

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

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

## ADMINISTRATIVE

### **Action On Decision 2020-3, page 663.**

Acquiescence to the holding that the term “taxpayer” in section 7811 can be broadly interpreted to include a wrongful-levy claimant. Nonacquiescence to the holding that section 7811(d) suspends the running of the limitations periods for third-parties to file wrongful levy claims or suits.

## ADMINISTRATIVE & EMPLOYMENT TAX

### **Notice 2020-22, page 664.**

This notice provides a waiver of additions to tax for failure to make a deposit of taxes for employers required to pay qualified sick leave wages and qualified family leave wages mandated by the Families First Coronavirus Response Act (Families First Act) and qualified health plan expenses allocable to these wages. This notice also provides a waiver of additions to tax for failure to make a deposit of taxes for certain employers experiencing a full or partial business suspension due to orders from a governmental authority due to the coronavirus disease 2019 or experiencing a statutorily specified decline in business under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This notice applies to deposits of Employment Taxes (including withheld income taxes, taxes under the Federal Insurance Contributions Act and taxes under the Railroad Retirement Act) reduced in anticipation of the credits with respect to qualified

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sick leave wages and qualified family leave wages paid with respect to the period beginning April 1, 2020, and ending December 31, 2020. This notice applies with respect to deposits of Employment Taxes reduced in anticipation of the credits with respect to qualified wages paid with respect to the period beginning on March 13, 2020, and ending December 31, 2020.

## ADMINISTRATIVE & SPECIAL ANNOUNCEMENT

### **Announcement 2020-4, page 667.**

Announcement 2020-4 provides that public hearings on notices of proposed rulemaking will be held telephonically and encourages taxpayers to submit public comments electronically.

## INCOME TAX

### **REG-132529-17, page 667.**

The proposed regulations provide guidance on determining life insurance reserves and changing the method of computing certain insurance company reserves. The proposed regulations also authorize changes to insurance company reporting requirements and propose numerous conforming changes to other regulations. The proposed regulations implement legislative changes made by sections 13513 and 13517 of the Tax Cuts and Jobs Act.

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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## Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommenda-

tion of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Internal Revenue Bulletin**.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the

court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner does ACQUIESCE IN RESULT ONLY in the following decision:

**Rothkamm v. United States, 802 F.3d 699 (5th Cir. 2015), rev’g 2014 WL 4986884 (M.D. La. Sept. 15, 2014)**<sup>1</sup>

<sup>1</sup> Acquiescence to the holding that the term “taxpayer” in section 7811 can be broadly interpreted to include a wrongful-levy claimant. Nonacquiescence to the holding that section 7811(d) suspends the running of the limitations periods for third-parties to file wrongful levy claims or suits.

# Part III

## Relief from Penalty for Failure to Deposit Employment Taxes

### Notice 2020-22

#### SECTION 1. PURPOSE

The purpose of this notice is to provide penalty relief with respect to certain employers' deposits of Federal employment taxes with the Internal Revenue Service (IRS) under §§ 31.6302-1 or 31.6302-2 of the Employment Taxes and Collection of Income Tax at Source Regulations, including deposits of withheld income taxes, taxes under the Federal Insurance Contributions Act (FICA), and taxes under the Railroad Retirement Tax Act (RRTA) (collectively, Employment Taxes). Specifically, this notice provides relief to employers entitled to the new refundable tax credits provided under the Families First Coronavirus Response Act (Families First Act), Public Law No. 116-127 (March 18, 2020), and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136 (March 27, 2020).

Employers paying qualified sick leave wages and qualified family leave wages required by the Families First Act (collectively, Qualified Leave Wages), as well as qualified health plan expenses allocable to Qualified Leave Wages (Qualified Health Plan Expenses) are eligible for refundable tax credits under the Families First Act. Additionally, certain employers experiencing a full or partial business suspension due to orders from a governmental authority due to the coronavirus disease 2019 (COVID-19) or experiencing a statutorily specified decline in business are also allowed a refundable tax credit under the CARES Act of up to fifty percent of the qualified wages, including allocable qualified health expenses and limited to \$10,000 per employee over all calendar quarters combined (Qualified Retention Wages). Under the Families First Act and the CARES Act, an employer paying Qualified Leave Wages or Qualified Re-

tention Wages may take refundable tax credits against a specified portion of the employer's share of certain Employment Taxes.

Section 3 of this notice provides employers relief from the failure to deposit penalty imposed by section 6656 of the Internal Revenue Code (Code) for an employer's failure to timely deposit Employment Taxes to the extent that the amounts not deposited are equal to or less than the amount of refundable tax credits to which the employer is entitled under the Families First Act and the CARES Act. This relief ensures that such employers may pay Qualified Leave Wages required by the Families First Act or Qualified Retention Wages under the CARES Act using Employment Taxes that would otherwise be required to be deposited without incurring a failure to deposit penalty. This notice applies to deposits of Employment Taxes reduced in anticipation of the credits with respect to Qualified Leave Wages paid with respect to the period beginning April 1, 2020, and ending December 31, 2020, and in anticipation of the credits with respect to Qualified Retention Wages paid with respect to the period beginning on March 13, 2020, and ending December 31, 2020.

#### SECTION 2. BACKGROUND

Section 3111(a) of the Code (employer's share of the Old Age, Survivors, and Disability Insurance (social security) portion of FICA tax) and section 3221(a) of the Code (employer's share of the social security and Hospital Insurance (Medicare) portions of RRTA tax), along with section 3402 related to Federal income tax withholding, impose Employment Tax liability on employers. For most employers, this liability is reported on the quarterly Form 941, Employer's QUARTERLY Federal Tax Return.

Section 2302 of the CARES Act provides that the payment and deposit of the employer's share of the social security portion of FICA tax and the employer's share of the social security portion of RRTA tax for deposits that are due to

be made during the period beginning on March 27, 2020, and ending before January 1, 2021, is not due before December 31, 2021 (for the first 50 percent of the liability), and December 31, 2022 (for the remaining 50 percent of the liability). Under this provision, an employer is treated as having timely made these required deposits of FICA and RRTA taxes if all such deposits are made not later than the applicable due dates. This deferral of payment does not apply to employers that have had indebtedness forgiven under either section 1106 or 1109 of the CARES Act.

Although Form 941 is due quarterly and payment and deposit of certain FICA (and RRTA) taxes is deferred under section 2302 of the CARES Act, section 6302 of the Code and regulations under that section generally require deposits of Employment Taxes to be made on a monthly or bi-weekly basis. Employers that accumulate \$100,000 or more of Employment Taxes on any day within a deposit period are required to deposit those liabilities with the IRS the next banking day. See § 31.6302-1(c).

The Families First Act generally requires employers of fewer than 500 employees to provide paid sick leave and expanded family and medical leave, up to specified limits, to employees unable to work or telework due to certain circumstances related to COVID-19. Generally, employers that are required to pay Qualified Leave Wages under the Families First Act are entitled to refundable tax credits administered by the IRS. (The government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of the foregoing is not entitled to these refundable tax credits.)

Sections 7001 and 7003 of the Families First Act provide a refundable tax credit against an employer's share of the social security portion of FICA tax and an employer's share of the social security and Medicare portions of RRTA tax for each calendar quarter in an amount equal to 100 percent of Qualified Leave Wages paid by the employer plus Qualified Health Plan Expenses with respect to that calendar



quarter. (For purposes of this notice, an employer's share of the social security portion of FICA tax and an employer's share of the social security and Medicare portions of RRTA tax, as applicable, are referred to as, Creditable Employment Taxes.) For employers subject to FICA tax, the credits under section 7001 and 7003 are increased by the amount of the employer's share of Medicare tax imposed on Qualified Leave Wages. . See section 7005(b)(1) of the Families First Act. (For purposes of this notice, the increase in credit under section 7005(b)(1) is treated as a credit under section 7001 or section 7003.) The refundable tax credit is reported on the employer's return for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly Form 941. An employer may claim an advance payment of the refundable tax credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

Section 2301 of the CARES Act provides a refundable tax credit against an employer's Creditable Employment Taxes for each calendar quarter for Qualified Retention Wages paid by the employer. The refundable tax credit is reported on the employer's return for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly Form 941. An employer may claim an advance payment of the refundable tax credit for Qualified Retention Wages under section 2301 of the CARES Act by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

Section 6656 of the Code imposes a penalty for any failure to deposit amounts as required by the Code or regulations on the date prescribed therefor, unless such failure is due to reasonable cause and not due to willful neglect. A failure to deposit taxes as required under section 6302 of the Code would generally subject an employer to the section 6656 penalty.

Sections 7001(i) and 7003(i) of the Families First Act, as added by section 3606(a) and (c) of the CARES Act, and section 2301(k) of the CARES Act, instruct the Secretary of the Treasury (or the Secretary's delegate) to waive the penalty under section 6656 of the Code for failure to deposit the employer share of social se-

curity tax in anticipation of the allowance of the refundable tax credits allowed under the Families First Act and the CARES Act. Furthermore, sections 7001(f) and 7003(f) of the Families First Act specifically authorize guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credits provided by the Families First Act. Section 3 of this notice provides relief from the penalty under section 6656 pursuant to the Families First Act and the CARES Act.

### **SECTION 3. RELIEF FROM FAILURE TO MAKE A DEPOSIT OF TAXES**

#### *a. Employment Taxes Related to Qualified Leave Wages*

An employer will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes relating to Qualified Leave Wages in a calendar quarter if—

(1) The employer paid Qualified Leave Wages to its employees in the calendar quarter prior to the time of the required deposit,

(2) The amount of Employment Taxes that the employer does not timely deposit is less than or equal to the amount of the employer's anticipated credits under sections 7001 and 7003 of the Families First Act for the calendar quarter as of the time of the required deposit, and

(3) The employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits.

Thus, an employer may reduce, without a penalty under section 6656 of the Code, the amount of a deposit of Employment Taxes by the amount of Qualified Leave Wages and Qualified Health Plan Expenses paid by the employer in the calendar quarter prior to the required deposit, plus the amount of the employer's share of Medicare tax on such Qualified Leave Wages, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of this section 3.a of this notice, the total amount of any reduction

in any required deposit may not exceed the total amount of Qualified Leave Wages and Qualified Health Plan Expenses and the employer's share of Medicare tax on the Qualified Leave Wages in the calendar quarter, minus any amount of Qualified Leave Wages, Qualified Health Plan Expenses, and employer's share of Medicare tax that had been previously used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

#### *b. Employment Taxes Related to Qualified Retention Wages*

An eligible employer will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes relating to Qualified Retention Wages in a calendar quarter if—

(1) The employer paid Qualified Retention Wages to its employees in the calendar quarter prior to the time of the required deposit,

(2) The amount of Employment Taxes that the employer does not timely deposit, reduced by the amount of Employment Taxes not deposited in anticipation of the credits claimed for Qualified Leave Wages, Qualified Health Plan Expenses, and the employer's share of Medicare tax on the Qualified Leave Wages under sections 7001 and 7003 (as described in section 3.a of this notice), is less than or equal to the amount of the employer's anticipated credits under section 2301 of the CARES Act for the calendar quarter as of the time of the required deposit, and

(3) The employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits.

Thus, after a reduction, if any, of a deposit of Employment Taxes by the amount of credits anticipated for Qualified Leave Wages under sections 7001 and 7003 (as described in section 3.a of this notice), an employer may further reduce, without a penalty under section 6656 of the Code, the amount of the deposit of Employment Taxes by the amount of Qualified Retention Wages paid by the employer in the calendar quarter prior to the required deposit, as long as the employer does not

also seek an advance credit with regard to the same amount.

For purposes of this section 3.b of this notice, the total amount of any reduction in any required deposit may not exceed the total amount of Qualified Retention Wages in the calendar quarter, minus any amount of Qualified Retention Wages that had been previously used (1) to reduce

a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

#### **SECTION 4. CONTACT INFORMATION**

The principal author of this notice is Michael A. Franklin of the Office of the Associate Chief Counsel (Procedure and Administration). For further information, please contact Mr. Franklin at (202)317-5436 (not a toll-free number).

## Part IV

### Announcement Regarding Procedures Related to Regulations

#### Announcement 2020-4

The Department of the Treasury and the Internal Revenue Service (IRS) announce that public hearings conducted by the IRS on notices of proposed rulemaking related to the internal revenue laws will be held telephonically until further notice, and encourage taxpayers to submit public comments electronically.

#### Conducting Public Hearings Telephonically

Until further notice, all public hearings on notices of proposed rulemaking will be conducted by telephone. Individuals who want to testify at a public hearing still must request to testify, submit timely public comments, and submit outlines of topics they intend to cover in their testimony. Deadlines for timely submission can be found in notices of proposed rulemaking. Speakers still will have up to ten minutes to testify and may be asked questions by the panel.

Additionally, individuals who want to testify (by telephone) at a public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-XXXXXX-XX) for the hearing and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-123456-00. The email should also include a copy of the speaker's public comments and outline of topics. The email must be received by the deadline, as identified in the notice of proposed rulemaking, to submit an outline of topics.

Individuals who want to attend (by telephone) a public hearing must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG-XXXXXX-XX) and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-123456-00. The email requesting to attend

the public hearing must be received by 5:00 P.M. two (2) business days before the date that the hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to [publichearings@irs.gov](mailto:publichearings@irs.gov).

The telephonic hearings will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

#### Submission of Public Comments through Regulations.gov

Commenters are strongly encouraged to submit public comments via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

#### CONTACT INFORMATION

The principal author of this notice is Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 317-3400 (not a toll-free number).

### Notice of Proposed Rulemaking

### Computation and Reporting of Reserves for Life Insurance Companies

#### REG-132529-17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the computation of life insurance reserves and the change in basis of computing certain reserves of insurance companies. These proposed regulations implement recent legislative changes to the Internal Revenue Code. This document invites comments on these proposed regulations. This document affects entities taxable as insurance companies.

DATES: Written or electronic comments and requests for a public hearing must be received by June 1, 2020.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-132529-17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-132529-17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dan Phillips, (202) 317-6995; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 317-5177 or [fdms.database@irs.counsel.treas.gov](mailto:fdms.database@irs.counsel.treas.gov) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains proposed amendments to 26 CFR part 1 under sections 807 and 816 of the Internal Revenue Code (Code). Sections 807 and 816 were added to the Code by section 211(a) of the Deficit Reduction Act of 1984, Public

Law 98-369, 98 Stat. 494. Section 807 was amended by sections 13513 and 13517 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054, 2143, 2144 (2017) (TCJA). These amendments by the TCJA apply to taxable years beginning after December 31, 2017.

This document also proposes to amend or remove the following regulations in 26 CFR: §§1.338-11, 1.381(c)(22)-1, 1.801-2, 1.801-5, 1.801-7, 1.801-8, 1.806-4, 1.807-1, 1.809-2, 1.809-5, 1.810-3, 1.817A-0, 1.817A-1, 1.818-2, 1.818-4, 1.848-1, 1.6012-2, and 301.9100-6T. These proposed changes are conforming changes to regulations that (i) relate to repealed or amended law, (ii) reference regulations that are proposed to be removed, (iii) have no future application, or (iv) relate to other regulations proposed by this document.

#### *A. Reserves Taken into Account in Determining Life Insurance Company Taxable Income*

Section 801(a) imposes a tax on the life insurance company taxable income of every life insurance company. Section 801(b) defines life insurance company taxable income to mean life insurance gross income, reduced by life insurance deductions. Under section 803(a)(2), life insurance gross income includes a net decrease in items described in section 807(c) as required by section 807(a). Under sections 804 and 805(a)(2), life insurance deductions include a deduction for a net increase in items as required by section 807(b).

The items described in section 807(c) are: (i) life insurance reserves (as defined in section 816(b)); (ii) unearned premiums and unpaid losses included in total reserves; (iii) amounts that are discounted at the appropriate rate of interest to satisfy obligations under insurance and annuity contracts that do not involve life, accident, or health contingencies when the computation is made; (iv) dividend accumulations and other amounts held at interest in connection with insurance and annuity contracts; (v) premiums received in advance and liabilities for premium deposit funds; and (vi) reasonable special contingency reserves under contracts of group term life insurance or group accident and

health insurance that are held for retired lives, premium stabilization, or a combination of both.

#### *B. Life Insurance Reserves Taken into Account in Determining Premiums Earned for a Nonlife Insurance Company*

Section 831(a) generally imposes a tax on the taxable income of every insurance company other than a life insurance company (a nonlife insurance company). Section 832 defines taxable income for this purpose to be gross income (as defined in section 832(b)(1)) less allowed deductions. Section 832(b)(1) provides that gross income includes underwriting income, and section 832(b)(3) provides that underwriting income means premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

Under sections 832(b)(4) and 832(b)(7)(A), premiums earned on insurance contracts during the taxable year are reduced by life insurance reserves at the end of the taxable year and increased by life insurance reserves at the end of the preceding taxable year. For this purpose, life insurance reserves are defined in section 816(b) but determined under section 807(d).

#### *C. Method of Computing Life Insurance Reserves for Purposes of Determining Income*

##### *1. Prior to modification by the TCJA*

Section 807(d) sets forth rules for computing the amount of life insurance reserves for a contract for purposes of determining life insurance company taxable income and for purposes of computing premiums earned for a nonlife insurance company. Prior to amendment by the TCJA, section 807(d)(1) provided that the amount of the life insurance reserves for any contract was the greater of the net surrender value of the contract (determined under section 807(e)(1)) or the federally prescribed reserve determined under section 807(d)(2). This amount, however, could not exceed the amount that would have been taken into account with respect to the contract in determining statutory reserves (as defined in prior section 807(d)(6)).

Prior section 807(d)(2) provided that the federally prescribed reserve for a contract was computed using (i) the tax reserve method applicable to the contract, (ii) the greater of the applicable Federal interest rate or the prevailing state assumed interest rate, and (iii) the prevailing commissioners' standard tables for mortality and morbidity, adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract that were not otherwise taken into account.

In the case of a contract to which the Commissioners' Reserve Valuation Method (CRVM) applied (generally, a life insurance contract), prior sections 807(d)(3)(A)(i) and 807(d)(3)(B)(i) provided that the tax reserve method applicable to the contract was the CRVM as prescribed by the National Association of Insurance Commissioners (NAIC) that was in effect on the date the contract was issued. Similarly, in the case of a contract to which the Commissioners' Annuity Reserve Valuation Method (CARVM) applied (generally, an annuity contract), prior sections 807(d)(3)(A)(ii) and 807(d)(3)(B)(ii) provided that the tax reserve method applicable to the contract was the CARVM as prescribed by the NAIC that was in effect on the date the contract was issued. Other parameters, such as the appropriate interest rate and mortality tables, were likewise generally determined with reference to the date the contract was issued.

Section 1.807-1 provided instructions on what mortality and morbidity tables taxpayers should have used to compute life insurance reserves for a contract for which there were no applicable commissioners' standard tables when the contract was issued. Section 1.807-1 was published as a final regulation in the **Federal Register** (54 FR 52933) on December 26, 1989 (T.D. 8278).

##### *2. Principle-based reserves and IRS notices*

In recent years, the NAIC has promulgated and states have adopted principle-based reserving methods to better reflect the economics of more complex life insurance and annuity products. Principle-based reserves (PBR) are intended to replace a more formulaic approach to determining policy reserves with an ap-



proach that takes into account a range of future economic conditions and more closely reflects the risks of complex insurance products. *See, e.g., Principle-Based Reserves for Life Products under the NAIC Valuation Manual*, Actuarial Standard of Practice No. 52, Actuarial Standards Board, Sept. 2017, App 1.

Federal income tax issues arose when trying to apply the requirements of prior section 807(d) to tax reserve methods that were PBR methods. It was not clear how aspects of PBR methods fit within the statutory requirements of prior section 807(d). For example, a PBR method may require reserves to be computed based on many different scenarios in which many different interest rate assumptions are made, but prior section 807(d) required the use of a single interest rate when computing the reserve for a contract.

In 2008, the IRS issued Notice 2008-18, 2008-1 C.B. 363, to alert life insurance companies that Federal tax issues might arise as a result of the then-proposed PBR methods, identify areas of concern, and invite comments on these and other issues. Several comments were received and considered.

In 2010, the IRS issued Notice 2010-29, 2010-15 I.R.B. 547, to provide interim guidance to issuers of variable annuity contracts as a result of the adoption by the NAIC of Actuarial Guideline 43 (AG 43), which describes a PBR method. The interim guidance provided, among other things, that (i) for purposes of determining whether an insurance company satisfies the 50 percent of reserves test for qualification as a life insurance company under section 816(a), the Standard Scenario Amount (SSA) determined under AG 43 is included in life insurance reserves as defined in section 816(b) and total reserves as defined in section 816(c), (ii) for purposes of applying the statutory reserve cap of section 807(d)(1), the term “statutory reserves” under prior section 807(d)(6) (current section 807(d)(4)) includes the SSA, provided the requirements of prior section 807(d)(6) are otherwise met, and (iii) for purposes of determining the amount of the reserve under prior section 807(d)(2) for contracts falling within the scope of AG 43 and issued on or after December 31, 2009, the provisions for determining the SSA are taken into account and the provisions for determining the condi-

tional tail expectation amount (a component of AG 43) are not taken into account.

### 3. Modification by the TCJA

Section 13517 of the TCJA amended section 807(d)(1) to provide generally that, for purposes of determining life insurance company taxable income, the amount of the life insurance reserves for any contract (other than a contract to which section 807(d)(1)(B) applies (relating to variable contracts)), is the greater of the net surrender value of such contract or 92.81 percent of the reserve determined under section 807(d)(2). The amount of the life insurance reserve for a variable contract, as specified in amended section 807(d)(1)(B), is the sum of (i) the greater of the net surrender value of such contract or the portion of the reserve that is separately accounted for under section 817 and (ii) 92.81 percent of the excess (if any) of the reserve determined under section 807(d)(2) over the amount in clause (i).

Section 13517 of the TCJA amended prior section 807(d)(2) to provide that the amount of the reserve under section 807(d)(2) is determined using the tax reserve method applicable to such contract. Section 13517 of the TCJA also amended prior section 807(d)(3) to provide generally that the tax reserve method applicable to a contract is the method prescribed by the NAIC that applies to the contract as of the date the reserve is determined, not the date the contract was issued, as was required prior to the TCJA.

The TCJA did not change the treatment of asset adequacy reserves. Asset adequacy reserves and similar reserves that address solvency concerns of state regulators but do not meet technical actuarial requirements have long been excluded from life insurance reserves for Federal income tax purposes. *See, e.g., Rev. Rul. 67-435, 1967-2C.B. 232; Old Line Insurance Co. v. Commissioner*, 13 B.T.A. 758 (1928). The Conference Report to the TCJA states that “[a]s under present law, no deduction for asset adequacy reserves or deficiency reserves is allowed.” H.R. Rep. No. 115-466, at 477 (2017) (Conference Report). *See also* Staff of the Joint Committee on Taxation, 115th Cong., General Explanation of Public Law 115-97, 235 (Comm. Print 2018) (Bluebook).

Section 13517(c)(3) of the TCJA provided a transition rule that requires any difference between (i) the amount of life insurance reserves with respect to any contract as of the close of the taxable year preceding the first taxable year beginning after December 31, 2017, computed using the method prescribed by the TCJA and (ii) the amount of such reserves computed using the method prior to the amendments by the TCJA, to be taken into account over the eight succeeding taxable years. Rev. Proc. 2019-34, 2019-35 I.R.B. 669, provides simplified procedures for an insurance company to obtain consent of the Commissioner of Internal Revenue or his delegate (Commissioner) to change its method of accounting for life insurance reserves to comply with the amendments to section 807 made by the TCJA.

### D. Change in Basis of Computing Reserves

#### 1. Prior to modification by the TCJA

##### a. Statutory provisions

Prior to amendment by the TCJA, section 807(f)(1) provided that if the basis for determining any item described in section 807(c) (for example, life insurance reserves) as of the close of any taxable year differed from the basis for that determination as of the close of the preceding taxable year, then so much of the difference between the amount of the items at the close of the taxable year computed on the new basis and the amount of the item at the close of the taxable year computed on the old basis, as is attributable to contracts issued before the taxable year, was taken into account ratably for each of the succeeding ten taxable years.

Prior section 807(f) was substantially similar to and replaced prior section 810(d) as enacted by the Life Insurance Company Income Tax Act of 1959, Public Law 86-69, 73 Stat. 112 (1959). By enacting prior section 810(d), Congress provided a specific treatment for adjustments resulting from a change in method of computing reserves that otherwise would have been subject to the general tax rules under section 481 for changes in method of accounting. *See, e.g., American General Life and Accident Insurance Co. v. United*

*States*, 90-1 USTC (CCH) ¶ 50,010 (M.D. Tenn. 1989) (section 481 is a more general provision dealing with a broad variety of cases and section 810, on the other hand, is much more specific and deals with a very narrow and limited type of change in method of accounting).

If a company ceases to qualify as a life insurance company, section 807(f)(2), which was not amended by the TCJA, requires, except as provided in section 381(c)(22), that the balance of any adjustment under section 807(f) be taken into account in the taxable year preceding the taxable year in which the taxpayer no longer qualifies as a life insurance company.

#### b. Regulatory provisions

Regulations relating to the change in method of computing reserves were adopted under Code provisions that existed prior to their repeal by the Deficit Reduction Act of 1984. If and to the extent the Deficit Reduction Act of 1984 incorporated provisions of prior law, regulations and other guidance generally continued to serve as interpretive guides to the new provisions. H.R. Rep. No. 98-432, pt. 2, at 1401 (1984).

Section 1.801-5(c) provides that if reserves are claimed by a life insurance company then sufficient information must be filed with the return to enable the validation of the claim. Section 1.801-5(c) also requires certain information to be filed if the basis (for Federal income tax purposes) for determining the amount of the life insurance reserves as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year. Section 1.801-5 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.806-4 describes prior section 806(b) and provides that a change in basis of computing any of the items in prior section 810(c) (the predecessor to section 807(c)) is not a change in method of accounting requiring the consent of the Secretary of the Treasury or his delegate (Secretary) under section 446(e). Section 1.806-4 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.810-3 describes how a change in basis of computing the items in prior section 810(c) should have been treated under the Code prior to its amendment by the Deficit Reduction Act of 1984. Section 1.810-3(a) provides that if the basis for determining an item in prior section 810(c) at the end of a taxable year differs from the basis for such determination at the end of the preceding taxable year, then the difference between the amount of the item computed at the end of the taxable year on the new basis and the amount of the item computed at the end of the taxable year on the old basis is generally taken into account ratably over the 10 succeeding taxable years. Example 1 of §1.810-3(b) illustrates that if there is a change in basis of computing an item described in former section 810(c) during a taxable year, then for purposes of determining any increase or decrease in such item during the taxable year, such increase or decrease is the difference between the amount of such item computed at the beginning of the taxable year on the old basis and the amount of such item computed at the end of the taxable year on the old basis. Section 1.810-3(c) further provides that, subject to section 381(c)(22), if a company ceases to qualify as a life insurance company, the balance of any adjustment resulting from the change in method of computing reserves must be taken into account in the taxable year preceding the taxable year in which the taxpayer no longer qualifies as a life insurance company. Section 1.810-3 was published as a final regulation in the **Federal Register** (25 FR 12654) on December 10, 1960 (T.D. 6513).

Section 1.818-2(c) describes prior sections 806(b) and 810(d)(1). Section 1.818-2 was published as a final regulation in the **Federal Register** (26 FR 2781) on April 4, 1961 (T.D. 6558).

#### c. IRS guidance

The application of section 807(f) prior to its amendment by the TCJA and the application of prior section 810(d) are illustrated by Rev. Rul. 2002-6, 2002-1 C.B. 460 (inclusion of factors omitted in a previous year's determination of reserves is a change in basis under prior section 807(f) and taxpayer may correct the method on an

amended return); Rev. Rul. 94-74, 1994-2 C.B. 157 (applying prior section 807(f) in several situations in which taxpayer changed the basis of computing life insurance reserves); Rev. Rul. 80-117, 1980-1 C.B. 143 (revocation of the election to recompute life insurance reserves under prior section 818(c) of a company acquired in a merger results in a recomputation of the reserves, which is a change in basis of computing the reserves subject to the 10 year spread of prior section 810(d)); Rev. Rul. 80-116, 1980-1 C.B. 141 (recomputation of life insurance reserves under prior section 818(c) of a company acquired in a merger is not a change in basis of computing reserves under prior section 810(d) because reserves must be recomputed for both beginning and end of year); Rev. Rul. 78-354, 1978-2 C.B. 190 (election of a life insurance company to recompute life insurance reserves under prior section 818(c) is terminated when company fails to qualify as a life insurance company and the required recomputation of the reserves is a change in basis of computing the reserves subject to the 10 year spread of prior section 810(d); method of nonlife insurance company taking 10 year spread into account is shown); Rev. Rul. 77-198, 1977-1 C.B. 190 (recomputation of certain reserves from a nonactuarial method to a method utilizing recognized mortality tables and assumed rates of interest is a change in basis of computing reserves under prior sections 806(b) and 810(d)); Rev. Rul. 75-308, 1975-2 C.B. 264 (change in basis of computing reserves under prior section 810(d) occurs when the addition to the reserve is made, not when the company adopts the policy to change the basis of computing reserves); Rev. Rul. 74-57, 1974-1 C.B. 163 (life insurance company that changes basis of computing reserves must take into account the entire adjustment under prior section 810(d) in the year of change if it ceases to qualify as a life insurance company in the year after the year of change); Rev. Rul. 70-568, 1970-2 C.B. 140 (recomputation of reserves under prior section 818(c) applies to contracts at beginning of year even if they are not held at end of year; prior section 810(d) does not apply to the recomputation); Rev. Rul. 70-192, 1970-1 C.B. 153 (change in assumption of when in year death benefits would be paid is a change in basis of

computing reserves under prior sections 806(b) and 810 (d)); Rev. Rul. 69-444, 1969-2 C.B. 145 (an increase in life insurance reserves attributable solely to the addition of a new benefit on existing contracts is not a change in basis of computing reserves under prior sections 806(b) and 810(d)); Rev. Rul. 65-240, 1965-2 C.B. 236 (a nonlife company's change in basis of computing life insurance reserves is a change in basis of computing reserves under prior section 810(d) and is subject to the 10 year spread); Rev. Rul. 65-233, 1965-2 C.B. 228 (prior sections 806(b) and 810(d) apply in the year of a change in basis of computing reserves notwithstanding that state regulatory approval for change was not received until the following year); and Rev. Rul. 65-143, 1965-1 C.B. 261 (change in method of computing life insurance reserves from a preliminary term basis to a net level premium basis is a change in basis of computing reserves under prior sections 806(b) and 810(d); election under prior section 818(c) does not apply to life insurance contracts that are computed for statutory purposes on a net level premium basis at the end of the year of election).

#### *d. Nonlife insurance companies*

Section 832(b)(4) requires a nonlife insurance company to include life insurance reserves, as defined in section 816(b) and determined under section 807, in its determination of premiums earned on insurance contracts during the taxable year, which is a component of underwriting income. Section 807(f) provides rules for changing the basis for determining any item referred to in section 807(c), and life insurance reserves are referred to in section 807(c)(1). Nonlife insurance companies are required to follow the requirements in section 807(f) to change the basis of computing life insurance reserves. Rev. Rul. 65-240.

#### *2. Modification by the TCJA*

Section 13513 of the TCJA amended prior section 807(f) to provide that any difference between the amount of an item referred to in section 807(c) as of the close of the taxable year computed on a new basis and the amount of such item as of the

close of the taxable year computed on the old basis, as is attributable to contracts issued before the taxable year, is to be taken into account under section 481 as adjustments attributable to a change in method of accounting initiated by the taxpayer and made with the consent of the Secretary.

Section 811(a), which was not amended by the TCJA, generally provides that computations made for the determination of Federal income taxes imposed by the provisions of subchapter L of chapter 1 of the Code (subchapter L) that are set forth in part I shall be made under an accrual method of accounting or, to the extent permitted under regulations, under a combination of an accrual method and any other permitted method. To the extent not inconsistent with the preceding sentence or any other provision in part I of subchapter L, these computations are to be made in a manner consistent with the manner required for the annual statement approved by the NAIC. Section 811(a) does not affect the application of section 446(e), which generally requires a taxpayer to secure the consent of the Secretary before changing the method of computing the taxpayer's taxable income. *See also* §1.446-1(e).

After the amendment of section 807(f) by the TCJA, a life insurance company must follow the regular administrative procedures for a change in method of accounting for a change in basis of computing reserves referred to in section 807(c). *See, e.g.*, §1.446-1(e); Rev. Proc. 2015-13, 2015-5 I.R.B. 419, Rev. Proc. 2019-43, 2019-48 I.R.B. 1107; Rev. Proc. 2002-18, 2002-1 C.B. 678. Similarly, a nonlife insurance company must follow the administrative procedures for a change in method of accounting to change its basis of computing life insurance reserves (as defined in section 816(b)).

The Conference Report explained that under the amended law “[i]ncome or loss [sic] resulting from a change in method of computing life insurance company reserves is taken into account consistent with IRS procedures, generally ratably over a four-year period, instead of over a 10-year period.” Conference Report at 467. The Joint Committee on Taxation explained that a company that makes a change in method of computing life insurance company reserves is required to

report and file such statements and other information as the Secretary requires under the IRS procedures for accounting method changes, including the procedures for obtaining automatic consent to change an accounting method. Bluebook at 228.

Rev. Proc. 2015-13 provides the IRS procedures for a taxpayer to obtain the advance (non-automatic) or automatic consent of the Commissioner to change a method of accounting. These procedures generally require a taxpayer to file a Form 3115, “Application for Change in Accounting Method,” to change the taxpayer's method of accounting. Rev. Proc. 2019-10, 2019-02 I.R.B. 296, modified the list of automatic accounting method changes in Rev. Proc. 2018-31, 2018-22 I.R.B. 637, to add section 26.04, which provided procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f) for taxable years beginning after December 31, 2017. In response to comments, section 26.04 of Rev. Proc. 2018-31 was modified and superseded by Rev. Proc. 2019-43. *See* section 26.04 of Rev. Proc. 2019-43 for the current procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f). Rev. Proc. 2019-10 also modified Rev. Rul. 94-74 and Rev. Rul. 2002-6 to the extent their holdings are inconsistent with the general rules for changing a method of accounting under section 446(e) and §1.446-1(e). Rev. Proc. 2002-18 provides the IRS procedures for changes in method of accounting imposed by the IRS and other procedures for resolving accounting method issues.

#### *E. Reporting of Reserves*

Section 13517 of the TCJA added section 807(e)(6), which provides that the Secretary shall require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income.

The Conference Report states that for this purpose the Secretary may require a life insurance company (including an af-



filiated group filing a consolidated return that includes a life insurance company) to report each of the line item elements of each separate account by combining them with such items from other separate accounts and the general account and report the combined amounts on a line-by-line basis. The Secretary may also provide that the reporting on a separate account by separate account basis is generally not permitted. The Conference Report further states that under existing regulatory authority, the Secretary may require e-filing or comparable filing of the returns and may require that the taxpayer provide its annual statement via a link, electronic copy, or other similar means. Conference Report at 478-79.

#### *F. Annual Statements and Electronically Filed Forms 1120-L and 1120-PC*

Section 6012(a)(2) generally requires that returns with respect to income taxes must be made by every corporation subject to taxation under subtitle A of the Code. Final regulations under section 6012 related to insurance companies were published in the **Federal Register** (72 FR 32794) on June 14, 2007 (T.D. 9329). Section 1.6012-2(c)(1) provides that a life insurance company must make a return on Form 1120-L, “U.S. Life Insurance Company Income Tax Return,” and, except as provided in §1.6012-2(c)(4), file with its return a copy of its annual statement. Similarly, §1.6012-2(c)(2) requires every domestic insurance company other than a life insurance company to make a return on Form 1120-PC, “U.S. Property and Casualty Insurance Company Income Tax Return,” and, except as provided in §1.6012-2(c)(4), file with its return a copy of its annual statement. For these purposes, an annual statement means the annual statement, the form of which is approved by the NAIC, that is filed by an insurance company for the year with the applicable state regulators or, if the insurance company is not required to file the NAIC annual statement, a pro forma annual statement. Section 1.6012-2(c)(3) generally provides that the requirements of §1.6012-2(c)(1) and (2) concerning returns and annual statements also apply to foreign insurance companies subject to tax under section 801 or section 831.

Section 1.6012-2(c)(4) provides that if an insurance company described in §1.6012-2(c)(1), (2), or (3) files its return electronically, it should not include its annual statement with such return but that such statement (or pro forma annual statement) must be available at all times to the IRS.

### **Explanation of Provisions**

#### *A. Computation of Life Insurance Reserves*

Section 1.807-1(a) of the proposed regulations provides that no asset adequacy reserve may be included in the determination of the amount of life insurance reserves under section 807(d). This proposed regulation is consistent with the law both before and after the TCJA. The substantive rules in current §1.807-1 have no application for taxable years beginning after December 31, 2017, and therefore, are not included in §1.807-1 of the proposed regulations.

#### *B. Reporting of Reserves*

Section 1.807-3 of the proposed regulations allows the IRS to require information necessary for the proper reporting of items described in section 807(c), including separate account items. This provision is consistent with section 807(e)(6), as added by the TCJA.

#### *C. Change in Basis of Computing Reserves*

##### *1. Proposed Section 1.807-4*

Section 1.807-4 of the proposed regulations provides guidance relating to both the change in basis of computing reserves of a life insurance company and the change in basis of computing life insurance reserves of a nonlife insurance company. Section 1.807-4(a) of the proposed regulations requires an insurance company to follow administrative procedures prescribed by the Commissioner to change the basis of computing reserves. This requirement is consistent with the Conference Report relating to section 13513 of the TCJA, which provides that a taxpayer is required to follow IRS proce-

dures. Conference Report at 467; *see also* Bluebook at 228 (a company is required to comply with procedures for automatic method changes and to report and file statements and other information as the Secretary requires).

Section 1.807-4(b) of the proposed regulations provides that, to avoid the double counting of income or a deduction, a taxpayer that changes its basis of computing reserves is required to take into account under section 481(a) an adjustment attributable to the change in basis. The proposed regulations provide that if a taxpayer loses its insurance company status, then any remaining balance of a section 481(a) adjustment must be taken into account in the last taxable year the taxpayer was an insurance company. This proposed rule, however, would not require an insurance company to accelerate the accounting for such adjustment if it changes from a life insurance company to a nonlife insurance company or vice versa.

Section 1.807-4(c) of the proposed regulations provides that for purposes of determining any increase or decrease in items described in section 807(c) (for a life insurance company) or the amount of life insurance reserves (for a nonlife insurance company), the determination should be made for the year of change using the old basis of computing reserves and should be made in the following taxable year using the new basis of computing reserves.

Certain revenue rulings are inconsistent with section 807(f), as amended by the TCJA. Accordingly, these revenue rulings are proposed to be obsolete for taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. *See* Effect on Other Documents.

#### *2. Procedure for Obtaining Automatic Consent*

Section 26.04 of Rev. Proc. 2019-43 provides the current procedures for an insurance company to obtain automatic consent of the Commissioner to change its method of accounting to comply with section 807(f). In response to comments, the Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc.

2019-43 as described in the following paragraphs.

First, section 26.04(2)(b)(ii) of Rev. Proc. 2019-43 provides that multiple changes during the same taxable year for the same type of contract are considered a single change in basis and the effects of such changes are netted and treated as a single section 481(a) adjustment. Section 807(f)(1), however, provides that the section 481(a) adjustment is the difference between the amount of any item referred to in section 807(c) computed on the new basis and the amount of such item computed on the old basis. Accordingly, the Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019-43 to require netting of the section 481(a) adjustments at the level of each item referred to in section 807(c) so there is a single section 481(a) adjustment for each of the items referred to in section 807(c).

Second, section 26.04(1) of Rev. Proc. 2019-43 provides that the automatic change procedures apply to a nonlife insurance company. The Treasury Department and the IRS intend to revise section 26.04 of Rev. Proc. 2019-43 to clarify the manner in which nonlife insurance companies implement changes to the basis of computing life insurance reserves (as defined in section 816(b)) during a taxable year (year of change). Specifically, the clarification would provide that, if a nonlife insurance company changes the basis of computing its life insurance reserves, then for purposes of applying section 832(b)(4), (i) for the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis and (ii) for the year following the year of change, life insurance reserves at the end of the preceding taxable year with respect to contracts issued before the year of change are determined on the new basis. Life insurance reserves attributable to contracts issued during the year of change and thereafter must be computed on the new basis.

#### *D. Definition of Life Insurance Reserves*

The TCJA modified section 807(d) to provide that, for purposes of part I of subchapter L (other than section 816), the

amount of life insurance reserves for any contract (other than a variable contract) is the greater of the net surrender value of such contract or 92.81 percent of the reserve determined under the applicable tax reserve method. For any variable contract, the amount of the life insurance reserve is the sum of (i) the greater of the net surrender value of such contract or the portion of the reserve that is separately accounted for under section 817 and (ii) 92.81 percent of the excess (if any) of the reserve determined under the applicable tax reserve method over the amount in clause (i).

Section 807(d)(3) provides that the applicable tax reserve method is CRVM in the case of a contract covered by CRVM and CARVM in the case of a contract covered by CARVM. The CRVM and CARVM may be PBR methods, which may be gross premium reserves and may take into account certain expenses and other factors. Congress understood that for this purpose life insurance reserves could be determined using PBR methods. The Joint Committee on Taxation described the purpose of the TCJA's amendments to section 807(d) as "accomodat[ing] the NAIC-prescribed principle-based reserve methodology." Bluebook at 235.

Section 807(c)(1), however, provides that the reserves referred to in sections 807(a) and (b), which are the reserves taken into account in determining the gross income or deductions of a life insurance company, are "life insurance reserves (as defined in section 816(b))."

Section 816(b) generally defines life insurance reserves to be amounts that are (i) computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, (ii) set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts involving, at the time with respect to which the reserves are computed, life, accident, or health contingencies, and (iii) with some exceptions, required by law. Section 816(b) (and its predecessor provisions) have been interpreted as describing a net premium reserve that does not take into account expenses or certain other factors. *See, e.g.*, Rev. Rul. 77-451, 1977-2 C.B. 224; *Maryland Ca-*

*sualty Co. v. United States*, 251 U.S. 342 (1920).

Thus, although Congress intended that the tax reserve method used to compute life insurance reserves under section 807(d), as amended by the TCJA, could include PBR methods, section 816(b) (by virtue of the reference in section 807(c)(1)) could be interpreted to preclude reserves determined under PBR methods from qualifying as life insurance reserves for purposes of section 807. To clarify the interaction between sections 807 and 816, §1.816-1 of the proposed regulations provides that a reserve that meets the requirements in sections 816(b)(1) and (2) will not be disqualified as a life insurance reserve if it is determined using a method that takes into account other factors, provided that the method used to compute the reserves is a "tax reserve method" as defined in section 807(d)(3). This definition would apply to life insurance reserves taken into account by nonlife insurance companies under section 832(b)(4) and for purposes of determining an insurance company's qualification as a life insurance company under section 816.

#### *E. Electronic Filing of Annual Statements*

The Conference Report contemplates requiring the electronic filing of annual statements to improve reporting of insurance reserves, as necessary to carry out and enforce section 807. Conference Report at 478-79. The Treasury Department and the IRS believe that requiring an insurance company to file its annual statement electronically (if the company's Form 1120-L or Form 1120-PC is also filed electronically) is necessary to allow the IRS to better and more efficiently examine the return. Accordingly, §1.6012-2(c) is proposed to be amended to remove the rule that prohibits an insurance company that files its Form 1120-L or Form 1120-PC electronically from filing its annual statement (or pro forma annual statement) electronically. The Treasury Department and the IRS request comments regarding potential issues that may arise in filing the annual statement (or pro forma annual statements) electronically (for example, if the size of the annual statement(s) may exceed or cause the filed return to exceed the size limits in section 2.1.2 (Submis-



sion Size) of IRS Publication 4164, *Modernized e-File (MeF) Guide for Software Developers and Transmitters, Processing Year 2020.*)

#### F. Proposed Removal or Revision of Regulations with No Future Application.

##### 1. In general

This notice of proposed rulemaking proposes to remove §§1.801-7, 1.801-8(e), 1.806-4, 1.809-2, 1.810-3, 1.818-2(c), and 1.818-4 because these provisions provide guidance under law that has been repealed or substantially changed and will have no application after the adoption of the proposed regulations as final. Section 1.801-5(c) is proposed to be removed because its requirement that a taxpayer file certain information when it changes the basis of computing life insurance reserve is obviated by the requirement in §1.807-4(b) of the proposed regulations that a taxpayer changing the basis of computing any item referred to in section 807(c) follow the administrative procedures prescribed by the Commissioner.

This notice of proposed rulemaking proposes to revise §301.9100-6T to remove provisions related to elections under law that has been repealed or elections that may no longer be made.

##### 2. Section 1.381(c)(22)-1

This notice of proposed rulemaking proposes to remove §1.381(c)(22)-1(b)(6) because its requirement that an acquiring corporation take into account any net increases or net decreases in reserves of the distributor or transferor corporation under section 810(d)(1) is no longer applicable. The principle in §1.381(c)(22)-1(b)(6), however, applies to transactions in which the distributor or transferor corporation has any remaining portion of an adjustment that was required to be taken into account over 10 years under prior section 807(f). See section 2.08 of Rev. Proc. 2019-10. After the amendment of section 807(f) by the TCJA, an acquiring corporation must take into account any remaining section 481(a) adjustment of the transferor or distributor corporation pursuant to the IRS's administrative procedures. See section 7.03 of Rev. Proc. 2015-13.

##### 3. Section 1.817A-1

This notice of proposed rulemaking proposes to revise §1.817A-1 to remove the requirement that the current market rate of interest prescribed in §1.817A-1(a)(5) be used to determine both the life insurance reserve and the required interest (as provided in prior section 812(b)(2)(A)) during the temporary guarantee period of a non-equity indexed modified guaranteed contract (MGC).

Prior to its amendment by the TCJA, section 807(d) generally provided that life insurance reserves for a contract were determined using a rate of interest applicable when the contract was issued. Prior section 807(d)(2)(B) provided that the rate of interest to be used was the greater of the applicable Federal interest rate or the prevailing State assumed interest rate. The TCJA amended section 807(d), however, to provide that life insurance reserves for a contract are generally computed using a method applicable to the contract and in effect as of the date the reserve is determined. Section 807(d), as amended, does not prescribe a particular interest rate to be used in determining life insurance reserves. Thus, the requirement in §1.817A-1(b)(2) that the applicable interest rate to be used under section 807(d)(2)(B) to compute life insurance reserves for an MGC is a prescribed current market interest rate is now inapplicable. Additionally, the need for §1.817A-1(b)(1) to prescribe a current market interest rate to determine life insurance reserves for MGCs (as opposed to an interest rate applicable when the contract was issued) is no longer present because section 807(d), as amended, requires the use of a method in effect as of the date the reserve is determined.

Prior to its amendment by the TCJA, section 812 determined “company’s share” and “policyholder’s share,” in part, by reference to required interest on certain reserves under section 807(c). Prior section 812(b)(2)(A) provided that the required interest was computed at the greater of the prevailing State assumed rate or the applicable Federal interest rate. The TCJA amended section 812 to provide that the “company’s share” means 70% and the “policyholder’s share” means 30%. Accordingly, after the TCJA’s amendment

of section 812, a particular interest rate is no longer needed to determine the “company’s share” and the “policyholder’s share.”

Section 1.817A-1 also requires that the current market rate of interest prescribed in §1.817A-1(a)(5) be used to determine reserves under section 807(c)(3) for an MGC during any temporary guarantee period. Prior to amendment of section 807(c), the “appropriate rate of interest” that was otherwise required to determine reserves for MGCs under section 807(c)(3) (the highest of the applicable Federal interest rate, the prevailing State assumed interest rate, or the interest rate assumed by the company in determining the guaranteed benefit) was determined when the obligation first did not involve life, accident, or health contingencies, and was thus not necessarily a current interest rate. The TCJA, however, modified the flush language in section 807(c)(3) to provide that the “appropriate rate of interest” is the highest rate or rates permitted to be used to discount the obligations by the NAIC as of the date the reserve is determined. Because the interest rate now required to be used to determine reserves under section 807(c)(3) (in the absence of the application of §1.817A-1) is a current market interest rate, §1.817A-1 may no longer be needed to provide a current interest rate. The Treasury Department and the IRS request comments on whether the current market rate of interest prescribed by §1.817A-1 should continue to apply to reserves under section 807(c)(3) for an MGC during any temporary guarantee period.

##### 4. Section 1.338-11

This notice of proposed rulemaking proposes to revise §1.338-11(d)(2) to reflect the change in section 807(f) made by the TCJA. Section 1.338-11(d) generally provides that when a section 338 election is made for an insurance company, new target must effectively capitalize its subsequent increase in reserves for any acquired contracts in the deemed asset sale to the extent the fair market value of certain assets acquired by new target in the deemed asset sale exceeds the adjusted grossed-up basis (AGUB) allocated to those assets (that is, to the extent of a “bargain purchase”). In the absence of

this rule, new target could obtain a better tax result if it acquired understated reserves and subsequently increased them rather than acquiring adequately stated reserves.

Section 1.338-11(d) was intended to minimize incentives for sellers to defer increases in reserves. *See* T.D. 9257 (71 FR 17990). An exception to §1.338-11(d), however, is provided if new target is required by section 807(f) to spread the reserve increase over the 10 succeeding taxable years. *See* §1.338-11(d)(2)(ii). There was limited incentive for sellers to defer increases in reserves when new target was required to spread the deduction resulting from the reserve increase over 10 years, as was the case under section 807(f) prior to its amendment by the TCJA. The amendment to section 807(f) by the TCJA together with the applicable administrative procedures require a deduction resulting from a reserve increase under section 807(f) to be taken into account in one year. As a result, there is greater incentive for a seller to defer increases in reserves if new target would be allowed to take the deduction into account in one year, and the reason for providing the exception currently in §1.338-11(d)(2)(ii) no longer exists. Accordingly, this notice of proposed rulemaking proposes to remove the exception for reserve increases under section 807(f) that is currently provided in §1.338-11(d)(2)(ii).

A new §1.338-11(d)(3)(iii) is also proposed to be added so the standard used for determining when there is an additional premium under §1.338-11(d)(3) for a change in items referenced in section 807(c) is the same as that used under section 807(f). Changes in PBRs that are contemplated by the applicable method, for example, may not constitute changes in the basis of computing reserves under section 807(f) and should not result in an amount of additional premium under §1.338-11(d)(3).

#### *G. Proposed Conforming Changes to Regulations.*

This notice of proposed rulemaking proposes to revise §§1.801-2, 1.809-5, and 1.848-1 to correct references to Code provisions or regulations that have been changed, removed, or are proposed to

be removed by this notice of proposed rulemaking.

#### **Determination of Life Insurance or Annuity Contract Status for Certain Foreign-Issued Contracts**

The Code contains a statutory definition of a life insurance contract under section 7702, rules applicable to certain flexible premium contracts under section 101(f), distribution on death requirements under section 72(s), and diversification requirements under section 817(h). These requirements, which reflect Congress's concern that the tax-favored treatment generally accorded life insurance and annuity contracts was available to contracts that were too investment oriented or provided for undue tax deferral, are relevant to the tax treatment of a policyholder, annuitant, or beneficiary as well as the entity that issues or reinsures a life insurance or annuity contract.

The Treasury Department and IRS received a request to promulgate regulations under section 807 that generally would provide, for purposes of subchapter L, that the determination of whether a contract issued by a non-United States insurance company and reinsured by a United States insurance company is a life insurance or annuity contract is made without regard to these statutory requirements, provided that (i) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person and (ii) such contract is regulated as a life insurance or annuity contract by a foreign regulator. Under the requested approach, a United States insurance company may be able to establish additional life insurance or other tax reserves for such a contract that is reinsured by a United States insurance company even if the contract does not meet these statutory requirements.

The Treasury Department and the IRS are evaluating this request, including whether to address it as part of this rulemaking. Comments are requested generally in respect of the requested change, including in respect of statutory interpretation and implications in various contexts and provisions outside of subchapter L, such as, for example, the interaction with policies underlying the Federal withholding tax provisions that could apply to re-

insurance payments from a United States reinsurer to a non-United States insurer as well as the administrability of requiring a United States reinsurance company to track the residence of direct and indirect beneficial owners of any interest in the contract, policyholder, insured, annuitant, or beneficiary of a contract issued by a non-United States insurance company that it may not administer.

#### **Proposed Applicability Dates**

The rules in this notice of proposed rulemaking are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

A taxpayer may choose to apply §§1.807-4, 1.816-1, and 1.817A-1(b) of the final regulations to taxable years beginning after December 31, 2017, the effective date of the revision of section 807 made by the TCJA, and ending before the first taxable year that begins on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**. *See* section 7805(b)(7). Alternatively, a taxpayer may rely on §§1.807-4 and 1.816-1 of the proposed regulations for taxable years beginning after December 31, 2017, and ending before the first taxable year that begins on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**.

Under proposed §1.6012-2(l), taxpayers may choose to apply §1.6012-2(c) of the final regulations to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after the date of publication of the Treasury decision adopting these rules as final in the **Federal Register**.

#### **Effect on Other Documents**

The following revenue rulings are proposed to be obsolete for taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**: Rev. Rul. 2002-6, Rev. Rul. 94-74, Rev. Rul. 80-117, Rev. Rul. 80-116,

Rev. Rul. 78-354, Rev. Rul. 77-198, Rev. Rul. 75-308, Rev. Rul. 74-57, Rev. Rul. 70-568, Rev. Rul. 70-192, Rev. Rul. 69-444, Rev. Rul. 65-240, Rev. Rul. 65-233, Rev. Rul. 65-143. Comments are requested regarding principles contained within these revenue rulings that are consistent with current section 807(f) and for which additional guidance is needed if these rulings are obsolete.

Notice 2010-29 is proposed to be obsolete for taxable years beginning after December 31, 2017.

### Special Analyses

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

#### *Paperwork Reduction Act*

The collection of information relating to this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review under OMB Control Number 1545-0123 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

In response to the Conference Report, §1.6012-2 of the proposed regulations would require an insurance company to include the insurance company's annual statement (as defined in §1.6012-2(c)(5)) with an electronically filed Federal income tax return (Form 1120-L for a life insurance company and Form 1120-PC for a nonlife insurance company). Federal income tax items of an insurance company are determined in part based upon the insurance company's annual statement. Providing the annual statement to the IRS with an electronically filed Federal income tax return is necessary to allow the IRS to better and more efficiently examine an insurance company's Federal income tax return.

In accordance with section 807(e)(6), as added by the TCJA, §1.807-3 of the proposed regulations provides that the IRS may require reporting on Form 1120-L of the opening balance and closing balance of items described in sec-

tion 807(c) (for example, life insurance reserves) and the method of computing such items for purposes of determining income. Providing this information is necessary to allow the IRS to better examine an insurance company's Federal income tax return.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with §1.6012-2 of the proposed regulations will be reflected in the burden on the Form 1120-L and in the burden on the Form 1120-PC (OMB Control Number 1545-0123) when the burden for each is revised to reflect the collection of information associated with §1.6012-2 of the proposed regulations. The respondents to the collection of information are life insurance companies that file the Form 1120-L electronically and nonlife insurance companies that file the Form 1120-PC electronically.

For purposes of the Paperwork Reduction Act, the burden for the collection of information associated with §1.807-3 of the proposed regulations will be reflected in the burden on the Form 1120-L (OMB Control Number 1545-0123) when the burden is revised to reflect the collection of information associated with §1.807-3 of the proposed regulations. The respondents to the collection of information are life insurance companies that file a Form 1120-L.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE-CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by June 1, 2020. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information

may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

#### *Regulatory Flexibility Act*

It is hereby certified that the proposed regulations will 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).

Section 13517 of the TCJA added section 807(e)(6) to the Code. Under section 807(e)(6), the Secretary may require reporting (at such time and in such manner as the Secretary shall prescribe) with respect to the opening balances and the closing balances of reserves and with respect to the method of computing reserves for purposes of determining income. Section 1.807-3 of the proposed regulations would allow the IRS to require the reporting of this information on any prescribed forms, such as the Form 1120-L.

The Conference Report at 478-479 provides that, under existing authority, the Secretary may require an insurance company to provide its annual statement via a link, electronic copy, or other similar means. Section 1.6012-2(c) of the proposed regulations would require an insurance company to include the insurance company's annual statement with an electronically filed Federal income tax return (Form 1120-L for a life insurance company and Form 1120-PC for a nonlife insurance company). Under current procedures, an insurance company can only electronically file a Form 1120-L or Form 1120-PC if the insurance company is part of an affiliated group filing a consolidated return, the parent of which files a Form 1120. Although data are not readily available, the IRS and the Treasury Department expect that any reporting burden associated with §1.6012-2(c) of the proposed regulations will fall pri-



marily on financial and insurance firms with annual receipts greater than \$41.5 million and, therefore, will not affect a substantial number of small entities. See 13 CFR 121.201, sector 52 (finance and insurance).

As stated in the preceding paragraph, the rule is not expected to affect a substantial number of small entities; however, even if a substantial number of small entities were affected, the economic impact of the regulation is not likely to be significant. Section 1.807-3 of the proposed regulations is limited in scope to time and manner of information reporting, and any economic impact associated with this proposed regulation is expected to be minimal. Further, the information reported to the IRS is information that the insurance company has readily available.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact this rule would have on small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules and the other proposed actions described herein. All comments that are submitted by the public will be available for public inspection and copying at <http://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Dan Phillips, Office of Associate

Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

### Statement of Availability of IRS Documents

The IRS notices, revenue procedures, and revenue rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise Taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a sectional authority for §1.807-3 in numerical order to read in part as follows:

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

Section 1.807-3 also issued under 26 U.S.C. 807(e)(6).

\* \* \* \* \*

#### §1.338-11 [Amended]

Par. 2. Section 1.338-11 is amended by:

1. Revising paragraph (d)(2).
2. Removing the language “and (d)(3)(iii)” from the first sentence in paragraph (d)(3)(i) and adding “through (iv)” in its place.

3. Redesignating paragraph (d)(3)(iii) as paragraph (d)(3)(iv).

4. Adding a new paragraph (d)(3)(iii).

5. Revising newly redesignated paragraph (d)(3)(iv).

6. Adding paragraph (d)(7)(iii).

The revisions and additions read as follows:

#### §1.338-11 Effect of section 338 election on insurance company targets.

\* \* \* \* \*

(d) \* \* \*

(2) *Exception.* New target is not treated as receiving additional premium under paragraph (d)(1) of this section if it is under state receivership as of the close of the taxable year for which the increase in reserves occurs.

(3) \* \* \* \* \*

(iii) *Increases in section 807(c) reserves.* The positive amounts with respect to the items referred to in section 807(c) other than discounted unpaid loss reserves is the sum of the net increases in such items that are required to be taken into account under section 807(f).

(iv) *Increases in other reserves.* The positive amount with respect to reserves other than discounted unpaid loss reserves and other items referred to in section 807(c) is the net increase of those reserves due to changes in estimate, methodology, or other assumptions used to compute the reserves (including the adoption by new target of a methodology or assumptions different from those used by old target).

\* \* \* \* \*

(7) \* \* \*

(iii) *Application of paragraphs (d)(2) and (3) of this section.* Paragraphs (d)(2) and (3) of this section apply to taxable years beginning on or after **[DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]**. For taxable years beginning before such date, see paragraph (d) of this section as contained in 26 CFR part 1 revised as of April 1, 2019.

\* \* \* \* \*

#### §1.381(c)(22)-1 [Amended]

Par. 3. In §1.381(c)(22)-1, paragraph (b)(6) is removed and reserved.

## §1.801-2 [Amended]

Par. 4. Section 1.801-2 is amended by removing the language “1.801-7” and adding the language “1.801-6” in its place.

Par. 5. Section 1.801-5 is amended by:

1. Removing paragraph (c) and redesignating paragraph (d) as paragraph (c).
2. In newly redesignated paragraph (c), designating the *Example* as paragraph (c)(1).
3. In newly designated paragraph (c)(1):
  - i. Designating the introductory text as paragraph (c)(1)(i).
  - ii. Adding a heading for the table in newly designated paragraph (c)(1)(i).
  - iii. Designating the undesignated paragraph following newly designated paragraph (c)(1)(i) as paragraph (c)(1)(ii).
4. Adding reserved paragraph (c)(2).

The addition reads as follows:

## §1.801-5 [Amended]

\* \* \* \* \*  
(c) \* \* \*  
(1) \* \* \*  
(i) \* \* \*  
Table 1 to Paragraph (c)(1)(i)  
\* \* \* \* \*

## §1.801-7 [Removed and Reserved]

Par. 6. Section 1.801-7 is removed and reserved.

## §1.801-8(e) [Amended]

Par. 7. In §1.801-8, paragraph (e) is removed and reserved.

## §1.806-4 [Removed]

Par. 8. Section 1.806-4 is removed.

Par. 9. Section 1.807-1 is revised to read as follows:

### §1.807-1 Computation of life insurance reserves.

(a) *No asset adequacy reserve.* The life insurance reserve determined under section 807(d)(1) does not include any asset adequacy reserve. An asset adequacy reserve includes any reserve that is established as an additional reserve based upon an analy-

sis of the adequacy of reserves that would otherwise be established or any reserve that is not held with respect to a particular contract. In determining whether a reserve is a life insurance reserve, the label placed on such reserve is not determinative, provided, however, any reserve or portion of a reserve that would have been established pursuant to an asset adequacy analysis required by the National Association of Insurance Commissioner’s Valuation Manual 30 as it existed on December 22, 2017, the date of enactment of Public Law 115-97, is an asset adequacy reserve.

(b) *Applicability date.* The rules of this section apply to taxable years beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

Par. 10. Section 1.807-3 is added to read as follows:

### §1.807-3 Reporting of reserves.

(a) *Reserve reporting.* A life insurance company subject to tax under section 801 is required to make a return on Form 1120-L, *U.S. Life Insurance Company Income Tax Return*. The Internal Revenue Service may require reporting with respect to the opening balance and closing balance of items described in section 807(c) and with respect to the method of computing such items for purposes of determining income. Such reporting may provide for the manner in which separate account items are reported. (See section 6011 and §301.6011-1 of this chapter.)

(b) *Applicability date.* The rules of this section apply to taxable years beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

Par. 11. Section 1.807-4 is added to read as follows:

### §1.807-4 Adjustment for change in computing reserves.

(a) *Requirement to follow administrative procedures.* Except as provided in §1.446-1(e), a change in basis of computing an item referred to in section 807(c) is a change in method of accounting for purposes of §1.446-1(e). Before computing such item under a new basis, a life insurance company must obtain the consent

of the Commissioner of Internal Revenue or his delegate (Commissioner) pursuant to administrative procedures prescribed by the Commissioner. Similarly, an insurance company other than a life insurance company (a nonlife insurance company) that changes its basis of computing life insurance reserves must obtain the consent of the Commissioner pursuant to administrative procedures prescribed by the Commissioner.

(b) *Section 481 adjustment—(1) In general.* If the basis of computing any item referred to in section 807(c) as of the close of any taxable year (the year of change) differs from the basis of computing such item at the close of the preceding taxable year, then the difference between the amount of the item at the close of the taxable year computed on the new basis and the amount of the item at the close of the taxable year computed on the old basis that is attributable to contracts issued before the taxable year, is taken into account under section 481 and §§1.481-1 through 1.481-5 as an adjustment attributable to a change in method of accounting.

(2) *Loss of company status.* If for any taxable year a taxpayer that was an insurance company for the year of change is no longer an insurance company, then the taxpayer must take into account in the preceding taxable year (that is, the last taxable year it was an insurance company) the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section. A taxpayer that was an insurance company for the year of change does not accelerate the balance of any section 481(a) adjustment determined under paragraph (b)(1) of this section merely because it changes from a life insurance company to a nonlife insurance company or because it changes from a nonlife insurance company to a life insurance company.

(c) *Effect on determining increase or decrease in reserves—(1) Effect under section 807(a) and (b).* If there is a change in basis of computing any item described in section 807(c) for a taxable year, then, for purposes of section 807(a) and (b), the closing balance for such item for the year of change with respect to contracts issued before the year of change is determined on the old basis and the opening balance for such item for the next taxable year for



such contracts is computed on the new basis.

(2) *Effect under section 832.* The following rules apply for purposes of section 832(b)(4):

(i) For the year of change, life insurance reserves at the end of the year of change with respect to contracts issued before the year of change are determined on the old basis.

(ii) For the taxable year following the year of change, life insurance reserves at the end of the preceding taxable year (that is, the year of change) with respect to contracts issued before the year of change are determined on the new basis.

(d) *Examples.* The principles of paragraphs (a) through (c) of this section are illustrated by the following examples. For purposes of these examples and except as otherwise provided, IC is a life insurance company within the meaning of section 816(a) that issues life insurance and annuity contracts. IC is required to determine the amount of life insurance reserves under section 807(d) and to take net increases or decreases in the reserves into account in computing life insurance company taxable income. IC's reserve for each insurance contract at issue exceeds the net surrender value for such contract and does not exceed the statutory reserve for such contract. IC uses a calendar year as its taxable year.

(1) *Example 1—(i) Facts.* In 2021, IC discovered that it had computed the amount of life insurance reserves for its 2019 and 2020 taxable years by using a mortality table that was not permitted by the tax reserve method (as defined in section 807(d)(3)).

(ii) *Analysis.* To comply with section 807(d), IC must use the appropriate mortality table to compute its life insurance reserves for the 2021 taxable year. This change is a change in basis of computing life insurance reserves and a change in method of accounting described in §1.446-1(e). IC is required to obtain the consent of the Commissioner to change its basis of computing its life insurance reserves by following the administrative procedures prescribed by the Commissioner.

(2) *Example 2—(i) Facts.* IC issues variable annuity contracts with guaranteed minimum benefits. In Year 1, the National Association of Insurance Commissioners makes a change to the Commissioners' Annuity Reserve Valuation Method that imposes a new computational requirement on issuers of variable annuities with guaranteed minimum benefits. The requirement applies to the determination of statutory reserves as of December 31, Year 1, for contracts issued on or prior to December 31, Year 1.

(ii) *Analysis.* To comply with section 807(d), IC must compute its life insurance reserves for variable annuities with guaranteed minimum benefits for the

Year 1 taxable year using the new computational requirement. This change is a change in basis of computing life insurance reserves for such contracts issued prior to Year 1 and a change in method of accounting described in §1.446-1(e). IC is required to obtain the consent of the Commissioner to change its basis of computing its life insurance reserves by following the administrative procedures prescribed by the Commissioner.

(3) *Example 3—(i) Facts.* In 2021, IC changed the basis of computing the amount of life insurance reserves for a certain type of life insurance contract as described in section 807(f). Both the basis used for computing the reserves for the relevant contracts at the close of the 2020 taxable year (old basis) and the basis of computing the reserves for the relevant type of contract at the close of the 2021 taxable year (new basis) are consistent with the applicable Commissioners' Reserve Valuation Method. IC followed the administrative procedures prescribed by the Commissioner to obtain consent to change the basis of computing these reserves. IC determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued prior to 2021 were \$110 if computed using the old method and \$120 if computed using the new method. IC also determined that the life insurance reserves as of December 31, 2021, for the relevant contracts issued during 2021 were \$15 using the new basis.

(ii) *Analysis.* IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the \$10 difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis (\$110) and the reserves for such contracts computed under the new basis (\$120). For purposes of determining any net increase or net decrease in reserves in taxable year 2021 under section 807(a) or (b), IC's closing balance of life insurance reserves computed under section 807(d) with respect to the relevant contracts is \$110 for contracts issued prior to 2021 (computed on the old basis) and \$15 for contracts issued during 2021 (computed on the new basis). IC's opening balance in 2022 for life insurance reserves for the relevant contracts is \$135 (computed on the new basis).

(4) *Example 4—(i) Facts.* The facts are the same as in paragraph (d)(3) of this section (the facts in *Example 3*), except that IC is an insurance company that is not a life insurance company. IC is required to compute taxable income under section 832.

(ii) *Analysis.* IC must take into account under section 481 and the administrative procedures prescribed by the Commissioner the \$10 difference between the reserves for the relevant contracts issued prior to 2021 computed under the old basis (\$110) and the reserves for such contracts computed under the new basis (\$120). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the year of change, the life insurance reserves at the end of the taxable year are \$110 for contracts issued prior to 2021 (computed on the old basis) and \$15 for contracts issued during 2021 (computed on the new basis). For purposes of determining the premiums earned on insurance contracts during the taxable year as described in section 832(b)(4) for the taxable year following the year of change, the life insurance reserves at the end of the preceding taxable year (the

year of change) with respect to relevant contracts are \$135 (computed on the new basis).

(e) *Applicability date.* The rules of this section apply to taxable years beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. However, a taxpayer may choose to apply the rules of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97, and ending before the first taxable year that begins on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. See section 7805(b)(7).

### §1.809-2 [Removed]

Par. 12. Section 1.809-2 is removed.

### §1.809-5 [Amended]

Par. 13. Section 1.809-5 is amended by removing the language “and §1.810-3” from the last sentence of paragraph (a)(5)(iii).

### §1.810-3 [Removed]

Par. 14. Section 1.810-3 is removed.

Par. 15. Section 1.816-1 is added before the undesignated center heading “Miscellaneous Provisions” to read as follows:

### §1.816-1 Life insurance reserves.

(a) *Definition of life insurance reserves.* Except as provided in section 816(h), a reserve that meets the requirements of section 816(b)(1) and (2) will not be disqualified as a life insurance reserve solely because the method used to compute the reserve takes into account other factors, provided that the method used to compute the reserve is a tax reserve method as defined in section 807(d)(3) and that such reserve is not an asset adequacy reserve as described in §1.807-1(a).

(b) *Applicability date.* The section applies to taxable years beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. However, a taxpayer may choose to apply the rules of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97,

and ending before the first taxable year that begins on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. See section 7805(b)(7).

**§1.817A-0 [Removed]**

Par. 16. Section 1.817A-0 is removed.

Par. 17. Section 1.817A-1 is amended by:

1. Revising the heading to paragraph (b) and paragraph (b)(1).
  2. Removing paragraph (b)(2).
  3. Redesignating paragraphs (b)(3) and (4) as paragraph (b)(2) and (3).
  5. In newly redesignated paragraph (b) (3):
    - i. Revising the first sentence.
    - ii. Removing the word “None” in the second sentence and adding “Neither” in its place.
  6. Removing paragraph (b)(5)
  7. Revising paragraph (d).
- The revisions read as follows:

**§1.817A-1 Certain modified guaranteed contracts.**

\*\*\*\*\*

(b) *Applicable interest rates for certain non-equity-indexed modified guaranteed contracts*—(1) *Tax reserves during temporary guarantee period under section 807(c)* (3). An insurance company is required to determine the tax reserves for certain MGCs under section 807(c)(3). During the temporary guarantee period of such an MGC that is a non-equity-indexed MGC, the applicable interest rate to be used is the current market rate, as defined in paragraph (a)(5) of this section. For periods after the end of such a temporary guarantee period, section 807(c)(3) is not modified when applied to a non-equity indexed MGC. Section 807(c)(3) is not affected by the definition of current market rate contained in paragraph (a)(5) of this section once the temporary guarantee period has expired.

\*\*\*\*\*

(3) *Periods after the end of the temporary guarantee period.* For periods after the end of the temporary guarantee period, sections 807(c)(3) and 811(d) are not modified when applied to non-equity-indexed MGCs. \*\*\*

\*\*\*\*\*

(d) *Applicability dates.* Paragraph (b) of this section applies to taxable years beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. However, a taxpayer may choose to apply the rules of paragraph (b) of this section for taxable years beginning after December 31, 2017, the effective date of the revision of section 807 by Public Law 115-97, and ending before the first taxable year that begins on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. See section 7805(b)(7). For taxable years beginning before [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], see paragraph (b) of this section as contained in 26 CFR part 1 revised as of April 1, 2019.

**§1.818-2 [Amended]**

Par. 18. Section 1.818-2 is amended by removing paragraph (c).

**§1.818-4 [Removed and Reserved]**

Par. 19. Section 1.818-4 is removed and reserved.

**§1.848-1 [Amended]**

Par. 20. Section 1.848-1 is amended by removing the language “section 807(e) (4)” in paragraph (b)(2)(i) and adding the language “section 807(e)(3)” in its place.

Par. 21. Section 1.6012-2 is amended by:

1. In the second sentence of paragraph (c)(1)(i), removing “Except as provided in paragraph (c)(4) of this section, such” and adding “Such” in its place.
  2. In the third sentence of paragraph (c)(2), removing “Except as provided in paragraph (c)(4) of this section, such” and adding “Such” in its place.
  3. Removing paragraph (c)(4).
  4. Redesignating paragraph (c)(5) as paragraph (c)(4).
  5. Revising paragraph (l).
- The revision reads as follows.

**§1.6012-2 Corporations required to make returns of income.**

\*\*\*\*\*

(l) *Applicability date.* Except as provided in this paragraph (l), paragraph (c) of this section applies to any taxable year beginning on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. However, a taxpayer may choose to apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. For taxable years beginning before [DATE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER] see paragraph (c) of this section as contained in 26 CFR part 1 in effect on April 1, 2019.

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 22. The authority citation for part 301 continues to read in part as follows:

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

**§301.9100-6T [Amended]**

Par. 25. Section 301.9100-6T is amended by:

1. Removing from the table in paragraph (a)(1) the three entries for “211” and the entries for “216(c)(1),” “216(c) (2),” “217(i),” and “217(l)(2)(B).”
2. Removing and reserving paragraph (a)(2)(iii).
3. Removing paragraph (a)(3)(v).
4. In paragraph (a)(4):
  - i. Removing “211 (Code section 810(b) (3)), 216(c) (1) and (2), 217(l),” from the first sentence.
  - ii. Removing “211 (Code sections 806(d)(4), and 807(d)(4)(C)), 217(i),” from the second sentence.
  - iii. Removing the last sentence.

Sunita Lough,  
*Deputy Commissioner for Services  
and Enforcement.*

(Filed by the Office of the Federal Register on April 1, 2019, 8:45 a.m., and published in the issue of the Federal Register for April 2, 2019, 85 F.R. 18496)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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



# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

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

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