INTERNAL REVENUE
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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.

ADMINISTRATIVE

T.D. 9881, page 1288.

This document contains final regulations amending the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, "Report of Health Insurance Provider Information."

Rev. Proc. 2019-42, page 1298.

This revenue procedure will update Rev. Proc. 2019-09, 2019-02 I.R.B. 292, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure will apply to any income tax return filed on 2019 tax forms for a taxable year beginning in 2019, and to any income tax return filed in 2020 on 2019 tax forms for short taxable years beginning in 2020.

Rev. Proc. 2019-46, page 1301.

This procedure provides the rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. The revenue procedure also provides rules for substantiating the amount of an employee's ordinary and necessary business expenses of local travel or transportation away from home that a payor (an employer, its agent, or a third party) reimburses using a mileage allowance. Rev. Proc. 2010-51 is modified.

EMPLOYEE PLANS

Notice 2019-60, page 1292.

Notice 2019-60 provides temporary relief with respect to the nondiscrimination requirements relating to benefits, rights, and features under closed defined benefit plans that generally meet the eligibility conditions for the relief provided in Notice 2014-5, 2014-2 I.R.B. 276, as extended.

Notice 2019-61, page 1294.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for November 2019 used under § 417(e)(3)(D), the 24-month average segment rates applicable for November 2019, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

INCOME TAX

Rev. Rul. 2019-26, page 1286.

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 December 2019.

T.D. 9883, page 1289.

These regulations provide rules regarding attribution for purposes of determining whether a person is a related person with respect to a controlled foreign corporation. They also provide rules for determining whether rents are derived in the active conduct of a trade or business for purposes of computing foreign personal holding company income. The regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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. 2019-26

This revenue ruling provides various prescribed rates for federal income tax purposes for December 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 appropriate 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. 2019-26 TABLE 1
Applicable Federal Rates (AFR) for December 2019
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	1.61%	1.60%	1.60%	1.59%
110% AFR	1.77%	1.76%	1.76%	1.75%
120% AFR	1.93%	1.92%	1.92%	1.91%
130% AFR	2.09%	2.08%	2.07%	2.07%
		Mid-term		
AFR	1.69%	1.68%	1.68%	1.67%
110% AFR	1.86%	1.85%	1.85%	1.84%
120% AFR	2.03%	2.02%	2.01%	2.01%
130% AFR	2.19%	2.18%	2.17%	2.17%
150% AFR	2.54%	2.52%	2.51%	2.51%
175% AFR	2.96%	2.94%	2.93%	2.92%
		Long-term		
AFR	2.09%	2.08%	2.07%	2.07%
110% AFR	2.30%	2.29%	2.28%	2.28%
120% AFR	2.52%	2.50%	2.49%	2.49%
130% AFR	2.72%	2.70%	2.69%	2.68%

REV. RUL. 2019-26 TABLE 2
Adjusted AFR for December 2019
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.21%	1.21%	1.21%	1.21%
Mid-term adjusted AFR	1.28%	1.28%	1.28%	1.28%
Long-term adjusted AFR	1.59%	1.58%	1.58%	1.57%

REV. RUL. 2019-26 TABLE 3 Rates Under Section 382 for December 2019	
Adjusted federal long-term rate for the current month	1.59%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	1.59%

REV. RUL. 2019-26 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for December 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	7.43%
Appropriate percentage for the 30% present value low-income housing credit	3.19%

REV. RUL. 2019-26 TABLE 5 Rate Under Section 7520 for December 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	2.0%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2019. See Rev. Rul. 2019-26, page 1286.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

Section 7520.—Valuation Tables

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2019. See Rev. Rul. 2019-26, page 1286.

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 December 2019. See Rev. Rul. 2019-26, page 1286.

T.D. 9881

DEPARTMENT OF THE TREASURY

Internal Revenue Service
26 CFR Part 57
Electronic Filing of the Report of Health Insurance Provider Information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, "Report of Health Insurance Provider Information." These final regulations affect those entities.

DATES: *Effective Date*. These regulations are effective on November 13, 2019.

FOR FURTHER INFORMATION CONTACT: David Bergman, (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, 124 Stat. 119 (2010), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). The final regulations provide guidance on the annual fee imposed on covered entities engaged in the business of providing health insurance for United States health risks, and affect persons engaged in the business of providing health insurance for United States health risks.

On December 9, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-123829-16) in the **Federal Register**, 81 FR 89020, containing proposed regulations that would amend section 57.3(a)(2) of the Health Insurance Providers Fee regulations to provide that a covered entity (including a controlled group) reporting on a Form 8963 or corrected Form 8963 more than $25 million in net premiums written must electronically file the forms after December 31, 2017. Forms 8963 reporting $25 million or less in net premiums written are not required to be electronically filed. The proposed regulations also provided that if a Form 8963 or corrected Form 8963 is required to be filed electronically, any subsequent Form 8963 filed for the same fee year must also be filed electronically, even if the subsequently filed Form 8963 reports $25 million or less in net premiums written. In addition, the proposed regulations provided that a failure to electronically file would be treated as a failure to file for purposes of section 57.3(b).

No comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations with no substantive change other than the applicability date. The rationale provided in the Explanation of Provisions section of the notice of proposed rulemaking applies equally to these final regulations. The electronic filing requirement will begin in the 2020 fee year because the fee will not be collected in 2019.

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. It is hereby certified that the electronic filing requirement would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The rule is expected to affect primarily larger entities because the electronic filing requirement is only imposed if the filer must report more than $25 million in net premiums. Small entities are unlikely to report more than $25 million in net premiums, and the rule contains a specific exemption from the electronic reporting requirement for covered entities that report $25 million or less in net premiums written. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

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

Drafting Information

The principal author of these regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 57 is amended to read as follows:

PART 57—HEALTH INSURANCE PROVIDERS FEE

Paragraph 1. The authority citation for 26 CFR part 57 continues to read in part as follows:

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

Par. 2. Section 57.3 is amended by revising paragraph (a)(2) to read as follows:

§57.3 Reporting requirements and associated penalties.

(a) * * *

(2) *Manner of reporting*—(i) *In general*. The IRS may provide rules in guidance published in the Internal Revenue Bulletin

for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(ii) *Electronic Filing Required*. Any Form 8963 (including corrected forms) filed pursuant to paragraph (a)(1) of this section and reporting more than $25 million in net premiums written must be filed electronically in accordance with the instructions to the form. If a Form 8963 or corrected Form 8963 is required to be filed electronically under this paragraph (a)(2)(ii), any subsequently filed Form 8963 filed for the same fee year must also be filed electronically. For purposes of §57.3(b), any Form 8963 required to be filed electronically under this section will not be considered filed unless it is filed electronically.

* * * * *

Par. 3 Section 57.10 is amended by revising the section heading, paragraph (a), and adding paragraph (c) to read as follows:

§57.10 Applicability date.

(a) Except as provided in paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) Section 57.3(a)(2)(ii) applies to Forms 8963, including corrected Forms 8963, filed after December 31, 2019.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved: October 29, 2019.

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

(Filed by the Office of the Federal Register on November 8, 2019, 4:15 p.m., and published in the issue of the Federal Register for November 13, 2019, 84 F.R. 61547)

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26 CFR 1.954-1: Foreign base company income

T.D. 9883

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Ownership Attribution for Purposes of Determining Whether a Person Is Related to a Controlled Foreign Corporation; Rents Derived in the Active Conduct of a Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the attribution of ownership of stock or other interests for purposes of determining whether a person is a related person with respect to a controlled foreign corporation ("CFC") under section 954(d)(3). In addition, the final regulations provide rules for determining whether a CFC is considered to derive rents in the active conduct of a trade or business for purposes of computing foreign personal holding company income. This document finalizes the proposed regulations published on May 20, 2019. The regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

DATES: Effective Date: These regulations are effective on November 19, 2019.

Applicability Date: For the dates of applicability, see §§1.954-1(f)(3), 1.954-2(i)(2), and 1.958-2(h).

FOR FURTHER INFORMATION CONTACT: Kristine A. Crabtree at (202) 317-6934.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2019, the Department of the Treasury ("Treasury Department") and the IRS published proposed regulations (REG-125135-15) under sections 954 and 958 in the **Federal Register** (84 FR 22751) (the "proposed regulations"). No public hearing was requested or held. All written comments received in response to the proposed regulations are available at www.regulations.gov or upon request. Because no comments suggested revisions to the proposed regulations, this Treasury decision adopts the proposed regulations as final regulations without change.

Summary of Comments

The proposed regulations and the final regulations limit the application of the section 318(a)(3) constructive ownership rules for purposes of the definition of related person in section 954(d)(3) to avoid inappropriately treating entities, including CFCs, that do not have a significant relationship to each other as related persons. Comments agreed with the Treasury Department and the IRS that limiting the application of the downward attribution rules of section 318(a)(3)(A) incorporated by section 958(b) for purposes of section 954(d)(3) avoids inappropriate results, and one comment urged the Treasury Department and the IRS to provide a similar limitation on the application of those rules for purposes of determining whether a foreign corporation is a CFC. The Treasury Department and the IRS are separately studying the application of section 958(b) following the repeal of section 958(b)(4) by the Tax Cuts and Jobs Act, Public Law 115-97 (2017), and the final regulations do not address the application of the constructive ownership rules of section 958(b) for purposes other than section 954(d)(3).

Effect on Other Documents

Section 7(d) of Notice 2007-9, 2007-1 C.B. 401, is obsoleted.

Special Analyses

OIRA has waived review of this final rule in accordance with section 6(a)(3)(A) of E.O. 12866.

Because this rulemaking is an interpretive rule and does not impose a collection of information on small entities, under 5 U.S.C. 603(a) the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received.

Drafting Information

The principal author of the final regulations is James Beatty of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of these proposed regulations.

Statement of Availability of IRS Documents

Notice 2007-9 is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 continues to read in part as follows:

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

Section 1.954-1 also issued under 26 U.S.C. 954(b) and (c).

Section 1.954-2 also issued under 26 U.S.C. 954(b) and (c).

* * * * *

Par. 2. Section 1.954-0 is amended by revising paragraph (b) by adding entries for §§1.954-1(f)(3), (f)(3)(i) through (iii), (g), and (g)(1) through (4) and 1.954-2(c)(2)(v) through (viii), (d)(2)(v), (i), and (i)(1) through (3) to read as follows:

§1.954-0 Introduction.

* * * * *

(b) * * *

§1.954-1 Foreign base company income.

* * * * *

(f) * * *

(3) Applicability dates.

(i) General rule.

(ii) Option rule in paragraph (f)(2)(iv)(B)(*2*) of this section.

(iii) Anti-abuse rule.

(g) Distributive share of partnership income.

(1) Application of related person and country of organization tests.

(2) Application of related person test for sales and purchase transactions between a partnership and its controlled foreign corporation partner.

(3) Examples.

(4) Effective date.

§1.954-2 Foreign personal holding company income.

* * * * *

(c) * * *

(2) * * *

(v) Leased in foreign commerce.

(vi) Leases acquired by the CFC lessor.

(vii) Marketing of leases.

(viii) Cost sharing arrangements (CSAs).

* * * * *

(d) * * *

(2) * * *

(v) Cost sharing arrangements (CSAs).

* * * * *

(i) Applicability dates.

(1) Paragraphs (c)(2)(v) through (vii).

(2) Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section.

(3) Other paragraphs.

Par. 3. Section 1.954-1 is amended by revising paragraph (f)(2)(iv) and adding paragraph (f)(3) to read as follows:

§1.954-1 Foreign base company income.

* * * * *

(f) * * *

(2) * * *

(iv) *Direct or indirect ownership*. For purposes of section 954(d)(3) and this paragraph (f), to determine direct or indirect ownership—

(A) The principles of §1.958-1 and section 958(a) apply without regard to whether a corporation, partnership, trust, or estate is foreign or domestic or whether an individual is a citizen or resident of the United States; and

(B) The principles of §1.958-2 and section 958(b) apply, except that—

(*1*) Neither section 318(a)(3), nor §1.958-2(d) or the principles thereof, applies to attribute stock or other interests to a corporation, partnership, estate, or trust; and

(*2*) Neither section 318(a)(4), nor §1.958-2(e) or the principles thereof, applies to treat dividends, interest, rents, or royalties received or accrued from a foreign corporation as received or accrued from a controlled foreign corporation payor if a principal purpose of the use of an option to acquire stock or an equity interest, or an interest similar to such an option, that causes the foreign corporation to be a controlled foreign corporation payor is to qualify dividends, interest, rents, or royalties paid by the foreign corporation for the section 954(c)(6) exception. For purposes of this paragraph (f)(2)(iv)(B)(*2*), an interest that is similar to an option to acquire stock or an equity interest includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock or an equity interest, a put, a stock or equity interest subject to risk of forfeiture, and a contract to acquire or sell stock or an equity interest.

(*3*) Neither section 318(a)(4), nor §1.958-2(e) or the principles thereof, applies to treat a person that has an option to acquire stock or an equity interest, or an interest similar to such an option, as owning the stock or equity interest if a principal purpose for the use of the option

or similar interest is to treat a person as a related person with respect to a controlled foreign corporation under this paragraph (f). For purposes of this paragraph (f)(2)(iv)(B)(*3*), an interest that is similar to an option to acquire stock or an equity interest includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock or an equity interest, a put, a stock or equity interest subject to risk of forfeiture, and a contract to acquire or sell stock or an equity interest.

(3) *Applicability dates*—(i) *General rule*. Except as otherwise provided in this paragraph (f)(3), paragraph (f)(2)(iv) of this section applies to taxable years of controlled foreign corporations ending on or after November 19, 2019, and taxable years of United States shareholders in which or with which such taxable years end.

(ii) *Option rule in paragraph (f)(2)(iv)(B)(2) of this section*. Paragraph (f)(2)(iv)(B)(*2*) of this section applies to taxable years of controlled foreign corporations beginning after December 31, 2006, and ending before November 19, 2019, and taxable years of United States shareholders in which or with which such taxable years end.

(iii) *Anti-abuse rule*. Paragraphs (f)(2)(iv)(B)(*1*) and (*3*) of this section apply to taxable years of controlled foreign corporations ending on or after May 17, 2019, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to amounts that are received or accrued by a controlled foreign corporation on or after May 17, 2019 to the extent the amounts are received or accrued in advance of the period to which such amounts are attributable with a principal purpose of avoiding the application of paragraph (f)(2)(iv)(B)(*1*) or (*3*) of this section with respect to such amounts.

* * * * *

Par. 4. Section 1.954-2 is amended by:

1. Revising paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A).
2. Revising the heading of paragraph (i).
3. Redesignating paragraph (i)(2) as paragraph (i)(3).
4. Adding new paragraph (i)(2).

The revisions and addition read as follows:

§1.954-2 Foreign personal holding company income.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) Deductions for amounts (including rents and royalties) paid or incurred by the lessor for the right to use the property (or a component thereof) that generated the rental income;

* * * * *

(iv) * * *

(A) Amounts (including rents and royalties) paid or incurred by the lessor for the right to use the property (or a component thereof) that generated the rental income;

* * * * *

(i) *Applicability dates*.* * *

(2) *Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section*. Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section apply for taxable years of controlled foreign corporations ending on or after November 19, 2019, and for the taxable years of United States shareholders in which or with which such taxable years end.

* * * * *

Par. 5. Section 1.958-2 is amended by revising paragraph (d)(1) introductory text and the first sentence of paragraph (e) and adding paragraph (h) to read as follows:

§1.958-2 Constructive ownership of stock.

* * * * *

(d) * * *

(1) * * * Except as otherwise provided in paragraph (d)(2) of this section and §1.954-1(f)—

* * * * *

(e) * * * Except as otherwise provided in §1.954-1(f), if any person has an option to acquire stock, such stock shall be considered as owned by such person. * * *

* * * * *

(h) *Applicability date*. Paragraphs (d)(1) and (e) of this section apply for taxable years of controlled foreign corporations ending on or after November 19, 2019, and for the taxable years of United States shareholders in which or with which such taxable years end.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved: October 28, 2019

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

(Filed by the Office of the Federal Register on November 18, 2019, 8:45 a.m., and published in the issue of the Federal Register for November 19, 2019, 84 F.R. 63802).

Part III

Additional Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2020

Notice 2019-60

I. PURPOSE

This notice provides additional temporary nondiscrimination relief for closed defined benefit plans (that is, defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date) that generally meet the eligibility conditions for the relief provided in Notice 2014-5, 2014-2 I.R.B. 276, as extended. Specifically, this notice provides that, if a plan satisfies the conditions specified in this notice, the plan is deemed to have satisfied certain of the nondiscrimination requirements relating to benefits, rights, and features.

II. BACKGROUND

A. Law and Regulations

Section 410(b) provides in general that a plan is a qualified plan only if the classification of employees who benefit under the plan does not discriminate in favor of highly compensated employees (HCEs). Section 410(b)(6)(B) provides that two or more plans may be aggregated for purposes of satisfying § 410(b), but only if those plans are also aggregated for purposes of § 401(a)(4).

Under § 1.410(b)-2(b), a plan generally satisfies § 410(b) with respect to employees only if the plan satisfies either the ratio percentage test of § 1.410(b)-2(b)(2) or the average benefit test of § 1.410(b)-2(b)(3) (which requires satisfaction of the nondiscriminatory classification test of § 1.410(b)-4 and the average benefit percentage test of § 1.410(b)-5). The ratio percentage test and the nondiscriminatory classification test are applied using a plan's ratio percentage, which is defined in § 1.410(b)-9 for a plan year as the percentage determined by dividing the percentage of the nonhighly compensated employees (NHCEs) who benefit under the plan by the percentage of HCEs who benefit under the plan.

Section 401(a)(4) provides in general that a plan is a qualified plan only if the contributions or the benefits provided under the plan do not discriminate in favor of HCEs. Compliance with § 401(a)(4) generally may be demonstrated on the basis of either contributions or benefits (including equivalent benefits). Section 1.401(a)(4)-9(b) contains special rules that apply for purposes of determining whether an aggregated plan that includes one or more defined benefit plans and one or more defined contribution plans (referred to as a DB/DC plan) satisfies the requirements of § 401(a)(4). A DB/DC plan may demonstrate compliance with § 401(a)(4) on the basis of equivalent benefits only if the DB/DC plan satisfies one of three alternative conditions set forth in § 1.401(a)(4)-9(b)(2)(v).

Section 1.401(a)(4)-4 provides rules regarding nondiscriminatory availability of benefits, rights, and features. Under § 1.401(a)(4)-4(a), benefits, rights, and features are provided to employees in a nondiscriminatory manner only if each benefit, right, or feature satisfies the current availability requirement of § 1.401(a)(4)-4(b) and the effective availability requirement of § 1.401(a)(4)-4(c). In general, a benefit, right, or feature satisfies the current availability requirement if the group of employees to whom the benefit, right, or feature is currently available during the plan year satisfies § 410(b) (without regard to the average benefit percentage test of § 1.410(b)-5). Under the effective availability requirement, based on all of the relevant facts and circumstances, the group of employees to whom a benefit, right, or feature is effectively available must not substantially favor HCEs.

The nondiscrimination regulations under § 401(a)(4) provide that the Commissioner may, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, provide any additional guidance that may be necessary or appropriate in applying the nondiscrimination requirements of § 401(a)(4), including additional safe harbors and alternative methods and procedures for satisfying those requirements. See § 1.401(a)(4)-1(d).

B. Notice 2014-5 Temporary Nondiscrimination Relief for Closed Defined Benefit Plans

Notice 2014-5 addresses the increasingly common situation of a defined benefit plan that has been closed to new entrants. The plan sponsor of a closed defined benefit plan typically provides a defined contribution plan for its new hires. Under these arrangements, in the early years after the defined benefit plan has been closed to new entrants, the plan may be able to satisfy the coverage requirement of § 410(b) without being aggregated with the defined contribution plan. However, the § 410(b) minimum coverage test typically becomes more difficult for the closed defined benefit plan to satisfy over time, as the proportion of plan participants who are HCEs increases. This might occur for several reasons, including the tendency of NHCEs to have higher rates of turnover than HCEs, as well as the potential for some of the NHCEs in the closed plan to become HCEs as they continue employment and their compensation increases.

If the closed defined benefit plan cannot satisfy the coverage requirement of § 410(b) on its own, it must be aggregated with another plan in order to satisfy that coverage requirement. If the defined benefit plan is aggregated with a defined contribution plan that covers the employer's new hires to satisfy the coverage requirement, then it is also required to be aggregated with the defined contribution plan for purposes of satisfying the nondiscrimination requirements of § 401(a)(4). In the typical case, the aggregated plans will fail the requirements of § 401(a)(4) unless they are permitted to demonstrate compliance with the nondiscrimination requirements on the basis of equivalent benefits. The aggregated plans usually may demonstrate nondiscrimination on the basis of equivalent benefits in the initial

years of aggregation without the need for benefit changes. However, the same demographic forces that drive the increase in the proportion of HCEs in the closed plan over time might lead to the aggregated plans being permitted to demonstrate nondiscrimination on the basis of equivalent benefits only if the plans satisfy the minimum aggregate allocation gateway (which requires a minimum level of benefits to be provided to NHCEs).

Notice 2014-5 provides temporary nondiscrimination relief for certain closed defined benefit pension plans. Specifically, for plan years beginning before 2016, Section III.B of Notice 2014-5 permits a DB/DC plan that includes a closed defined benefit plan (that was closed before December 13, 2013) and that satisfies certain conditions set forth in the notice to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)-1(b)(2) on the basis of equivalent benefits even if the DB/DC plan does not meet any of the existing eligibility conditions for testing on that basis under § 1.401(a)(4)-9(b)(2)(v). That is, such a DB/DC plan may satisfy the nondiscrimination requirements on the basis of equivalent benefits without being required to satisfy the minimum aggregate allocation gateway.

A series of notices extend the temporary nondiscrimination relief provided in Notice 2014-5 by applying that relief to plan years beginning before 2021 if the conditions of Notice 2014-5 are satisfied. See Notice 2015-28, 2015-14 I.R.B. 848, Notice 2016-57, 2016-40 I.R.B. 432, Notice 2017-45, 2017-38 I.R.B. 232, Notice 2018-69, 2018-37 I.R.B. 426, and Notice 2019-49, 2019-37 I.R.B. 699.

C. Proposed regulations to provide nondiscrimination relief for closed defined benefit pension plans

Proposed regulations relating to nondiscrimination requirements for closed plans were published in the Federal Register on January 29, 2016 (81 FR 4976). The proposed regulations set forth relief for closed plans under §§ 1.401(a)(4)-4, 1.401(a)(4)-8, and 1.401(a)(4)-9 (subject to satisfaction of certain conditions set forth in the regulations) and contain other proposed nondiscrimination rules. The regulations generally are proposed to apply to plan years beginning on or after the date of publication of the final regulations in the Federal Register. The proposed regulations provide that taxpayers are permitted to apply certain provisions of the proposed regulations (including all of the provisions that apply specifically to closed plans) for certain plan years beginning before the proposed applicability date. Notice 2019-49 states that it is expected that the final regulations will provide that the reliance granted in the preamble to the proposed regulations may be applied for plan years beginning before 2021. Thus, for plan years beginning before January 1, 2021, taxpayers may apply the relief in Notice 2014-5 (as extended), as well as the rules relating to closed plans in the proposed regulations.

The provisions under the proposed amendments to § 1.401(a)(4)-4 with respect to defined benefit plans provide relief from nondiscrimination testing with respect to a benefit, right, or feature that is made available only to a grandfathered group of employees with respect to a closed plan. Specifically, if the eligibility conditions in the proposed regulations are satisfied, the special testing rule treats a benefit, right, or feature that is provided only to a grandfathered group of employees as satisfying the current and effective availability tests of § 1.401(a)(4)-4(b) and (c). Because the special testing rule does not apply until plan years that begin on or after the fifth anniversary of the closure date (as defined in the proposed regulations), the benefit, right or feature must be currently available to a group of employees that satisfies the minimum coverage requirements of § 410(b) (without regard to the average benefit percentage test of § 1.410(b)-5) for plan years that begin within the 5 years immediately following the closure date.

The relief under the proposed amendments to § 1.401(a)(4)-4 is available only if the amendment restricting the availability of the benefit, right, or feature also resulted in a significant change in the type of the defined benefit plan's formula. For example, a plan amendment that changes the plan formula from an annual percentage of final average annual compensation to a cash balance formula would be a significant change in the type of benefit formula, so that the special testing rule would apply to facilitate preservation of any subsidized early retirement factors for the employees who continue to benefit under the prior benefit formula. In addition, this proposed relief is available only if no plan amendment that affects the availability of the benefit, right, or feature (other than the closure amendment, as defined in the proposed regulations) is adopted or made effective during the period that began 5 years before the closure date (with exceptions for certain types of amendments, such as an amendment that expands or restricts the eligibility for the benefit, right, or feature, if, as of the applicable amendment date, the post-amendment ratio percentage of the group of employees eligible for the benefit, right, or feature is not less than the pre-amendment ratio percentage of the group of employees eligible for the benefit, right, or feature).

Many comments have been submitted on the proposed regulations, including oral comments at a public hearing held on May 19, 2016. The Department of the Treasury and the Internal Revenue Service (IRS) expect that the final regulations will include a number of significant changes in response to those comments.

III. ADDITIONAL RELIEF FOR CLOSED DEFINED BENEFIT PLANS WITH RESPECT TO BENEFITS, RIGHTS, OR FEATURES

A. Need for relief relating to benefits, rights, or features

At the time a defined benefit plan is closed to new entrants, the plan may provide for benefits, rights, or features that are not available to participants in other plans of the employer. For such a plan, the proposed regulations provide relief from the requirements of § 1.401(a)(4)-4 relating to benefits, rights, or features only if the amendment restricting the availability of the benefit, right, or feature also resulted in a significant change in the type of the defined benefit plan's formula. Thus, neither Notice 2014-5 nor the proposed regulations provide relief under § 1.401(a)(4)-4 for a defined benefit plan that is closed to new entrants but has not undergone a change in benefit formula with respect to

existing participants. In addition, the relief in the proposed regulations relating to benefits, rights, or features is conditioned on compliance with requirements relating to plan amendments that may have occurred long before the proposed regulations were issued.

Commenters on the proposed regulations observed the need for relief relating to benefits, rights, and features for a plan if the plan is closed to new entrants (but has not undergone a significant change in the type of the plan's benefit formula). Commenters also observed the need for relief relating to plan amendments that occurred before the proposed regulations were issued.

B. Temporary relief for certain closed defined benefit plans with respect to benefits, rights, or features

Pursuant to the authority under § 1.401(a)(4)-1(d) to provide alternative methods for satisfying the nondiscrimination requirements, this section III.B provides a closed defined benefit plan that generally meets the eligibility conditions for the temporary relief under Notice 2014-5 (as extended) with additional temporary relief from the requirements of § 1.401(a)(4)-4 relating to benefits, rights, or features.

1. Plans to which temporary relief applies

The temporary relief under this section III.B applies to a plan if it is a defined benefit plan providing ongoing accruals that was amended, by an amendment adopted before December 13, 2013, to provide that only employees who participated in the defined benefit plan on a specified date continue to accrue benefits under the plan. Thus, this relief applies to defined benefit plans for which the relief under Notice 2014-5 (as extended) is available (except that eligibility for this relief does not depend on the method used to satisfy the nondiscrimination requirements for the plan year beginning in 2013).

2. Period of temporary relief

The temporary relief under this section III.B applies for plan years ending after November 13, 2019, and beginning before January 1, 2021. Accordingly, the last plan year for which this relief applies is the same as the last plan year for which the relief under Notice 2014-5, as extended most recently by Notice 2019-49, applies.

3. Effect of temporary relief

The following treatment may be applied to a defined benefit plan described in section III.B.1 of this notice for a plan year described in section III.B.2 of this notice:

The plan is treated as satisfying § 1.401(a)(4)-4(b) and (c) for the plan year with respect to a benefit, right, or feature that was provided under the plan at the time the amendment described in section III.B.1 of this notice was adopted. This relief applies only if either:

(i) No amendment adopted after January 29, 2016 expands or restricts the eligibility for the benefit, right, or feature; or

(ii) If any such amendment has been adopted, then, as of the applicable amendment date for that amendment (determined under § 1.411(d)-3(g)(4)),[1] the post-amendment ratio percentage of the group of employees eligible for the benefit, right, or feature was not less than the pre-amendment ratio percentage of the group of employees eligible for the benefit, right, or feature.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in development of this guidance. For further information regarding this notice, please contact Ms. Bloom or Linda Marshall at (202) 317-6700 (not a toll-free number).

Part III — Administrative, Miscellaneous, and Procedural

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

Notice 2019-61

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the cal-

[1] Under § 1.411(d)-3(g)(4), the term "applicable amendment date," with respect to a plan amendment, means the later of the effective date of the amendment or the date the amendment is adopted.

endar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from October 2019 data is in Table 2019-10 at the end of this notice. The spot first, second, and third segment rates for the month of October 2019 are, respectively, 2.01, 3.06, and 3.65.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2018, 2019, and 2020 were published in Notice 2017-50, 2017-41 I.R.B. 280, Notice 2018-73, 2018-40 I.R.B. 526 and Notice 2019-51, 2019-41 I.R.B. 866, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for November 2019 without adjustment for the 25-year average segment rate limits are as follows:

24-Month Average Segment Rates Without 25-Year Average Adjustment

Applicable Month	First Segment	Second Segment	Third Segment
November 2019	2.79	3.87	4.33

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for November 2019, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2018	November 2019	3.92	5.52	6.29
2019	November 2019	3.74	5.35	6.11
2020	November 2019	3.64	5.21	5.94

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for October 2019 is 2.19 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2049. For plan years beginning in November 2019, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
November 2019	2.85	2.57 to 3.00

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

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for October 2019 are as follows:

Month	First Segment	Second Segment	Third Segment
October 2019	2.01	3.06	3.65

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Paul Stern at 202-317-8702 (not toll-free numbers).

Table 2019-10

Monthly Yield Curve for October 2019

Derived from October 2019 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.91	20.5	3.49	40.5	3.67	60.5	3.73	80.5	3.77
1.0	1.93	21.0	3.50	41.0	3.67	61.0	3.74	81.0	3.77
1.5	1.96	21.5	3.51	41.5	3.67	61.5	3.74	81.5	3.77
2.0	1.97	22.0	3.52	42.0	3.68	62.0	3.74	82.0	3.77
2.5	1.99	22.5	3.52	42.5	3.68	62.5	3.74	82.5	3.77
3.0	2.00	23.0	3.53	43.0	3.68	63.0	3.74	83.0	3.77
3.5	2.02	23.5	3.54	43.5	3.68	63.5	3.74	83.5	3.77
4.0	2.06	24.0	3.54	44.0	3.69	64.0	3.74	84.0	3.77
4.5	2.10	24.5	3.55	44.5	3.69	64.5	3.74	84.5	3.77
5.0	2.15	25.0	3.55	45.0	3.69	65.0	3.74	85.0	3.77
5.5	2.22	25.5	3.56	45.5	3.69	65.5	3.74	85.5	3.77
6.0	2.29	26.0	3.56	46.0	3.69	66.0	3.74	86.0	3.77
6.5	2.37	26.5	3.57	46.5	3.70	66.5	3.75	86.5	3.77
7.0	2.45	27.0	3.57	47.0	3.70	67.0	3.75	87.0	3.77
7.5	2.53	27.5	3.58	47.5	3.70	67.5	3.75	87.5	3.77
8.0	2.62	28.0	3.58	48.0	3.70	68.0	3.75	88.0	3.77
8.5	2.70	28.5	3.59	48.5	3.70	68.5	3.75	88.5	3.77
9.0	2.77	29.0	3.59	49.0	3.70	69.0	3.75	89.0	3.78
9.5	2.85	29.5	3.60	49.5	3.71	69.5	3.75	89.5	3.78
10.0	2.91	30.0	3.60	50.0	3.71	70.0	3.75	90.0	3.78
10.5	2.98	30.5	3.61	50.5	3.71	70.5	3.75	90.5	3.78
11.0	3.04	31.0	3.61	51.0	3.71	71.0	3.75	91.0	3.78
11.5	3.09	31.5	3.62	51.5	3.71	71.5	3.75	91.5	3.78
12.0	3.14	32.0	3.62	52.0	3.71	72.0	3.75	92.0	3.78
12.5	3.18	32.5	3.62	52.5	3.71	72.5	3.76	92.5	3.78
13.0	3.22	33.0	3.63	53.0	3.72	73.0	3.76	93.0	3.78
13.5	3.26	33.5	3.63	53.5	3.72	73.5	3.76	93.5	3.78
14.0	3.29	34.0	3.63	54.0	3.72	74.0	3.76	94.0	3.78
14.5	3.32	34.5	3.64	54.5	3.72	74.5	3.76	94.5	3.78
15.0	3.34	35.0	3.64	55.0	3.72	75.0	3.76	95.0	3.78
15.5	3.37	35.5	3.64	55.5	3.72	75.5	3.76	95.5	3.78
16.0	3.38	36.0	3.65	56.0	3.72	76.0	3.76	96.0	3.78
16.5	3.40	36.5	3.65	56.5	3.72	76.5	3.76	96.5	3.78
17.0	3.42	37.0	3.65	57.0	3.73	77.0	3.76	97.0	3.78
17.5	3.43	37.5	3.65	57.5	3.73	77.5	3.76	97.5	3.78
18.0	3.45	38.0	3.66	58.0	3.73	78.0	3.76	98.0	3.78
18.5	3.46	38.5	3.66	58.5	3.73	78.5	3.76	98.5	3.78
19.0	3.47	39.0	3.66	59.0	3.73	79.0	3.76	99.0	3.78
19.5	3.48	39.5	3.67	59.5	3.73	79.5	3.76	99.5	3.78
20.0	3.49	40.0	3.67	60.0	3.73	80.0	3.77	100.0	3.78

Administrative, Procedural, and Miscellaneous

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

(Also: Part 1, §§ 6662, 6694, 1.6662-4, 1.6694-2)

Adequate Disclosure Revenue Procedure Renewal

Rev. Proc. 2019-42

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2019-09, 2019-02 I.R.B. 292, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including but not limited to the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(b)(6) accuracy-related penalty and the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements). If this revenue procedure does not include an item or position, disclosure is adequate with respect to that item or position only if made on a properly completed Form 8275 or 8275-R, as appropriate, attached to the return for the year or to a qualified amended return. *See* Treas. Reg. § 1.6664-2(c) for information about qualified amended returns.

This revenue procedure applies to any income tax return filed on 2019 tax forms for a taxable year beginning in 2019, and to any income tax return filed in 2020 on 2019 tax forms for short taxable years beginning in 2020.

SECTION 2. CHANGES FROM REV. PROC. 2019-09

Editorial changes have been made throughout this revenue procedure. In addition, minor changes have been made in order to update the taxable years and tax forms to which this revenue procedure applies. No additional substantive changes have been made.

SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment is added to the tax. The penalty rate increases to 40 percent in the case of gross valuation misstatements under section 6662(h), nondisclosed noneconomic substance transactions under section 6662(i), or undisclosed foreign financial asset understatements under section 6662(j). Section 6662(b)(2) applies to the portion of an underpayment of tax that is attributable to a substantial understatement of income tax.

.02 Generally, there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of (i) 10 percent of the amount of tax required to be shown on the return for the taxable year or (ii) $5,000. Section 6662(d)(1). Section 6662(d)(1)(C) provides a special rule for taxpayers claiming a section 199A deduction. In the case of any taxpayer who claims any deduction allowed under section 199A for the taxable year, there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of (i) 5 percent of the amount of tax required to be shown on the return for the taxable year or (ii) $5,000. Section 6662(d)(1)(B) provides a special rule for corporations. A corporation (other than an S corporation or a personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of (i) 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, $10,000) or (ii) $10,000,000. Generally, an understatement is the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate, where the excess is determined without regard to items to which the reportable transaction understatement penalty under section 6662A applies. Section 6662(d)(2)(A). For purposes of determining whether an understatement is substantial, the understatement determined under the general rule is increased by the aggregate amount of any reportable transaction understatements relating to the return. Section 6662A(e)(1)(A).

.03 In the case of an item not attributable to a tax shelter, if the taxpayer has a reasonable basis for the tax treatment of the item, the amount of the understatement is reduced by the portion of the understatement attributable to the item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. Section 6662(d)(2)(B)(ii).

.04 Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting an understatement of liability due to an "unreasonable position" if the tax return preparer knew (or reasonably should have known) of the position. A position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) is generally treated as unreasonable unless (i) there is or was substantial authority for the position, or (ii) the position was properly disclosed in accordance with section 6662(d)(2)(B)(ii)(I) and had a reasonable basis. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. *See* Notice 2009-5, 2009-3 I.R.B. 309, for interim penalty compliance rules for tax shelter transactions.

.05 In general, this revenue procedure provides guidance for determining when disclosure by return is adequate for purposes of section 6662(d)(2)(B)(ii) and

section 6694(a)(2)(B). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable.

.06 This revenue procedure may apply to a return for a fiscal tax year that begins in 2019 and ends in 2020. This revenue procedure may also apply to a short year return for a period beginning in 2020 if the return is to be filed before the 2020 forms are available. (Note that individuals are generally not put in this position. The most frequent situation in which a short year arises is when filing a decedent's final return for a fractional part of a year. In that situation, the 2020 form will be available because the final return is due the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of such fractional part of the year (meaning the due date is not accelerated). *See* Treas. Reg. § 1.6072-1(b). In the case of fiscal year and short year returns, the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2019, even though these changes are not reflected on the form or instructions.

.07 This document does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2019. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, until the Service prescribes criteria for complying with the requirement.

.08 A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP, *Uncertain Tax Position Statement*, will be treated as if the corporation filed a Form 8275 or Form 8275-R regarding the tax position. The filing of a Form 8275 or Form 8275-R, however, will not be treated as if the corporation filed a Schedule UTP.

SECTION 4. PROCEDURE

.01 General

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M-1 and M-3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between parties who are related within the meaning of section 267(b). If an entry may present a legal issue or controversy because of a related-party transaction, then that transaction and the relationship must be disclosed on a Form 8275 or Form 8275-R.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that item (such as on an unnamed line under an "Other Expense" category), the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words "bad debt" must be written or typed on the line of Schedule C (Form 1040 or 1040SR) that shows the amount of the bad debt. Also, for Schedule M-3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 38, Other expense/deduction items with differences, the entry must provide descriptive language; for example, "Cost of non-compete agreement deductible not capitalizable," and the description must be provided on an attachment. Similarly, for other forms, if space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return: (1) does not have a reasonable basis as defined in Treas. Reg. § 1.6662-3(b)(3); (2) is attributable to a tax shelter item as defined in section 6662(d)(2)(C)(ii); or (3) is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position.

(6) Disclosure also will have no effect for purposes of the section 6694(a) penalty as applicable to tax return preparers if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies.

.02 Items

(1) Form 1040, Schedule A, *Itemized Deductions*:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 7, supplying all required information. Line 6 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 8 through 10, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is completed, or (ii) amounts disallowed under section 265.

(d) Charitable Contributions: Complete lines 11 through 14, supplying all required information and attaching all related forms required pursuant to statute or regulation.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Officers' Compensation: Complete Form 1125-E, *Compensation of Officers*, when its instructions require completion. You must express the "percent of time devoted to business" as a numerical percentage, rather than as a non-numerical description such as "part" or "as needed." This section does not apply to "excess parachute payments," as defined in section 280G. This section does not apply to the extent that remuneration paid or incurred exceeds an applicable employee-remuneration deduction limitation under section 162(m).

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any amount properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting:

For Schedule M-1 and all Schedules M-3, including those listed in (a)-(f) below, the information provided must reasonably apprise the Service of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275-R must be used to adequately disclose the item (*see* Part II of the instructions for those forms).

Note: An item reported on a line with a pre-printed description, shown on an attached schedule or "itemized" on Schedule M-1, may represent the aggregate amount of several transactions producing that item (*i.e.*, a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, a potentially controversial item may involve a portion of the aggregate amount disclosed on the schedule. The Service will not be reasonably apprised of a potential controversy by the aggregate amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275-R regarding that portion of the item.

Combining unlike items, whether on Schedule M-1 or Schedule M-3 (or on an attachment when directed by the instructions), will not constitute an adequate disclosure.

Additionally, taxpayers that file the Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*, may be required to complete Schedule B (Form 1120), *Additional Information for Schedule M-3 Filers*. For further information, see Who Must File in the General Instructions for Schedule B (Form 1120). Taxpayers that file the Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*, may be required to complete Schedule C (Form 1065), *Additional Information for Schedule M-3 Filers*. For further information, see Who Must File in the General Instructions for Schedule C (Form 1065). When required, these schedules are necessary to constitute adequate disclosure:

(a) Form 1065. Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(b) Form 1120. (i) Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*.

(ii) Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(c) Form 1120-L. Schedule M-3 (Form 1120-L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(d) Form 1120-PC. Schedule M-3 (Form 1120-PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(e) Form 1120-S. Schedule M-3 (Form 1120-S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(f) Form 1120-F. Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More*: Column (b), *Temporary Differences*, Column (c), *Permanent Differences*, and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI,* of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*; Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, must be completed when required by its instructions.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses (for use only by Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and employees with impairment-related work expenses)*, and attach to the return. This section does not apply to club dues or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2019 tax form for a taxable year beginning in 2019 and to any income tax return filed on a 2019 tax form in 2020 for a short taxable year beginning in 2020.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and Administration at (202) 317-6844 (not a toll free number).

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

(Also Part I, §§ 62, 67, 162, 170, 213, 217, 274, 1016; 1.62-2, 1.162-17, 1.170A-1, 1.213-1, 1.217-2, 1.274-5, 1.1016-3.)

Rev. Proc. 2019-46

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2010-51, 2010-51 I.R.B. 883, to reflect changes made to §§ 67 and 217 of the Internal Revenue Code by §§ 11045 and 11049 of Public Law No. 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). This revenue procedure provides rules for using optional standard mileage rates in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes.

This revenue procedure also provides rules for substantiating, under § 274(d) and § 1.274-5 of the Income Tax Regulations, the amount of an employee's ordinary and necessary expenses of local travel or transportation away from home that a payor (an employer, its agent, or a third party) reimburses using a mileage allowance. Taxpayers are not required to use the substantiation methods described in this revenue procedure. A taxpayer may substantiate actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence. The Internal Revenue Service (IRS) prospectively adjusts the standard mileage rates for business, medical, and moving expenses annually (to the extent warranted). The IRS publishes the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes in a separate annual notice.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 162(a) allows a deduction for the ordinary and necessary expenses a taxpayer pays or incurs during the taxable year in carrying on any trade or business, including the cost of operating an automobile to the extent that it is used in a trade or business.

.02 Under § 262, a taxpayer may not deduct any portion of the cost of operating an automobile attributable to personal use.

.03 To deduct expenses for travel or listed property, a taxpayer must substantiate the expenses under § 274(d). As amended by the TCJA, § 280F(d)(4) continues to provide that listed property includes passenger automobiles and any other property used as a means of transportation.

.04 Section 1.274-5(g) and (j) authorizes the Commissioner of Internal Revenue (Commissioner) to prescribe rules and establish methods under which mileage rates and allowances that comply with reasonable business practice are treated as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of transportation expenses for purposes of § 1.274-5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of the expenses for purposes of § 1.274-5(f).

.05 In computing adjusted gross income, § 62(a)(1) allows an individual taxpayer to deduct expenses paid or incurred by the taxpayer in carrying on a trade or business, if the trade or business does not consist of services by the taxpayer as an employee. Section 62(a)(2)(A), however, allows an employee to deduct business expenses the employee pays or incurs in performing services as an employee under a reimbursement or other expense allowance arrangement with a payor. In addition, § 62(a)(2)(B) through (E) allows a qualified performing artist, a fee-basis state or local government official, an eligible educator, and an Armed Forces reservist to deduct specified business expenses paid or incurred in performing services

as an employee. The expenses paid or incurred by the taxpayer that are deductible under § 62(a)(1) or (a)(2) in computing adjusted gross income are not miscellaneous itemized deductions as described in § 67.

.06 Section 62(c) provides that an arrangement is not treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) Does not require the employee to substantiate the expenses covered under the arrangement to the payor, or

(2) Allows the employee to retain any amount in excess of the substantiated expenses covered under the arrangement.

.07 Section 62(c) further provides, however, that substantiation is not required for the expense to the extent provided in regulations under § 274(d).

.08 Under § 1.62-2(c), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses. If an arrangement meets these requirements, all amounts paid under the arrangement are treated as paid under an accountable plan and are excluded from income and wages. If an arrangement does not meet one or more of these requirements, all amounts paid under the arrangement are treated as paid under a nonaccountable plan and are included in the employee's gross income, must be reported as wages or compensation on the employee's Form W-2, and are subject to the withholding and payment of employment taxes (Federal Insurance Contributions Act, Federal Unemployment Tax Act, Railroad Retirement Tax Act, Railroad Unemployment Repayment Tax, and income tax).

.09 Section 1.62-2(e)(2) provides that the amount of a business expense substantiated under § 1.274-5(g) is treated as substantiated for purposes of § 1.62-2.

.10 Under § 1.62-2(f)(2), the Commissioner may prescribe rules for treating an arrangement providing mileage allowances as satisfying the requirement of returning amounts in excess of expenses if the arrangement requires the employee to return amounts that relate to unsubstantiated travel miles, even if the employee is not required to return the portion of the allowance for substantiated travel miles that exceeds the deemed substantiated amount for those miles. The allowance must be reasonably calculated not to exceed the amount of the employee's expenses and the employee must be required to return within a reasonable period (as defined in § 1.62-2(g)) any portion of the allowance that relates to unsubstantiated travel miles. Under § 1.62-2(h)(2)(i)(B), the portion of the allowance that relates to substantiated travel days, that exceeds the substantiated amount for those days, and that the employee is not required to return is subject to withholding and payment of employment taxes. *See* §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the Employment Tax Regulations.

.11 Under § 1.62-2(h)(2)(i)(B)(4), the Commissioner may prescribe special rules for the timing of withholding and paying employment taxes on mileage allowances.

.12 Section 67(a) generally provides that, in the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income (2-percent floor).

.13 Section 11045(a) of the TCJA amended § 67 by adding subsection (g), which temporarily suspends all miscellaneous itemized deductions that are subject to the 2-percent floor for any taxable year beginning after December 31, 2017, and before January 1, 2026 (suspension period). For any taxable year during the suspension period, a taxpayer is not permitted to claim miscellaneous itemized deductions, including unreimbursed employee travel expenses. However, in computing adjusted gross income, deductions allowed for expenses that are described in § 62(a)(1) or (2) are not miscellaneous itemized expenses and are therefore not suspended.

.14 Section 217(a) generally allows a deduction for moving expenses paid or incurred during the taxable year by the taxpayer in connection with starting work as an employee or as a self-employed individual at a new principal place of work (as defined in § 1.217-2(c)(3)) (moving expenses).

.15 Section 11049(a) of the TCJA amended § 217 by adding subsection (k), which temporarily suspends the deduction for moving expenses for any taxable year during the suspension period. However, under § 217(g), the suspension of the deduction does not apply to a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station. For any taxable year during the suspension period, a taxpayer other than a taxpayer described in § 217(g) is not permitted to claim a deduction for moving expenses.

.16 This revenue procedure modifies Rev. Proc. 2010-51 as follows:

(1) Section 4.02 is modified to provide that a taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction during the suspension period.

(2) Sections 4.03 is modified to provide that a taxpayer may not claim a miscellaneous itemized deduction during the suspension period for parking fees and tolls attributable to the taxpayer using the automobile for business purposes.

(3) Section 4.04 is modified to provide that, under § 1016(a)(2), a taxpayer must reduce the basis of an automobile used in business by the greater of the amount of depreciation the taxpayer claims for the automobile or the amount of depreciation allowable. If a taxpayer uses the business standard mileage rate to compute the expense of operating an automobile for any year, a per-mile amount (published by the IRS in an annual notice) is treated as the depreciation claimed by the taxpayer and the depreciation allowable for those years in which the taxpayer used the business standard mileage rate.

(4) Section 4.05(4) is added to provide that a taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction during the suspension period for unreimbursed travel expenses.

(5) Section 4.06 is added to provide that a taxpayer who pays or incurs unreimbursed employee travel expenses during the suspension period that are deductible by the taxpayer in computing adjusted gross income may use the business standard mileage rate to compute an adjustment to gross income.

(6) Section 5.02 is modified to provide that the deduction for moving expenses during the suspension period does not ap-

ply unless the taxpayer is a member of the Armed Forces on active duty moving pursuant to a military order and incident to a permanent change of station.

(7) Section 6.03(2) is modified to provide that in using the fixed and variable rate (FAVR) allowance, an employee may not claim a miscellaneous itemized deduction during the suspension period for parking fees and tolls attributable to the employee driving the standard automobile in performing services as an employee.

(8) Section 7.06 is added to provide that if during the suspension period, an employee's substantiated expenses are less than the employee's actual expenses, the employee may not claim an itemized deduction for the excess amount.

(9) Section 7.08 (formerly section 7.07) is modified to provide that an employee's amount computed under section 4 for the business standard mileage rate is an itemized deduction subject to the 2-percent floor and is not deductible during the suspension period.

(10) Section 8.04 is added to clarify that amounts paid under a mileage allowance to an employee regardless of whether the employee incurs deductible business expenses are treated as paid under a nonaccountable plan.

SECTION 3. DEFINITIONS

.01 *Standard mileage rate*. The term "standard mileage rate" means the amount the IRS provides for optional use by taxpayers to substantiate the amount of—

(1) Deductible costs of operating for business purposes automobiles, including vans, pickups, or panel trucks, they own or lease, and

(2) Deductible costs of operating automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses*. The term "transportation expenses" means the expenses of operating an automobile for local transportation or transportation away from home.

.03 *Mileage allowance*. The term "mileage allowance" means a payment under a reimbursement or other expense allowance arrangement that is—

(1) Paid for the ordinary and necessary business expenses an employee incurs, or that the payor reasonably anticipates an employee will incur, for transportation expenses in performing services as an employee,

(2) Reasonably calculated not to exceed the amount of the expenses or anticipated expenses, and

(3) Paid at the applicable standard mileage rate, a flat rate or stated schedule, or under any other IRS-specified rate or schedule.

.04 *Flat rate or stated schedule*. A mileage allowance is paid at a flat rate or stated schedule if it is paid on a uniform and objective basis for the expenses described in section 3.03 of this revenue procedure. The allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and accords with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs, including depreciation or lease payments, insurance, registration and license fees, and personal property taxes, of driving an automobile in performing services as an employee, coupled with a periodic payment at a cents-per-mile rate to cover the variable costs, including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs, of using an automobile for those purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locations to cover the costs of driving an automobile in performing services as an employee is an allowance paid at a flat rate or stated schedule.

.05 *Lease period*. The term "lease period" includes renewal periods.

.06 *Suspension period*. The term "suspension period" means any taxable year beginning after December 31, 2017, and before January 1, 2026.

.07 *Armed Forces*. The term "Armed Forces" means the Armed Forces of the United States.

SECTION 4. BUSINESS STANDARD MILEAGE RATE

.01 *Use of the business standard mileage rate*. A taxpayer may use the business standard mileage rate (published by the IRS in an annual notice) to substantiate the amount of a deduction to compute adjusted gross income for an automobile that a taxpayer either owns or leases. A taxpayer generally may deduct an amount equal to either the business standard mileage rate times the number of business miles traveled, or the actual fixed and variable costs the taxpayer pays or incurs that are allocable to traveling those business miles, subject to the limitations in section 4.05 of this revenue procedure.

.02 *Business standard mileage rate in lieu of fixed and variable costs*. A taxpayer computes a deduction using the business standard mileage rate on a yearly basis and in lieu of computing the fixed and variable costs of the automobile allocable to business purposes, except as provided in section 7.06 of this revenue procedure. Items such as: depreciation or lease payments; maintenance and repairs; tires; gasoline, including all taxes thereon; oil; insurance; and license and registration fees are included in fixed and variable costs for this purpose. However, during the suspension period, a taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction. *See* sections 4.05(4) and 7.06 of this revenue procedure. Notwithstanding the suspension of miscellaneous itemized deductions, a taxpayer may use the standard business mileage rate in computing adjusted gross income under § 62(a)(1) or (2). *See* sections 4.06 and 7.07 of this revenue procedure.

.03 *Parking fees, tolls, interest, and taxes*.

(1) During the suspension period, a taxpayer may not claim a miscellaneous itemized deduction for parking fees and tolls attributable to the use of the automobile for business purposes. *See* § 67(g). A taxpayer may deduct, as separate items, parking fees and tolls attributable to the use of the automobile for business purposes to the extent the items are deductible in computing adjusted gross income under § 62(a)(1) or (2).

(2) A taxpayer may deduct interest relating to the purchase of the automobile and state and local personal property taxes as separate items to the extent allowable under § 163 or § 164, respectively. Under § 163(h)(2)(A), interest is nondeductible personal interest if it is paid or incurred on indebtedness properly allocable to the

trade or business of performing services as an employee. Section 164 provides that state and local taxes a taxpayer pays or incurs in connection with an acquisition or disposition of property are treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of the property. If the automobile is operated less than 100 percent for business purposes, a taxpayer must allocate the business and nonbusiness portion of the allowable taxes and interest deduction.

.04 *Depreciation*. Under § 1016(a)(2), a taxpayer must reduce the basis of an automobile used in business by the greater of the amount of depreciation the taxpayer claims for the automobile or the amount of depreciation allowable. If a taxpayer uses the business standard mileage rate to compute the expense of operating an automobile for any year, a per-mile amount (published by the IRS in an annual notice) is treated as the depreciation claimed by the taxpayer and the depreciation allowable for those years in which the taxpayer used the business standard mileage rate. If the taxpayer deducted the actual costs of operating an automobile for one or more of those years, the taxpayer may not use the business standard mileage rate to determine the amount treated as depreciation for those years.

.05 *Limitations*.

(1) A taxpayer may not use the business standard mileage rate to compute the deductible expenses of five or more automobiles a taxpayer owns or leases and uses simultaneously (such as in fleet operations).

(2) A taxpayer may not use the business standard mileage rate to compute the deductible business expenses of an automobile a taxpayer leases unless the taxpayer uses either the business standard mileage rate or FAVR allowance (as provided in section 6 of this revenue procedure) for the entire lease period.

(3) A taxpayer may not use the business standard mileage rate to compute the deductible expenses of an automobile for which the taxpayer has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the additional first-year depreciation allowance under, for example, § 168(k) or former § 168(n), or (d) used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile, if owned, from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile's remaining estimated useful life, subject to the applicable depreciation deduction limitations under § 280F.

(4) A taxpayer may not use the business standard mileage rate to claim a miscellaneous itemized deduction subject to the 2-percent floor under § 67 for unreimbursed travel expenses paid or incurred during the suspension period. *See* § 67(g).

(5) A taxpayer who is an employee of the United States Postal Service may not use the business standard mileage rate or this revenue procedure to compute the amount of the taxpayer's deductible automobile expenses incurred in performing services involving the collection and delivery of mail on a rural route if the taxpayer receives qualified reimbursements, as defined in § 162(o), for the expenses. *See* § 162(o) for the rules that apply to these qualified reimbursements.

.06 *Use of the business standard mileage rate during the suspension period in computing adjusted gross income.* A taxpayer who pays or incurs unreimbursed employee travel expenses that are deductible by such taxpayer in computing adjusted gross income under § 62 may use the business standard mileage rate to compute the adjustment to gross income, notwithstanding the suspension of miscellaneous itemized deductions under § 67(g) during the suspension period.

SECTION 5. CHARITABLE AND MEDICAL AND MOVING STANDARD MILEAGE RATES

.01 *Charitable standard mileage rate*. A taxpayer may use the charitable standard mileage rate (published by the IRS in an annual notice) to compute the charitable contribution deduction for use of an automobile in rendering gratuitous services to a charitable organization under § 170.

.02 *Medical and moving standard mileage rates*.

(1) A taxpayer may use the medical standard mileage rate (published by the IRS in an annual notice) to compute the deduction for use of an automobile as medical care described in § 213.

(2) During the suspension period, a taxpayer who is a member of the Armed Forces on active duty moving pursuant to a military order and incident to a permanent change of station may use the moving standard mileage rate (published by the IRS in an annual notice) to compute the deduction for the use of an automobile as a moving expense deductible under § 217. No other taxpayers may claim a moving expense deduction under § 217 during the suspension period.

.03 *Charitable, medical, or moving standard mileage rate in lieu of variable expenses*. A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of a deduction for variable expenses, including gasoline and oil, of the automobile allocable to those purposes. Costs for items such as depreciation or lease payments, insurance, and license and registration fees are not deductible for these purposes and are not included in the charitable, medical, or moving standard mileage rate.

.04 *Parking fees, tolls, and taxes*. A taxpayer may deduct, as separate items, parking fees and tolls attributable to the use of the automobile for deductible charitable, medical, or moving expense purposes to the extent otherwise allowable. State and local personal property taxes are not deductible as charitable, medical, or moving expenses. State and local personal property taxes may be deducted as separate items to the extent allowable under § 164.

SECTION 6. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general*.

(1) The ordinary and necessary expenses an employee pays or incurs in driving an automobile the employee owns or leases in performing services as an employee of the employer are deemed substantiated, in an amount determined under section 7 of this revenue procedure, when a payor reimburses those expenses using a FAVR

allowance. A FAVR allowance is a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of this section 6.

(2) A payor must base the amount of a FAVR allowance on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is reasonable and statistically defensible in approximating the actual expenses employees receiving the allowance would incur as owners of the standard automobile.

.02 *Computing a FAVR allowance*.

(1) *FAVR allowance*. A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile or an automobile of the same make and model that is comparably equipped, retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments. However, optional high mileage payments are included in an employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes when paid. *See* section 7.05 of this revenue procedure. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles an employee drives and substantiates for a calendar year in excess of the annual business mileage for that year. If a FAVR allowance covers an employee for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment*. A periodic fixed payment covers the projected fixed costs (including depreciation or lease payments, insurance, registration and license fees, and personal property taxes) of driving the standard automobile in performing services as an employee of the employer in a base locality, and must be paid at least quarterly. A payor may compute a periodic fixed payment by (a) dividing the total projected fixed costs of the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment*. A periodic variable payment covers the projected variable costs, including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs, of driving a standard automobile in performing services as an employee in a base locality, and must be paid at least quarterly. A payor may compute a periodic variable payment rate for a computation period by dividing the total projected variable costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period may be any period of a year or less. Computation period mileage is the total mileage, business and personal, a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile an employee substantiates for the computation period, a payor must make a periodic variable payment at a rate that does not exceed the rate for that computation period.

(4) *Base locality*. A base locality is the particular geographic locality or region of the United States where an employee generally pays or incurs the costs of driving an automobile in performing services as an employee. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region where the employee resides. For purposes of determining the amount of variable costs, the base locality is generally the geographic locality or region where the employee drives the automobile in performing services as an employee.

(5) *Standard automobile*. A standard automobile is the automobile a payor selects on which a specific FAVR allowance is based.

(6) *Standard automobile cost*. The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes on the purchase of the automobile. The maximum standard automobile cost for a given taxable year is published by the IRS in an annual notice.

(7) *Annual mileage*. Annual mileage is the total mileage, business and personal, a payor reasonably projects an employee will drive a standard automobile during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage*. Annual business mileage is the mileage a payor reasonably projects an employee will drive a standard automobile in performing services as an employee during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage*. A payor determines the business use percentage by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness of the business use percentage based on records of total mileage and business mileage driven by employees annually, a payor may use a business use percentage that is less than or equal to the following percentages for a FAVR allowance that is paid for the following annual business mileage:

Annual business mileage	*Business use percentage*
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period*. A retention period is the period in calendar years a payor selects during which the payor expects an employee to drive a standard automobile in performing services as an employee before the automobile is replaced. The period may not be less than two calendar years.

(11) *Retention mileage*. Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value*. The residual value of a standard automobile is the projected amount for which it could be sold at the end of the retention period after being driven the retention mileage. The IRS will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

Retention period	*Residual value*
2 years	70 percent
3 years	60 percent
4 years	50 percent

.03 *FAVR allowance in lieu of fixed and variable costs*.

(1) A reimbursement computed using a FAVR allowance is in lieu of the employee's deduction of all the fixed and variable costs the employee pays or incurs in driving the automobile in performing services as an employee, except as provided in section 7.06 of this revenue procedure. Items such as: depreciation or lease payments; maintenance and repairs; tires; gasoline, including all taxes thereon; oil; insurance; license and registration fees; and personal property taxes are included in fixed and variable costs for this purpose.

(2) During the suspension period, an employee may not claim a miscellaneous itemized deduction for parking fees and tolls attributable to the employee driving the standard automobile in performing services as an employee.

.04 *Depreciation*.

(1) A payor may not provide a FAVR allowance for an automobile for which an employee has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the additional first-year depreciation allowance under, for example, § 168(k) or former § 168(n), or (d) used ACRS under former § 168 or MACRS under current § 168. If an employee uses actual costs for an owned automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life, subject to the applicable depreciation deduction limitations under § 280F.

(2) Except as provided in section 6.04(3) of this revenue procedure, the total amount of the depreciation component for the retention period a payor includes in computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of the depreciation component may not exceed the sum of the annual § 280F limitations on depreciation in effect at the beginning of the retention period that apply to the standard automobile during the retention period.

(3) If the depreciation component of the periodic fixed payments exceeds the limitations in section 6.04(2) of this revenue procedure, the IRS will treat that section as satisfied if the total annual amount of the FAVR (periodic fixed and variable) payments a payor makes to an employee driving 80 percent of the annual business mileage of the standard automobile does not exceed the business standard mileage rate for that year multiplied by 80 percent of the annual business mileage of the standard automobile.

(4) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid for an automobile reduces the basis of the automobile, but not below zero, in determining adjusted basis as required by § 1016(a)(2). *See* section 6.07(2) of this revenue procedure for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations*.

(1) A payor may provide a FAVR allowance only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in performing services as an employee or, if greater, 80 percent of the annual business mileage of that FAVR allowance. If the employee is covered by the FAVR allowance for less than the entire calendar year, the payor may prorate these limits on a monthly basis.

(2) A payor may not provide a FAVR allowance to a control employee, as defined in § 1.61-21(f)(5) and (6), excluding the $100,000 limitation in paragraph (f)(5)(iii).

(3) A payor may not provide a FAVR allowance if at any time during a calendar year a majority of the employees the FAVR allowance covers are management employees.

(4) A payor may not provide a FAVR allowance to any employee unless at all times during a calendar year FAVR allowances provided by the payor cover at least five employees in total.

(5) A payor may provide a FAVR allowance only for an automobile (a) the employee receiving the payment owns or leases, (b) the cost of which, as a new vehicle, whether or not purchased new by the employee, was at least 90 percent of the standard automobile cost included in determining the FAVR allowance for the first calendar year the employee receives the allowance for that automobile, and (c) for which the model year does not differ from the current calendar year by more than the number of years in the retention period.

(6) A payor may not provide a FAVR allowance for an automobile an employee leases for which the employee has used actual expenses to compute the deductible business expenses of the automobile for any year during the lease period.

(7) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without considering rate-increasing factors such as poor driving records or young drivers.

(8) A payor may provide a FAVR allowance only to an employee whose insurance coverage limits on the automobile for which the FAVR allowance is paid are at least equal to the insurance coverage limits used to compute the periodic fixed payment under that FAVR allowance.

.06 *Employee reporting*. Within 30 days after a FAVR allowance initially covers an employee's automobile, or again covers the automobile if coverage has lapsed, the employee by written declaration must provide the payor with the following information: (1) the make, model, and year of the employee's automobile, (2) written proof of the insurance coverage limits on the automobile, (3) the odometer reading of the automobile, (4) if owned, the purchase price of the automobile or, if leased, the price at which the automobile is ordinarily sold by retailers (gross capitalized cost of the automobile), and (5) if owned, whether the employee has claimed depreciation for the automobile using any of the depreciation methods prohibited by sec-

tion 6.04(1) of this revenue procedure or, if leased, whether the employee has computed deductible business expenses for the automobile using actual expenses. The employee also must provide the information in (1), (2), and (3) to the payor within 30 days after the beginning of each calendar year that a FAVR allowance covers the employee's automobile.

.07 *Payor recordkeeping and reporting*.

(1) The payor or its agent must maintain written records stating (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information the employees provided under section 6.06 of this revenue procedure.

(2) Within 30 days of the end of each calendar year, the payor must provide each employee covered by a FAVR allowance during that year with a statement that lists the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year to an automobile owner and explains that by receiving a FAVR allowance the employee has elected to exclude the automobile from the MACRS under § 168(f)(1). For automobile lessees, the statement must explain that by receiving the FAVR allowance the employee may not compute the deductible business expenses of the automobile using actual expenses for the lease period.

.08 *Failure to meet section 6 requirements*. If an employee receives a mileage allowance that fails to meet one or more of the requirements of this section 6, the employee may not be treated as covered by any FAVR allowance of the payor during the period of the failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 4, 7.01(1), and 7.02 of this revenue procedure to the extent the requirements of those sections are met.

SECTION 7. MILEAGE ALLOWANCES

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses an employee incurs or may incur, the payor is deemed to have substantiated either:

(1) For any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the business standard mileage rate multiplied by the number of substantiated business miles; or

(2) For a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the substantiated business miles that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 An employee is deemed to satisfy the adequate accounting requirements of § 1.274-5(f) and the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274-5(c) if the amount of transportation expenses is deemed substantiated under the rules provided in section 7.01 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses under § 1.274-5T(b)(2) (travel away from home), § 1.274-5T(b)(6) (listed property, which includes passenger automobiles and any other property used as a means of transportation), and § 1.274-5(c) (rules of substantiation).

.03 An arrangement providing mileage allowances is treated as satisfying the requirement of § 1.62-2(f)(2) on returning amounts in excess of expenses as follows:

(1) For a mileage allowance, other than a FAVR allowance, paid only at a cents-per-mile rate, the requirement to return excess amounts is treated as satisfied if an employee is required to return within a reasonable period of time, as defined in § 1.62-2(g), any portion of the allowance that relates to unsubstantiated travel miles, even though the arrangement does not require the employee to return the portion of the allowance that relates to substantiated travel miles and that exceeds the amount of the employee's expenses deemed substantiated. For example, a payor provides an employee an advance mileage allowance of $170.00 based on an anticipated 250 business miles at 68 cents per mile, at a time when the business standard mileage rate is 58 cents per mile, and the employee substantiates 150 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return the portion of the allowance that relates to the 100 unsubstantiated business miles ($68.00) even though the employee is not required to return the portion of the allowance ($15.00) that exceeds the amount of the employee's expenses deemed substantiated under section 7.01 of this revenue procedure ($87.00) for the 150 substantiated business miles. However, the $15.00 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 7.05 of this revenue procedure.

(2) For a mileage allowance, other than a FAVR allowance, paid other than only at a cents-per-mile rate, the requirement to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time, as defined in § 1.62-2(g), any portion of the allowance that exceeds the product of the business standard mileage rate and the number of substantiated travel miles. For example, a payor provides an employee an advance mileage allowance of $400 per month plus 20 cents per mile based on an anticipated 2000 miles for a total of $800, at a time when the business standard mileage rate is 58 cents per mile, and the employee substantiates 1000 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return $220, the portion of the allowance that exceeds the product of the standard mileage rate and the miles substantiated ($580).

(3) For a FAVR allowance, the requirement to return excess amounts is treated as satisfied if the employee is required to return, within a reasonable period of time, as defined in § 1.62-2(g), (a) the portion, if any, of the periodic variable payment received that relates to miles in excess of substantiated business miles, and (b) the portion, if any, of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a

mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 7.01 of this revenue procedure, provided the employee substantiates under section 7.02 of this revenue procedure. *See* § 1.274-5T(f)(2)(i). Assuming that the remaining requirements for an accountable plan provided in § 1.62-2 are satisfied, that portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from withholding and payment of employment taxes. *See* § 1.62-2(c)(2) and (c)(4).

.05 An employee is required to include in gross income the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 7.01 of this revenue procedure. *See* § 1.274-5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. *See* § 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06 If during the suspension period an employee's substantiated expenses are less than the employee's actual expenses, the employee may not claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated. *See* § 67(g).

.07 A self-employed individual may deduct an amount computed under section 4 of this revenue procedure in computing adjusted gross income under § 62(a)(1).

.08 An employee may deduct an amount computed under section 4 of this revenue procedure only as an itemized deduction, unless the amount is used to compute adjusted gross income under § 62(a)(2)(B)-(a)(2)(E). This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions in § 67, and is therefore suspended. Notwithstanding the suspension of miscellaneous itemized deductions, an employee who is a qualifying performing artist, fee-basis state or local government official, educator, or Armed Forces reservist under § 62(a)(2)(B)-(a)(2)(E) may deduct an amount computed under section 4 of this revenue procedure. This amount is deducted under § 62(a)(2) in computing adjusted gross income and is not a miscellaneous itemized deduction as described in § 67.

SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a mileage allowance, other than a FAVR allowance, if any, that relates to substantiated business miles and that exceeds the amount deemed substantiated for those miles under section 7.01(1) of this revenue procedure is treated as paid under a nonaccountable plan and is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) For a mileage allowance paid as a reimbursement, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which a payor reimburses the expenses for the substantiated business miles. *See* § 1.62-2(h)(2)(i)(B)(2).

(2) For a mileage allowance paid as an advance, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the business miles for which the advance was paid are substantiated. *See* § 1.62-2(h)(2)(i)(B)(3). If some or all of the business miles for which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(3) For a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (for example, a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 6 of this revenue procedure), the payor must compute periodically, no less frequently than quarterly, the amount, if any, that exceeds the amount deemed substantiated under section 7.01(1) of this revenue procedure by comparing the total mileage allowance paid for the period to the business standard mileage rate multiplied by the number of business miles the employee substantiated for the period. Any excess is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. *See* § 1.62-2(h)(2)(i)(B)(4).

(4) For example, a payor provides employees a mileage allowance under an arrangement that otherwise meets the requirements of an accountable plan at a rate of 68 cents per mile, when the business standard mileage rate is 58 cents per mile. The payor does not require the return of the portion of the allowance that exceeds the business standard mileage rate for the substantiated business miles (10 cents). In June, the payor advances an employee $340.00 for 500 miles to be traveled during the month. In July, the employee substantiates to the payor 400 business miles traveled in June and returns $68.00 to the payor for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is $232.00 and the employee is not required to return $40.00. No later than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the payor must withhold and pay employment taxes on $40.00.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 7.01(2) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles an employee substantiates and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

.03 All payments to an employee under a mileage allowance are treated as paid under a nonaccountable plan if the arrangement evidences a pattern of abuse. An arrangement evidences a pattern of abuse if, for example, it has no process to determine when an allowance exceeds the amount that may be deemed substantiated and the arrangement routinely pays allowances in excess of the amount that may be deemed substantiated without (1) requiring actual substantiation or repayment of the excess amount, or (2) treating the excess allowances as wages for employment tax purposes. *See* § 62(c), § 1.62-2(k), and Rev. Rul. 2006-56, 2006-2 C.B. 874. Thus, these payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. *See* § 1.62-2(c)(3), (c)(5), and (h)(2).

.04 If a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) deductible business expenses or other *bona fide* expenses related to the employer's business that are not deductible, the arrangement does not meet the business connection requirement of § 1.62-2(d), and all amounts paid under the arrangement are treated as paid under a nonaccountable plan. Thus, an arrangement that recharacterizes taxable wages as nontaxable reimbursements or allowances in order to avoid the suspension of miscellaneous itemized deductions under § 67(g) does not satisfy the business connection requirement of the accountable plan rules under § 62(c) and the applicable regulations. See § 62(c), § 1.62-2(d), and Rev. Rul. 2012-25, 2012-37 I.R.B. 337.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for (1) deductible transportation expenses paid or incurred on or after November 14, 2019, and (2) mileage allowances or reimbursements (a) paid to an employee or to a charitable volunteer on or after November 14, 2019, and (b) for transportation expenses the employee or charitable volunteer pays or incurs on or after November 14, 2019. Notwithstanding the effective date in this section 9, amendments made by the TCJA to §§ 67 and 217 are effective for any taxable year beginning after December 31, 2017, and before January 1, 2026.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2010-51 is modified, and as modified, is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Anna Gleysteen of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Gleysteen at (202) 317-7007 (not a toll-free number).

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

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Proposed Regulations:—Continued

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Treasury Decisions:

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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 Items[1]

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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.

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

We Welcome Comments About the Internal Revenue Bulletin

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