needs the information,
 2. How it will be used, and
 3. Whether or not the information is required to be furnished to the IRS.

.02 This information must be provided to any users of official or substitute IRS forms or instructions.

.03 The OMB requirements for substitute IRS Form W-2 and Form W-3 are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- The OMB number for both Form W-2 (Copy A) and Form W-3 is 1545-0008 and must appear exactly as shown on the official IRS form.
- For any copy of Form W-2 other than Copy A, the OMB number must use one of the following formats.
 1. OMB No. 1545-0008 (preferred), or
 2. OMB # 1545-0008 (acceptable).

.04 Any substitute Form W-2 (Copy A only) and Form W-3 must state “For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.” If no instructions are provided to users of your forms, you must furnish them with the exact text of the Privacy Act and Paperwork Reduction Act Notice in the 2019 General Instructions for Forms W-2 and W-3.

Section 3.4 – Order Forms and Instructions

.01 You can order IRS Forms W-2, Forms W-3, the General Instructions for Forms W-2 and W-3, and other tax material online at www.irs.gov/OrderForms.

.02 Copies of Form W-2 (Copy A) and Form W-3 downloaded from IRS.gov cannot be used for filing with the SSA. These copies of Forms W-2 and W-3 are for information purposes only.

Section 3.5 – Effect on Other Documents

.01 Revenue Procedure 2018-37, I.R.B. 2018-29, dated July 16, 2018 (reprinted as Publication 1141, Revised 07-2018), is superseded.

Section 3.6 – Exhibits

Exhibits A through F provide the general measurements for Forms W-2 and W-3 as discussed in this revenue procedure. Certain exhibits show a 0000/ in the location designated for your vendor code. See Section 2.2.01, item 11, and Section 2.2.05 for more information.

Exhibit A — Form W-2 (Copy A) (Red-Ink) 2019

Exhibit B — Form W-2 (Copy B) 2019

Exhibit C — Form W-3 (Red-Ink) 2019

Exhibit D — Form W-2 (Copy A) (Substitute Black-and-White) 2019

Exhibit E — Form W-3 (Substitute Black-and-White) 2019

Exhibit F — Form W-2 Alternative Employee Copies (Illustrating Horizontal and Vertical Formats)

Exhibit A

Form W-2 (Copy A) (Red Ink)

Diagram of Form W-2 (Copy A) showing dimensions in inches. The form is 7.50 in wide and .50 in high. It includes fields for social security number, EIN, name, address, and various wage and tax categories. Dimensions are provided for each field and section.

Form **W-2** Wage and Tax Statement **2019** Department of the Treasury—Internal Revenue Service
 Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.
Do Not Cut, Fold, or Staple Forms on This Page

Diagram of Form W-2 (Copy A) showing dimensions in inches. The form is 4.10 in wide and .50 in high. It includes fields for social security number, EIN, name, address, and various wage and tax categories. Dimensions are provided for each field and section.

Form **W-2** Wage and Tax Statement **2019** Department of the Treasury—Internal Revenue Service
 Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Exhibit B

Form W-2 (Copy B)

| | | | | | | | | | | | | | |
|--|--|----------------------------|--|-----------------------------------|--|---|--|---|--|---------------------|--|------------------|--|
| a Employee's social security number | | OMB No. 1545-0008 | | Safe, accurate, FAST! Use | |  | | Visit the IRS website at www.irs.gov/efile | | | | | |
| b Employer identification number (EIN) | | | | 1 Wages, tips, other compensation | | 2 Federal income tax withheld | | | | | | | |
| c Employer's name, address, and ZIP code | | | | 3 Social security wages | | 4 Social security tax withheld | | | | | | | |
| | | | | 5 Medicare wages and tips | | 6 Medicare tax withheld | | | | | | | |
| | | | | 7 Social security tips | | 8 Allocated tips | | | | | | | |
| d Control number | | | | 9 | | 10 Dependent care benefits | | | | | | | |
| e Employee's first name and initial | | Last name | | Suff. | | 11 Nonqualified plans | | 12a See instructions for box 12 | | | | | |
| | | | | | | 13 Statutory employee <input type="checkbox"/> | | 12b | | | | | |
| | | | | | | Retirement plan <input type="checkbox"/> | | 12c | | | | | |
| | | | | | | Third-party sick pay <input type="checkbox"/> | | 12d | | | | | |
| | | | | | | 14 Other | | | | | | | |
| f Employee's address and ZIP code | | | | | | | | | | | | | |
| 15 State | | Employer's state ID number | | 16 State wages, tips, etc. | | 17 State income tax | | 18 Local wages, tips, etc. | | 19 Local income tax | | 20 Locality name | |
| | | | | | | | | | | | | | |

Form **W-2** Wage and Tax Statement

2019

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return. 0000/
This information is being furnished to the Internal Revenue Service.

Exhibit C

Form W-3 (Red Ink)

| | | | | |
|---|---|---|---|--------|
| 7.50 in | | | | .50 in |
| DO NOT STAPLE | | | | |
| a Control number 99999 | | For Official Use Only OMB No. 1545-0048 | | |
| .85 in | | 5.00 in | | |
| b Kind of Payer (Check one) | <input type="checkbox"/> 941 Military <input type="checkbox"/> 943 Hshld. CT-1 <input type="checkbox"/> 944 Medicare govt. emp. | | <input type="checkbox"/> None apply <input type="checkbox"/> State/local non-501c <input type="checkbox"/> State/local 501c <input type="checkbox"/> Federal govt. | |
| | .36 in | | .14 in | |
| c Total number of Forms W-2 1.60 in | | d Establishment number 1.60 in | | |
| e Employer identification number (EIN) | | f Employer's name 4.67 in | | |
| g Employer's address and ZIP code 3.20 in | | h Other EIN used this year | | |
| 15 State .60 in | | 14 Income tax withheld by payer of third-party sick pay | | |
| Employer's state ID number 2.60 in | | 12b | | |
| 16 State wages, tips, etc. | | 17 State income tax | | |
| Employer's contact person | | 18 Local wages, tips, etc. | | |
| Employer's tax number | | 19 Local income tax .33 in | | |
| Employer's telephone number | | For Official Use Only | | |
| Employer's email address | | For Official Use Only | | |
| Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete. | | | | |
| Signature | | Title | | Date |
| .50 in | | .50 in | | |

Department of the Treasury
Internal Revenue Service

Form W-3 Transmittal of Wage and Tax Statements 2019

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2019 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

Purpose of Form

Complete a Form W-3 Transmittal only when filing paper Copy A of Form(s) W-2, Wage and Tax Statement. Don't file Form W-3 alone. All paper forms must comply with IRS standards and be machine readable. Photocopies are not acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

E-Filing

The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website.

- **W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.
- **File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's *Specifications for Filing Forms W-2 Electronically (EFW2)*.

W-2 Online fill-in forms or file uploads will be on time if submitted by **January 31, 2020**. For more information, go to www.SSA.gov/bsa. First time filers, select "Register"; returning filers select "Log In."

When To File Paper Forms

Mail Form W-3 with Copy A of Form(s) W-2 by **January 31, 2020**.

Where To File Paper Forms

Send this entire page with the entire Copy A page of Form(s) W-2 to:

**Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001**

Note: If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Pub. 15 (Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Exhibit D

Form W-2 (Copy A) (Substitute Black-and-White)

Form W-2 Wage and Tax Statement 2019
 Copy A For Social Security Administration — Send this entire page with 0000/
 Form W-3 to the Social Security Administration; photocopies are not acceptable.

Department of the Treasury—Internal Revenue Service
 For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Do Not Cut, Fold, or Staple Forms on This Page

| | | | | | | |
|--|----------------------------|-------------------------------|--|--|---------------------------------|------------------|
| 22222 | | Void <input type="checkbox"/> | a Employee's social security number | For Official Use Only OMB No. 1545-0008 | | |
| b Employer identification number (EIN) | | | 1 Wages, tips, other compensation | 2 Federal income tax withheld | | |
| c Employer's name, address, and ZIP code | | | 3 Social security wages | 4 Social security tax withheld | | |
| | | | 5 Medicare wages and tips | 6 Medicare tax withheld | | |
| | | | 7 Social security tips | 8 Allocated tips | | |
| d Control number | | | 9 | 10 Dependent care benefits | | |
| e Employee's first name and initial | | Last name | Suff. | 11 Nonqualified plans | 12a See instructions for box 12 | |
| f Employee's address and ZIP code | | | 13 Statutory employee Retirement plan Third-party sick pay | 12b | | |
| | | | 14 Other | 12c | | |
| | | | | 12d | | |
| | | | | | | |
| 15 State | Employer's state ID number | 16 State wages, tips, etc. | 17 State income tax | 18 Local wages, tips, etc. | 19 Local income tax | 20 Locality name |

Exhibit E

Form W-3 (Substitute Black-and-White)

| | | | | | |
|--|--|--|--|---|--|
| 33333 | | a Control number | | For Official Use Only OMB No. 1545-0008 | |
| b Kind of Payer (Check one) | | b Kind of Employer (Check one) | | Third-party sick pay (Check if applicable) | |
| <input type="checkbox"/> 941 CT-1 <input type="checkbox"/> 942 Hshld. emp. <input type="checkbox"/> 943 Military <input type="checkbox"/> 944 Medicare govt. emp. | | <input type="checkbox"/> None apply <input type="checkbox"/> State/local non-501c <input type="checkbox"/> State/local govt. <input type="checkbox"/> Federal govt. | | <input type="checkbox"/> 501c non-govt. <input type="checkbox"/> State/local govt. | |
| c Total number of Forms W-2 | | d Establishment number | | 1 Wages, tips, other compensation | |
| e Employer identification number (EIN) | | 3 Social security wages | | 2 Federal income tax withheld | |
| f Employer's name | | 6 Medicare wages and tips | | 4 Social security tax withheld | |
| g Employer's address and ZIP code | | 7 Social security tips | | 6 Medicare tax withheld | |
| h Other EIN used this year | | 9 | | 8 Allocated tips | |
| 15 State Employer's state ID number | | 11 Nonqualified plans | | 10 Dependent care benefits | |
| 16 State wages, tips, etc. | | 12a Deferred compensation | | 12b | |
| 17 State income tax | | 13 For third-party sick pay use only | | 14 Income tax withheld by payer of third-party sick pay | |
| Employer's contact person | | 18 Local wages, tips, etc. | | 19 Local income tax | |
| Employer's fax number | | Employer's telephone number | | For Official Use Only 0000/ | |
| Employer's email address | | Employer's email address | | Employer's email address | |
| Signature | | Title | | Date | |

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Department of the Treasury
Internal Revenue Service

Form **W-3 Transmittal of Wage and Tax Statements** 2019

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration (SSA). Photocopies are not acceptable. Do not send Form W-3 if you filed electronically with the SSA. Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2019 General Instructions for Forms W-2 and W-3 for information on completing this form. Do not file Form W-3 for Form(s) W-2 that were submitted electronically to the SSA.

Purpose of Form

Complete a Form W-3 Transmittal only when filing paper Copy A of Form(s) W-2, Wage and Tax Statement. Don't file Form W-3 alone. All paper forms **must** comply with IRS standards and be machine readable. Photocopies are **not** acceptable. Use a Form W-3 even if only one paper Form W-2 is being filed. Make sure both the Form W-3 and Form(s) W-2 show the correct tax year and Employer Identification Number (EIN). Make a copy of this form and keep it with Copy D (For Employer) of Form(s) W-2 for your records. The IRS recommends retaining copies of these forms for four years.

E-Filing

The SSA strongly suggests employers report Form W-3 and Forms W-2 Copy A electronically instead of on paper. The SSA provides two free e-filing options on its Business Services Online (BSO) website.

- W-2 Online.** Use fill-in forms to create, save, print, and submit up to 50 Forms W-2 at a time to the SSA.
- File Upload.** Upload wage files to the SSA you have created using payroll or tax software that formats the files according to the SSA's *Specifications for Filing Forms W-2 Electronically (EFW2)*.

W-2 Online fill-in forms or file uploads will be on time if submitted by **January 31, 2020**. For more information, go to www.SSA.gov/bsa. First time filers, select "Register"; returning filers select "Log In."

When To File Paper Forms
Mail Form W-3 with Copy A of Form(s) W-2 by **January 31, 2020**.

Where To File Paper Forms
Send this entire page with the entire Copy A page of Form(s) W-2 to:
**Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001**

Note: If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Pub. 15 (Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Exhibit F

Form W-2 (Copy B) (Alternative Employee Copies)

| | | | |
|--|----------------------------|--|--------------------------------|
| a Employee's social security number | | Safe, accurate, FAST! Use  Visit the IRS website at www.irs.gov/efile | |
| b Employer identification number (EIN) | | 1 Wages, tips, other compensation | 2 Federal income tax withheld |
| c Employer's name, address, and ZIP code | | 3 Social security wages | 4 Social security tax withheld |
| | | 5 Medicare wages and tips | 6 Medicare tax withheld |
| | | 7 Social security tips | 8 Allocated tips |
| d Control number | | 9 | 10 Dependent care benefits |
| e Employee's first name and initial Last name Suffix | | 11 Nonqualified plans | |
| | | 12a See instructions for box 12 | |
| | | 12b | |
| | | 12c | |
| f Employee's address and ZIP code | | 12d | |
| 15 State Employer's state ID number | 16 State wages, tips, etc. | 17 State income tax | 18 Local wages, tips, etc. |
| | | 19 Local income tax | 20 Locality name |

Form W-2 Wage and Tax Statement **2019** Department of the Treasury—Internal Revenue Service
Copy B—To Be Filed With Employee's FEDERAL Tax Return. 0000/
 This information is being furnished to the Internal Revenue Service.

OMB No. 1545-0008

| | |
|--|--------------------------------|
| 1 Wages, tips, other compensation | 2 Federal income tax withheld |
| 3 Social security wages | 4 Social security tax withheld |
| 5 Medicare wages and tips | 6 Medicare tax withheld |
| Employee's social security number | |
| Employer identification number (EIN) | |
| Employer's name, address, and ZIP code | |
| Employee's name | |
| Employee's address and ZIP code | |
| 15 State Employer's state ID number | 16 Local wages, tips, etc. |
| 16 State wages, tips, etc. | 19 Local income tax |
| 17 State income tax | 20 Locality name |

Copy B To Be Filed With Employee's FEDERAL Tax Return.

Form W-2 Wage and Tax Statement **2019** Department of the Treasury—Internal Revenue Service
 0000/

Note: Exhibit F displays examples of how Form W-2 (Copy B) can be furnished to employees. Copy B can be furnished in horizontal or vertical format. Specifications and requirements for employee copies can be found in Section 2.3 — Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2).

Although employee copies can be manipulated, Section 2.3 has specific requirements for core data boxes that must be present on substitute employee copies.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also §§ 36B, 1.36B-2, 1.36B-3.)

Rev. Proc. 2019-29

SECTION 1. PURPOSE

This revenue procedure provides indexing adjustments for certain provisions under § 36B of the Internal Revenue Code. In particular, it updates the applicable percentage table in § 36B(b)(3)(A)(i) (Applicable Percentage Table) to provide the Applicable Percentage Table for calendar year 2020. This table is used to calculate an individual's premium tax credit. This revenue procedure also updates the required contribution percentage in § 36B(c)(2)(C)(i)(II) for plan years beginning after calendar year 2019 (Section 36B Required Contribution Percentage). This percentage is used to determine whether an individual is eligible for affordable employer-sponsored minimum essential coverage under § 36B. This revenue procedure uses the methodology described in Section 4 of Rev. Proc. 2014-37, 2014-2 C.B. 363, and the Department of Health and Human Services (HHS) Notice of Benefit and Payment Parameters for 2020, 84 Fed. Reg. at

17454 (April 25, 2019) (2020 Benefit and Payment Notice), to index the Applicable Percentage Table and the Section 36B Required Contribution Percentage.

In addition to the adjustments described in Rev. Proc. 2014-37, for adjusting the Applicable Percentage Table, § 36B(b)(3)(A)(ii)(II) provides that, except as provided in § 36B(b)(3)(A)(ii)(III), an additional adjustment must be made for calendar years after 2018 to reflect the rates of premium growth relative to the growth in the consumer price index. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that the failsafe exception described in § 36B(b)(3)(A)(ii)(III) applies for calendar year 2020 and no additional adjustment under § 36B(b)(3)(A)(ii)(II) is required for calendar year 2020.

SECTION 2. CHANGE TO PREMIUM GROWTH ADJUSTMENT METHODOLOGY

The Applicable Percentage Table and the Section 36B Required Contribution Percentage are adjusted annually by the ratio of premium growth to income growth for the preceding calendar year, and may be further adjusted to reflect updates to the data and data sources used to compute the ratio of premium growth

to income growth. See §§ 1.36B-2(c)(3)(v)(C) and 1.36B-3(g). These adjustments are computed using a premium adjustment percentage provided in guidance issued by HHS. For years prior to 2020, the rate of premium growth was based on per enrollee spending for employer-sponsored insurance as published in the National Health Expenditure Account. However, in the 2020 Benefit and Payment Notice, HHS provided a new premium growth measure beginning in calendar year 2020 that captures increases in individual market premiums in addition to increases in employer-sponsored insurance premiums for purposes of calculating the premium adjustment percentage for the 2020 benefit year and beyond. The Treasury Department and the IRS adopt the new premium growth measure provided in the 2020 Benefit and Payment Notice for purposes of the Applicable Percentage Table and the Section 36B Required Contribution Percentage indexing adjustments.

SECTION 3. ADJUSTED ITEMS

.01 *Applicable Percentage Table for 2020.* For taxable years beginning in calendar year 2020, the Applicable Percentage Table for purposes of § 36B(b)(3)(A)(i) and § 1.36B-3(g) is:

| Household income percentage of Federal poverty line: | Initial percentage | Final percentage |
|--|--------------------|------------------|
| Less than 133% | 2.06% | 2.06% |
| At least 133% but less than 150% | 3.09% | 4.12% |
| At least 150% but less than 200% | 4.12% | 6.49% |
| At least 200% but less than 250% | 6.49% | 8.29% |
| At least 250% but less than 300% | 8.29% | 9.78% |
| At least 300% but not more than 400% | 9.78% | 9.78% |

.02 *Section 36B Required Contribution Percentage for 2020.* For plan years beginning in calendar year 2020, the required contribution percentage for purposes of § 36B(c)(2)(C)(i)(II) and § 1.36B-2(c)(3)(v)(C) is 9.78%.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014-37 is supplemented.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years and plan years beginning after December 31, 2019.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Bill Ruane of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number).

Part IV.

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2019-8

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81-38 and superseding guidance in Revenue Procedure 2014-42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer **and** signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014-42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is

not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81-38 or to comply with Circular 230 as required by Revenue Procedure 2014-42 may be determined ineligible to engage in limited practice as a representative of any taxpayer. Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or failed to comply with any of the requirements to act as a representative.

A practitioner who has been disbarred or suspended under 31 C.F.R. § 10.60, or suspended under § 10.82, or a disqualified appraiser may petition for reinstatement before the IRS after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period if shorter than 5 years). Reinstatement will not be granted unless the IRS is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to Circular 230, and that granting such reinstatement would not be contrary to the public interest.

Reinstatement decisions are published at the individual's request, and described in these terms:

Reinstated to practice before the IRS—The individual's petition for re-

instatement has been granted. The individual is an attorney, certified public accountant, enrolled agent, enrolled actuary, or an enrolled retirement plan agent, and eligible to practice before the IRS, or in the case of an appraiser, the individual is no longer disqualified.

Reinstated to engage in limited practice before the IRS—The individual's petition for reinstatement has been granted. The individual is an unenrolled/unlicensed return preparer and eligible to engage in limited practice before the IRS.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" agreement admitting to one

or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

| City & State | Name | Professional Designation | Disciplinary Sanction | Effective Date(s) |
|-----------------|--|--------------------------|--|--------------------------------|
| Delaware | | | | |
| Claymont | Rice, Donald R. | CPA | Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from April 18, 2019 |
| Florida | | | | |
| Tampa | Webber, Zane P. | CPA | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from June 11, 2019 |
| Georgia | | | | |
| | Patterson, Shannon D., see North Caroline | | | |
| Illinois | | | | |
| Crystal Lake | Lamping, Anthony A. | CPA | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from April 11, 2019 |
| Lake Zurich | Jung, Soo-Hyun | Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from June 11, 2019 |
| Iowa | | | | |
| Cresco | Jung, Soo-Hyun, see Illinois Kowalke, Todd W. | Attorney | Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from April 11, 2019 |

| City & State | Name | Professional Designation | Disciplinary Sanction | Effective Date(s) |
|---------------------------------|-----------------------------------|--------------------------|--|--------------------------------|
| Michigan Chesterfield | Bowser, James C. | Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from April 30, 2019 |
| New Jersey Bogota | Friedman, Barry D. | Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from May 8, 2019 |
| New Mexico Albuquerque | Becerra, Steven | Enrolled Agent | Suspended by consent under 31 C.F.R. §§ 10.51(a)(2), 10.51(a)(3) | Indefinite from April 30, 2019 |
| New York New York | Etkind, Steven M. | Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from May 21, 2019 |
| Ohio Steubenville | Marshall, Michael J. | CPA/Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from June 18, 2019 |
| North Carolina Winston Salem | Patterson, Shannon D. | Attorney | Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b) | Indefinite from May 08, 2019 |
| West Virginia | Marshall, Michael J., see Ohio | | | |

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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¹ A 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 2019–32

¹ A 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.

Internal Revenue Service

Washington, DC 20224

Official Business
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INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.