

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

Rev. Proc. 2022-10, page 473.

This revenue procedure establishes an 18-month pilot program that provides an opportunity for fast-track processing of certain private letter ruling requests solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate).

EMPLOYEE PLANS

Notice 2022-7, page 469.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for November 2021 used under § 417(e)(3)(D), the 24-month average segment rates applicable for November 2021, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

EMPLOYMENT TAX

Rev. Proc. 2022-13, page 477.

This revenue procedure modifies and supersedes Notice 2002-5, 2002-1 C.B. 320. It provides in-

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formation about when and how the IRS will issue a Notice of Employment Tax Determination Under IRC § 7436 (§ 7436 Notice) and how taxpayers petition for Tax Court review of the determinations under IRC § 7436.

EMPLOYMENT TAX

AOD 2022-1, page 466.

Nonacquiescence to the holding that the period of limitations on assessing backup withholding liability begins to run when the taxpayer files a Form 1040 and Forms 1099-MISC that omit payee taxpayer identification numbers.

Rev. Rul. 2022-3, page 467.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for February 2022.

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 Court Decisions

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 recommendation 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 NOT ACQUIESCE in the following decision:

Quezada v. IRS, 982 F.3d 931 (5th Cir. 2020).¹

¹ Nonacquiescence to the holding that the period of limitations on assessing backup withholding liability begins to run when the taxpayer files a Form 1040 and Forms 1099-MISC that omit payee taxpayer identification numbers.

Part I

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

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

Rev. Rul. 2022-3

This revenue ruling provides various prescribed rates for federal income tax

purposes for February 2022 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropri-

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

REV. RUL. 2022-3 TABLE 1				
Applicable Federal Rates (AFR) for February 2022				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	0.59%	0.59%	0.59%	0.59%
110% AFR	0.65%	0.65%	0.65%	0.65%
120% AFR	0.71%	0.71%	0.71%	0.71%
130% AFR	0.77%	0.77%	0.77%	0.77%
		<i>Mid-term</i>		
AFR	1.40%	1.40%	1.40%	1.40%
110% AFR	1.55%	1.54%	1.54%	1.54%
120% AFR	1.69%	1.68%	1.68%	1.67%
130% AFR	1.83%	1.82%	1.82%	1.81%
150% AFR	2.11%	2.10%	2.09%	2.09%
175% AFR	2.47%	2.45%	2.44%	2.44%
		<i>Long-term</i>		
AFR	1.92%	1.91%	1.91%	1.90%
110% AFR	2.11%	2.10%	2.09%	2.09%
120% AFR	2.30%	2.29%	2.28%	2.28%
130% AFR	2.50%	2.48%	2.47%	2.47%

REV. RUL. 2022-3 TABLE 2				
Adjusted AFR for February 2022				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	0.45%	0.45%	0.45%	0.45%
Mid-term adjusted AFR	1.06%	1.06%	1.06%	1.06%
Long-term adjusted AFR	1.46%	1.45%	1.45%	1.45%

REV. RUL. 2022-3 TABLE 3
Rates Under Section 382 for February 2022

Adjusted federal long-term rate for the current month	1.46%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	1.46%

REV. RUL. 2022-3 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for February 2022

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

Appropriate percentage for the 70% present value low-income housing credit	7.38%
Appropriate percentage for the 30% present value low-income housing credit	3.16%

REV. RUL. 2022-3 TABLE 5
Rate Under Section 7520 for February 2022

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.6%
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Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

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

The applicable federal short-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

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

The adjusted applicable federal long-term rate is set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of February 2022. See Rev. Rul. 2022-3, page 467.

Part III

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

Notice 2022-7

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

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to sin-

gle-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.¹ However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate

bond yield curve derived from December 2021 data is in Table 2021-12 at the end of this notice. The spot first, second, and third segment rates for the month of December 2021 are, respectively, 1.16, 2.72, and 3.10.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. The 25-year average segment rates for plan years beginning in 2020, 2021 and 2022 were published in Notice 2019-51, 2019-41 I.R.B. 866, Notice 2020-72, 2020-40 I.R.B. 789, and Notice 2021-54, 2021-41 I.R.B. 457, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for January 2022 without adjustment for the 25-year average segment rate limits are as follows:

<i>24-Month Average Segment Rates Without 25-Year Average Adjustment</i>			
Applicable Month	First Segment	Second Segment	Third Segment
January 2022	0.88	2.61	3.27

25-YEAR AVERAGE SEGMENT RATES

Section 9706(a) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (ARP), which was enacted on March 11, 2021, changes the 25-year average segment rates and the applicable minimum and maximum percentages used under § 430(h)(3)(C)(iv) of the Code to adjust the 24-month average segment rates.² Prior to this change, the applicable min-

imum and maximum percentages were 90% and 110% for a plan year beginning in 2020, 85% and 115% for a plan year beginning in 2021, and 80% and 120% for plan year beginning in 2022, respectively. After this change, the applicable minimum and maximum percentages are 95% and 105% for a plan year beginning in 2020, 2021, or 2022. In addition, pursuant to this change, any 25-year average segment rate that is less than 5% is deemed to be 5%.³

Pursuant to § 9706(c)(1) of ARP, these changes apply with respect to plan years beginning on or after January 1, 2020. However, § 9706(c)(2) of ARP provides that a plan sponsor may elect not to have these changes apply to any plan year beginning before January 1, 2022.⁴

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code as amended by § 9706(a) of ARP. These adjusted 24-month average segment rates

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

² Section 80602 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, makes further changes to the time periods for which specified applicable minimum and maximum percentages apply.

³ Pursuant to this change, the 25-year averages of the first segment rate for 2020, 2021, and 2022 are increased to 5.00% because those 25-year averages as originally published are below 5.00%.

⁴ This election may be made either for all purposes for which the amendments under § 9706 of ARP apply or solely for purposes of determining the adjusted funding target attainment percentage under § 436 of the Code for the plan year.

apply only for plan years for which an election under § 9706(c)(2) of ARP is not in effect. For a plan year for which such an election does not apply, the 24-month

averages applicable for January 2022, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment

rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

<i>Adjusted 24-Month Average Segment Rates</i>				
For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2020	January 2022	4.75	5.50	6.27
2021	January 2022	4.75	5.36	6.11
2022	January 2022	4.75	5.18	5.92

The adjusted 24-month average segment rates set forth in the chart below do not reflect the changes to § 430(h)(2)(C)(iv) of the Code made by § 9706(a) of ARP. These adjusted 24-month average

segment rates apply only for plan years for which an election under § 9706(c)(2) of ARP is in effect. For a plan year for which such an election applies, the 24-month averages applicable for January 2022,

adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

<i>Pre-ARP Adjusted 24-Month Average Segment Rates</i>				
For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2020	January 2022	3.64	5.21	5.94
2021	January 2022	3.32	4.79	5.47

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multi-employer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calcu-

late current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for December 2021 is 1.85

percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2051. For plan years beginning in January 2022, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

<i>Treasury Weighted Average Rates</i>		
For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
January 2022	2.12	1.91 to 2.22

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates

under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum pres-

ent value segment rates. Pursuant to that notice, the minimum present value segment rates determined for December 2021 are as follows:

<i>Minimum Present Value Segment Rates</i>			
Month	First Segment	Second Segment	Third Segment
December 2021	1.16	2.72	3.10

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Asso-

ciate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development

of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Osmundo Bernabe at 626-927-1344 (not a toll-free number).

Table 2021-12
 Monthly Yield Curve for December 2021
 Derived from December 2021 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	0.31	20.5	3.07	40.5	3.10	60.5	3.12	80.5	3.13
1.0	0.60	21.0	3.07	41.0	3.10	61.0	3.12	81.0	3.13
1.5	0.86	21.5	3.07	41.5	3.10	61.5	3.12	81.5	3.13
2.0	1.06	22.0	3.07	42.0	3.10	62.0	3.12	82.0	3.13
2.5	1.21	22.5	3.07	42.5	3.10	62.5	3.12	82.5	3.13
3.0	1.32	23.0	3.07	43.0	3.10	63.0	3.12	83.0	3.13
3.5	1.42	23.5	3.07	43.5	3.10	63.5	3.12	83.5	3.13
4.0	1.50	24.0	3.07	44.0	3.10	64.0	3.12	84.0	3.13
4.5	1.59	24.5	3.07	44.5	3.10	64.5	3.12	84.5	3.13
5.0	1.68	25.0	3.07	45.0	3.10	65.0	3.12	85.0	3.13
5.5	1.77	25.5	3.07	45.5	3.11	65.5	3.12	85.5	3.13
6.0	1.87	26.0	3.07	46.0	3.11	66.0	3.12	86.0	3.13
6.5	1.98	26.5	3.07	46.5	3.11	66.5	3.12	86.5	3.13
7.0	2.08	27.0	3.07	47.0	3.11	67.0	3.12	87.0	3.13
7.5	2.18	27.5	3.08	47.5	3.11	67.5	3.12	87.5	3.13
8.0	2.28	28.0	3.08	48.0	3.11	68.0	3.12	88.0	3.13
8.5	2.37	28.5	3.08	48.5	3.11	68.5	3.12	88.5	3.13
9.0	2.45	29.0	3.08	49.0	3.11	69.0	3.12	89.0	3.13
9.5	2.54	29.5	3.08	49.5	3.11	69.5	3.12	89.5	3.13
10.0	2.61	30.0	3.08	50.0	3.11	70.0	3.12	90.0	3.13
10.5	2.68	30.5	3.08	50.5	3.11	70.5	3.12	90.5	3.13
11.0	2.74	31.0	3.08	51.0	3.11	71.0	3.12	91.0	3.13
11.5	2.79	31.5	3.08	51.5	3.11	71.5	3.12	91.5	3.13
12.0	2.84	32.0	3.09	52.0	3.11	72.0	3.12	92.0	3.13
12.5	2.88	32.5	3.09	52.5	3.11	72.5	3.12	92.5	3.13
13.0	2.92	33.0	3.09	53.0	3.11	73.0	3.12	93.0	3.13
13.5	2.95	33.5	3.09	53.5	3.11	73.5	3.12	93.5	3.13
14.0	2.97	34.0	3.09	54.0	3.11	74.0	3.12	94.0	3.13
14.5	2.99	34.5	3.09	54.5	3.11	74.5	3.12	94.5	3.13
15.0	3.01	35.0	3.09	55.0	3.11	75.0	3.12	95.0	3.13
15.5	3.02	35.5	3.09	55.5	3.11	75.5	3.12	95.5	3.13
16.0	3.04	36.0	3.09	56.0	3.11	76.0	3.12	96.0	3.13
16.5	3.05	36.5	3.09	56.5	3.11	76.5	3.12	96.5	3.13
17.0	3.05	37.0	3.09	57.0	3.11	77.0	3.12	97.0	3.13
17.5	3.06	37.5	3.10	57.5	3.11	77.5	3.12	97.5	3.13
18.0	3.06	38.0	3.10	58.0	3.12	78.0	3.12	98.0	3.13
18.5	3.07	38.5	3.10	58.5	3.12	78.5	3.12	98.5	3.13
19.0	3.07	39.0	3.10	59.0	3.12	79.0	3.12	99.0	3.13
19.5	3.07	39.5	3.10	59.5	3.12	79.5	3.12	99.5	3.13
20.0	3.07	40.0	3.10	60.0	3.12	80.0	3.13	100.0	3.13

Rev. Proc. 2022-10

SECTION 1. PURPOSE

This revenue procedure establishes an 18-month pilot program to provide an opportunity for fast-track processing of certain requests for letter rulings solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate).

SECTION 2. BACKGROUND

.01 Letter Rulings.

(1) *In general.* The Internal Revenue Service (Service) publishes annually a revenue procedure to explain how the Service provides advice to taxpayers on issues under the jurisdiction of each Associate office. For example, Rev. Proc. 2022-1, 2022-1 I.R.B. 1, explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. References in this revenue procedure to Rev. Proc. 2022-1 include references to successor revenue procedures as appropriate.

(2) *General instructions for requesting letter rulings.* Section 7 of Rev. Proc. 2022-1 provides general instructions and procedures for requesting letter rulings and determination letters.

(a) *Expedited handling of letter ruling requests.* The Service ordinarily processes requests for letter rulings and determination letters in order of the date received. However, section 7.02(4) of Rev. Proc. 2022-1 sets forth the procedures for requesting expedited handling of letter ruling requests (expedited handling). That section requires a request for expedited handling to be made in writing, preferably in a separate letter included with the request for the letter ruling or provided soon after its filing, and to explain in detail the need for expedited handling. That section also sets forth the circumstances in which the Service will grant expedited handling of a letter ruling request. Specifically, that section provides that a request for expedited handling is granted only in rare and unusual cases, out of fairness to other taxpayers and because the Service seeks to process all requests

as expeditiously as possible and to give appropriate deference to normal business exigencies in all cases. Nevertheless, the Service may grant a request for expedited handling when a factor outside a taxpayer's control creates a real business need to obtain a letter ruling or determination letter before a certain date to avoid serious business consequences.

(b) *Processing of letter ruling requests.* Section 8 of Rev. Proc. 2022-1 describes the processing of letter ruling requests by the Associate offices. Section 8.05(1) of Rev. Proc. 2022-1 provides that, if a letter ruling request lacks essential information, the branch representative will request such information, and that, unless an extension of time is granted, the request will be closed if the Associate office does not receive the requested information within 21 calendar days from the date of the request. Section 8.05(2) of Rev. Proc. 2022-1 provides that the Service will grant an extension of the 21-day period if the extension is justified in writing by the taxpayer and approved by the branch reviewer. Section 8.05(3) of Rev. Proc. 2022-1 provides procedures for closing a request if the taxpayer does not submit the information requested within the specified time.

(3) *Conferences for letter rulings.* Section 10 of Rev. Proc. 2022-1 provides procedures and rules regarding conferences between the taxpayer or the taxpayer's authorized representative (taxpayer) and Service representatives to discuss a letter ruling request. A taxpayer generally is entitled, as a matter of right, to only one conference (conference of right). See Rev. Proc. 2022-1, section 10.02.

.02 *Comments Requesting Faster Processing.* The Department of the Treasury (Treasury Department) and the Service have received numerous informal comments from taxpayers and practitioners regarding the time required to process letter ruling requests. The Treasury Department and the Service have determined that faster processing of certain requests for letter rulings solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) would improve service to taxpayers and enhance sound administration of the corporate tax provisions of the Internal Revenue Code (Code).

SECTION 3. SCOPE

.01 *Availability of Fast-Track Processing or Expedited Handling.*

(1) *Fast-track processing available.* Except as provided in section 3.01(3) of this revenue procedure, a taxpayer requesting a letter ruling solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) may request fast-track processing. A request for fast-track processing generally will be granted if the letter ruling request is solely under the jurisdiction of the Associate Chief Counsel (Corporate), and the requirements described in section 4 of this revenue procedure are met. However, if the letter ruling request is primarily under the jurisdiction of the Associate Chief Counsel (Corporate) but also includes a request for a ruling on an issue under the jurisdiction of another Associate office, fast-track processing will be granted only if the other Associate office with jurisdiction over the issue agrees to process the request in accordance with this revenue procedure. If the letter ruling request is primarily under the jurisdiction of the Associate Chief Counsel (Corporate) but also involves an issue under the jurisdiction of another Associate office, but no ruling with respect to such issue is requested, fast-track processing will be granted only if no other Associate office with jurisdiction over the issue objects to the request being processed in accordance with this revenue procedure.

(2) *Expedited handling not available.* Except as provided in section 3.01(3) of this revenue procedure, expedited handling under section 7.02(4) of Rev. Proc. 2022-1 is not available for a letter ruling request solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate).

(3) *Section 9100 relief.*

(a) *Fast-track processing not available.* Fast-track processing is not available for requests for extension of time to make elections or other applications for relief under § 301.9100 of the Procedure and Administration Regulations (26 CFR part 301) (§ 9100 relief).

(b) *Expedited handling available.* Expedited handling under section 7.02(4) of Rev. Proc. 2022-1 is available for requests for § 9100 relief.

.02 *Effect of Fast-Track Processing.* If a request for fast-track processing is granted, the Service will endeavor to complete processing of the letter ruling request and, if appropriate, to issue the letter ruling within the time period specified by the branch reviewer (specified period). The specified period will be 12 weeks unless a shorter or longer period is requested and granted pursuant to this revenue procedure.

(1) If the letter ruling request involves issues solely under the jurisdiction of the Associate Chief Counsel (Corporate), the specified period will begin on the date the letter ruling request is assigned to and received by the branch representative and branch reviewer processing the letter ruling request.

(2) If the letter ruling request involves issues under the jurisdiction of an Associate office other than the Associate Chief Counsel (Corporate), the specified period will begin on the first date on which all other Associate offices having jurisdiction have informed the branch representative of their agreement to fast-track processing (or, if applicable, have indicated non-objection to such processing).

SECTION 4. PROCEDURES FOR FAST-TRACK PROCESSING

.01 *Qualification.* The Service will provide fast-track processing of a letter ruling request only if (1) the taxpayer satisfies each of the requirements described in sections 4.02 through 4.04 of this revenue procedure and agrees to satisfy the requirement described in section 4.07 of this revenue procedure, and (2) after considering the factors listed in section 4.05(2) of this revenue procedure, the branch reviewer determines that fast-track processing is feasible.

.02 *Pre-submission Conference.*

(1) *Request by taxpayer.* The taxpayer must request a pre-submission conference with respect to the letter ruling request, in accordance with the procedures described in sections 10.07, 10.08, and 10.09 (added by this revenue procedure) of Rev. Proc. 2022-1. In the pre-submission conference, the taxpayer should address both the substantive issues and the taxpayer's request for fast-track processing.

(2) *Required information before pre-submission conference.* Before the

pre-submission conference, the taxpayer must provide the information required pursuant to section 10.07(3) of Rev. Proc. 2022-1. Additionally, the taxpayer must provide a statement setting forth the reasons for requesting fast-track processing, the length of the specified period the taxpayer requests (if other than 12 weeks), any matters that could affect the feasibility of fast-track processing, and any issues under the jurisdiction of an Associate office other than the Associate Chief Counsel (Corporate) relevant to the transaction(s) (including whether a ruling will be requested as to each such issue).

.03 *Letter Ruling Request.* A letter ruling request as to which fast-track processing is requested must satisfy all applicable requirements of Rev. Proc. 2022-1 and any other applicable revenue procedures and, in addition, must include the items in sections 4.03(1) through (4) of this revenue procedure.

(1) *Required statement.* The letter ruling request must state, at the top of the first page: "Fast-Track Processing Is Requested under Revenue Procedure 2022-10."

(2) *Required information.* The letter ruling request must include information on the taxpayer's reasons for requesting fast-track processing, the length of the specified period the taxpayer requests (if other than 12 weeks), any information required by section 4.06 if the specified period is less than 12 weeks, any matters that could affect the feasibility of fast-track processing, and any issues under the jurisdiction of an Associate office other than the Associate Chief Counsel (Corporate) relevant to the transaction(s) (including any rulings requested on any such issues).

(3) *Agreement regarding additional information.* The letter ruling request must state that the taxpayer agrees to provide any additional information requested by the branch representative within the seven business days that begin on the next business day after the day the request for information is made (seven-day period). See section 4.07 of this revenue procedure.

(4) *Draft letter ruling.* The letter ruling request must include a draft letter ruling in a form that includes a legend of defined terms, a description of relevant facts, representations, requested rulings, and administrative matters.

.04 *Submitting Request for Letter Ruling.*

(1) *Suggested submission by encrypted email attachment.* To avoid delay in processing of letter ruling requests submitted by mail or delivered in physical form, it is strongly recommended that a letter ruling request for which fast-track processing is requested be submitted by encrypted email attachment, in accordance with section 7.04(3) of Rev. Proc. 2022-1.

(2) *Submission other than by encrypted email attachment.* If a letter ruling request for which fast-track processing is requested is submitted other than by encrypted email attachment, the draft letter ruling required by section 4.03(4) of this revenue procedure must be submitted separately by encrypted email attachment in accordance with section 7.04(3) of Rev. Proc. 2022-1.

.05 *Notification of Receipt and Granting of Request for Fast-Track Processing.*

(1) *Notification.* No later than seven business days after the day the letter ruling request is received by the branch representative and branch reviewer, the branch representative or branch reviewer will contact the taxpayer (i) to acknowledge receipt of the letter ruling request, (ii) to provide contact information for the branch representative and branch reviewer, and (iii) to notify the taxpayer that the request for fast-track processing is granted, denied, or still pending. If the request is granted, the branch representative or branch reviewer will inform the taxpayer of the length of the specified period and the date the specified period will end. If the request is denied, the branch representative or branch reviewer will explain the reasons for the denial. If the request is under consideration by another Associate office at that time, the branch representative or branch reviewer will so inform the taxpayer.

(2) *Factors in determining whether fast-track processing is feasible.* In making the determination whether fast-track processing is feasible, and, if so, the length of the specified period, the branch reviewer will consider--

(a) All the facts, representations, and circumstances, including the complexity of the proposed transactions, the issues presented, and other obligations of the attorneys assigned to process the request,

(b) Whether the letter ruling request fully and clearly describes and analyzes the relevant facts and issues,

(c) Whether the draft letter ruling satisfies the requirements set forth in section 4.03 of this revenue procedure,

(d) The taxpayer's need for fast-track processing, and

(e) Any concerns communicated by another Associate office.

(3) *Opportunity for discussion and reconsideration; tolling.* If the branch representative or the branch reviewer informs the taxpayer that the request for fast-track processing is denied, the taxpayer may address that determination in writing, discuss that determination with the branch reviewer, or both. If the branch reviewer continues to determine that the request for fast-track processing should be denied, there is no right of appeal. See section 10.02 of Rev. Proc. 2022-1. After reconsideration, if the branch reviewer determines that the request for fast-track processing should be granted, the specified period will be tolled for the period beginning on the date the taxpayer was informed that the request for fast-track processing was denied and ending on the date the taxpayer is informed of the determination that such request is granted. The branch representative or the branch reviewer will inform the taxpayer that a favorable or unfavorable determination has been made as soon as possible after the determination has been made and, in the event of a favorable determination, the period of tolling of the specified period.

.06 *Specified Period Shorter or Longer than 12 Weeks.*

(1) *Request for specified period shorter than 12 weeks.*

(a) *In general.* Upon request, the Service will agree to a specified period shorter than 12 weeks if the branch reviewer determines that the taxpayer has a real business need to obtain a letter ruling within that specified period, and that processing is feasible.

(b) *Business need.* In a request for a specified period shorter than 12 weeks, the taxpayer must demonstrate a need for such processing by submitting information to support the following conclusions, no later than the date on which the letter ruling request is submitted:

(i) There is a business exigency outside the taxpayer's control.

(ii) There will be adverse consequences to the taxpayer or other persons if the Service does not issue the requested letter ruling by the specified period.

(iii) The taxpayer submitted the request as promptly as possible after becoming aware of the circumstances described in paragraph (i) and (ii) of this section 4.06(1)(b).

(c) *Insufficient reasons.* The following facts alone do not demonstrate a need for a specified period shorter than 12 weeks:

(i) The scheduling of a closing date for a transaction, a meeting of a board of directors or shareholders of a corporation, or any other corporate action within the control of the taxpayer or other parties to the transaction.

(ii) The possible effect of fluctuation in the market price of stocks on a transaction.

(2) *Specified period longer than 12 weeks.*

(a) *Taxpayer request.* Upon request by the taxpayer, the Service may agree to a specified period longer than 12 weeks.

(b) *Branch reviewer determination.* The branch reviewer may decide to designate a specified period longer than 12 weeks, if he or she determines (based on the factors described in section 4.05(2) of this revenue procedure) that fast-track processing is not feasible within 12 weeks (or other specified period requested by the taxpayer) but is feasible during the longer period. In such a case, the branch representative or branch reviewer will inform the taxpayer of the decision and the reasons therefor and will provide the taxpayer an opportunity to address the decision. The branch representative or the branch reviewer will inform the taxpayer of any subsequent favorable or unfavorable determination.

(3) *Same procedures apply.* The procedures described in this revenue procedure apply to all requests for fast-track processing, regardless of whether the specified period is 12 weeks or is shorter or longer than 12 weeks.

.07 *Requested Additional Information Not Received Within Seven-Day Period.*

If the branch representative requests additional information, but all the requested information is not received within the seven-day period, then, unless the taxpayer requests an extension before the end of the seven-day period, and the branch reviewer

or branch representative grants the extension, fast-track processing will be terminated. A request for an extension of the seven-day period may be made orally, in writing, or both. However, the seven-day period will not be tolled after an extension is requested unless agreed to by the branch reviewer or branch representative. The branch reviewer or branch representative will grant an extension only if the taxpayer provides good cause therefor. If an extension of time to submit information is granted, and the requested information is not provided within the extended time, fast-track processing will also be terminated unless a further extension is requested and granted. If fast-track processing is terminated under this section, the request will be subject to the procedures described in section 4.08 of this revenue procedure.

.08 *Termination or Delay of Fast-Track Processing.*

(1) *In general.* If the branch reviewer determines that fast-track processing within the specified period is no longer feasible, the branch reviewer may terminate fast-track processing or determine that fast-track processing will be completed within a newly designated specified period.

(2) *Rationale for determination.* In determining whether fast-track processing is no longer feasible within the specified period, the branch reviewer will consider any event or situation that affects the Service's ability to provide fast-track processing within the specified period, including--

(a) Any material change to the proposed transaction(s) since submission of the letter ruling request,

(b) Any Federal income tax issue not addressed in the original letter ruling request and subsequently identified,

(c) The accuracy or completeness of any additional information submitted,

(d) Any pending legislation, regulations, or other guidance that may affect the proposed transaction(s), and

(e) The scheduling of a conference of right described in section 10.02 of Rev. Proc. 2022-1 or a similar conference.

(3) *Notification and opportunity for discussion and reconsideration; tolling.* If the branch representative or the branch reviewer informs the taxpayer that fast-track processing has been terminated, the specified period has been extended,

or the completion of fast-track processing has otherwise been delayed, the taxpayer may address that determination in writing, discuss that determination with the branch reviewer, or both. If, upon reconsideration, the branch reviewer continues to determine that the request for fast-track processing should be terminated, the specified period should be extended, or completion of fast-track processing will otherwise be delayed, there is no right of appeal. See section 10.02 of Rev. Proc. 2022-1. If, upon reconsideration, the branch reviewer determines that fast-track processing should not be terminated, the specified period should not be extended, or completion of fast-track processing should not be otherwise delayed, the specified period will be tolled for the period beginning on the date the taxpayer was informed of the initial unfavorable determination and ending on the date the taxpayer is informed of the subsequent favorable determination. The branch representative or the branch reviewer will inform the taxpayer that a determination following reconsideration has been made as soon as possible after the determination has been made and, in the event of a favorable determination, the period of tolling of the specified period.

(4) *Continued processing of letter ruling request.* If fast-track processing is terminated, the Service will continue to process the letter ruling request under the procedures of section 7 of Rev. Proc. 2022-1 (exclusive of section 7.02(4)).

SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 *Requests for Expedited Handling.* Section 7.02(4) of Rev. Proc. 2022-1 is modified by adding the following new paragraph at the end:

Important: Expedited handling under this section 7.02(4) is not available as to a request for a letter ruling solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) (other than a request for an extension of time to make an election or other application for relief under § 301.9100 of the Procedure and Administration Regulations (26 CFR part 301)). For guidance on fast-track process-

ing of such a letter ruling request, see Rev. Proc. 2022-10, 2022-6 I.R.B. 473.

.02 *Additional Information.* Section 8.05(1) of Rev. Proc. 2022-1 is modified by adding the following new paragraph at the end:

Important: Special rules and procedures apply to letter ruling requests under the jurisdiction of the Associate Chief Counsel (Corporate) for which fast-track processing is requested. Under section 4.07 of Rev. Proc. 2022-10, failure to provide, within seven business days (including extensions, if granted), a complete response to any information request from the branch representative assigned to the letter ruling request will result in termination of fast-track processing.

.03 *Conferences for Letter Rulings.* Section 10 of Rev. Proc. 2022-1 is modified by adding the following new paragraph at the end:

PRE-SUBMISSION CONFERENCES UNDER REV. PROC. 2022-10.

.09 Special rules and procedures apply to letter ruling requests solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) for which fast-track processing has been requested. For more information, see Rev. Proc. 2022-10.

SECTION 6. APPLICABILITY DATES

.01 *Beginning Date of Pilot Program.*

(1) *In general.* The pilot program established by this revenue procedure applies to all letter ruling requests postmarked or, if not mailed, received by the Service after January 14, 2022.

(2) *Request for fast-track processing for pending letter ruling requests.* If a taxpayer has submitted a letter ruling request that was postmarked or, if not mailed, received by the Service on or before January 14, 2022, the taxpayer may request fast-track processing by agreeing to follow the procedures set forth in this revenue procedure, adapted to the situation. For example, the taxpayer must address in writing the factors in section 4.05(2)(a) and (d) of this revenue procedure. However, no pre-submission conference is required.

The taxpayer must submit a draft letter ruling (in accordance with section 4.03(4) of this revenue procedure) within seven business days of being notified that the request for fast-track processing has been granted (unless previously submitted). If fast-track processing is granted, the Service will endeavor to complete processing of the letter ruling request within a specified period.

.02 *Ending Date of Pilot Program.*

(1) *In general.* This pilot program will expire on the earlier of July 14, 2023 or the date on which a superseding revenue procedure is released. In advance of that date, the Treasury Department and the Service will evaluate the effectiveness and sustainability of the pilot program and determine whether the program should be extended. If it is determined that the pilot program should be extended, the Service intends to publish permanent procedures in advance of July 14, 2023.

(2) *Application of this revenue procedure to submitted letter ruling requests.* This revenue procedure will continue to apply to all letter ruling requests postmarked or, if not mailed, received by the Service on or before July 14, 2023. The Service may also grant a request for fast-track processing made prior to the expiration of the pilot program for a letter ruling request postmarked or, if not mailed, received by the Service no later than three months after the expiration of the pilot program.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 4. This information is required to determine whether a taxpayer qualifies for fast-track

processing. The collections of information are required to obtain a benefit. The likely respondents are corporations seeking private letter rulings.

The estimated total annual reporting and/or recordkeeping burden for Rev. Proc. 2022-1 is 316,020 hours.

The estimated annual burden per respondent/recordkeeper for Rev. Proc. 2022-1 varies from 1 to 200 hours, depending on individual circumstances, with an estimated average burden of 80 hours. The estimated number of respondents and/or recordkeepers is 3,956.

The estimated total annual reporting and/or recordkeeping burden for this revenue procedure adds 260 hours to the burden imposed by Rev. Proc. 2022-1.

The estimated annual burden per respondent/recordkeeper for this revenue procedure varies from 3 to 10 hours, depending on individual circumstances, with an estimate average burden of 8 hours. The estimated number of additional respondents and/or recordkeepers added to Rev. Proc. 2022-1 by this revenue procedure is 10, increasing the estimated number of respondents and/or recordkeepers to Rev. Proc. 2022-1 to 3,966.

The estimated annual frequency of response is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue tax law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Kelton P. Frye and Richard K. Passales of the Office of Associate Chief Counsel (Corporate). For further information, please phone Mr. Frye at (202) 317-5363 or Mr. Passales at (202) 317-5024.

[26 CFR 7436]: Proceedings for Determination of Employment Status

Rev. Proc. 2022-13

SECTION 1. PURPOSE.

This revenue procedure provides information about when and how the Internal Revenue Service (IRS) will issue a Notice of Employment Tax Determination Under IRC § 7436 (§ 7436 Notice)¹ and how taxpayers petition for Tax Court review of certain IRS determinations under Internal Revenue Code (Code) § 7436.² This revenue procedure modifies and supersedes Notice 2002-5, 2002-1 C.B. 320.

SECTION 2. BACKGROUND AND SUMMARY OF CHANGES IN APPLICATION OF § 7436

.01 Section 7436 provides for Tax Court review of two types of employment tax determinations made by the IRS: (a) worker reclassification, and (b) section 530 relief determinations, and it allows the court to ascertain the proper amount of employment tax, penalties, and additions to tax resulting from those determinations. Section 7436(a) provides a remedy if, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that:

- (1) one or more individuals performing services for such person are employees of such person for purposes of subtitle C [worker reclassification], or
- (2) such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual [section 530 relief].

Upon the filing of an appropriate pleading, the Tax Court may determine whether such a determination by the Secretary is correct and the proper amount of employment tax under such determination. Any such redetermination by the Tax Court shall have the force and effect of a deci-

sion of the Tax Court and shall be reviewable as such.

.02 The employment taxes that may be determined by the Tax Court are the taxes imposed by subtitle C, which include Federal Insurance Contributions Act (FICA) taxes, Railroad Retirement Tax Act (RRTA) taxes, Federal Unemployment Tax Act (FUTA) taxes, and the collection of income tax at source on wages (ITW).

.03 Notice 2002-5 provides that a § 7436 Notice is a jurisdictional prerequisite for seeking Tax Court review under § 7436, similar to the jurisdictional requirement of the issuance of a notice of deficiency in an income tax case. Notice 2002-5 also provides that the IRS will issue a § 7436 Notice only after the IRS has determined that: (a) one or more individuals performing services for the taxpayer are employees for purposes of subtitle C, and (b) the taxpayer is not entitled to section 530 relief.

.04 Two Tax Court opinions, *SECC Corp. v. Commissioner*, 142 T.C. 225 (2014), and *American Airlines, Inc. v. Commissioner*, 144 T.C. 24 (2015), expanded the Tax Court's jurisdiction under § 7436 related to worker classification determinations beyond the limitations set forth in Notice 2002-5. Specifically, the Tax Court held that a § 7436 Notice was not a jurisdictional requirement, and that if the IRS has made a worker classification or section 530 relief determination, the determination requirement of § 7436 is met regardless of whether the IRS issues a § 7436 Notice. The decisions are inconsistent with the jurisdictional requirements described in Notice 2002-5.

.05 The § 7436 Notice continues to be the IRS's formal documentation informing a taxpayer of a determination concerning worker reclassification or section 530 relief.

However, the Tax Court has clarified that the "determination" itself is what gives rise to Tax Court jurisdiction and no particular form is required to be provided to the taxpayer before a "determination" is considered made. Accordingly, even in the

¹The § 7436 Notice (Letter 3523) was formerly known as a Notice of Determination of Worker Classification and has been modified to reflect the expanded jurisdiction of the Tax Court under § 7436.

²All section references in this revenue procedure are to the Internal Revenue Code of 1986, or to section 530 of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763, as amended, unless otherwise noted. The uncodified statutory language of section 530 can usually be found in the publisher's notes following § 3401(a).

absence of the issuance of a § 7436 Notice, a taxpayer may petition the Tax Court on an IRS worker reclassification or section 530 relief determination to the extent that the determination meets the requirements set forth in the Tax Court opinions, as explained in section 3 of this revenue procedure.

.06 Furthermore, in accordance with the procedures set forth in section 4 of this revenue procedure, the IRS will issue a § 7436 Notice as part of an audit if one or both of the following determinations is made and there is a controversy regarding the determination: (a) one or more individuals performing services for the taxpayer are to be reclassified as employees for purposes of subtitle C, or (b) the taxpayer is not entitled to section 530 relief.

SECTION 3. APPLICATION AND SCOPE OF § 7436

.01 *Jurisdictional requirements.* The Tax Court has jurisdiction under § 7436 only if all the following four requirements are satisfied:

- (1) the IRS conducts an examination in connection with an audit of any person;
- (2) as part of the audit, the IRS determines that –
 - (a) one or more individuals performing services for the person are employees of the person for purposes of subtitle C (worker reclassification), or
 - (b) the person is not entitled to the relief under section 530(a) with respect to such an individual (section 530 relief);
- (3) there is an “actual controversy” involving the determination as part of an examination; and
- (4) the person for whom the services at issue were performed files an appropriate pleading in the Tax Court.

See American Airlines, 144 T.C. at 32.

The following sections, 3.02 through 3.05, discuss each of these requirements.

.02 *Examination in connection with an audit.*

(1) Worker reclassification or section 530 relief determinations are reviewable by the Tax Court only if made by the IRS as part of an examination under subtitle C in connection with an audit of a person for whom the services are performed. While § 7436(a) uses the phrase “audit of any person”, § 7436(b)(1) provides that a petition may be filed only by the person for whom the services are performed. Thus, the audit must be of such a person. For purposes of this section, the examination process includes consideration by the Independent Office of Appeals (Appeals) and is not complete until the Appeals process concludes.

(2) Examinations in connection with an audit of a taxpayer’s income tax, excise tax, pension plan, employer shared responsibility payments for health coverage under § 4980H, or other tax liabilities unrelated to section 530 relief or worker reclassification for the purpose of subtitle C do not provide a basis for Tax Court review under § 7436(a).

(3) Similarly, determinations made by the IRS outside of the examination process are not determinations made in an examination for purposes of § 7436. For example, the Tax Court has no jurisdiction over an IRS determination of employment status made in response to the filing of a Form SS-8 “Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.” The Form SS-8 process is a taxpayer-initiated request for an IRS ruling and does not involve an examination in connection with an audit. Other examples of determinations that are not determinations made in an examination for purposes of § 7436 include system generated notices (such as CP 2000 letters) or any determinations made in examinations in connection with backup withholding.

.03 *Determination concerning worker reclassification or section 530 relief.*

(1) Section 7436 grants jurisdiction to the Tax Court only for determinations involving worker reclassification or section 530 relief. Other determinations by the IRS in connection with proposing employment tax adjustments are not subject to review by the Tax Court.

(2) The IRS makes a worker reclassification determination when it concludes that an individual who was treated by a taxpayer as a non-employee should be reclassified as an employee for subtitle C purposes.

(3) The IRS makes a section 530 relief determination when it concludes that: (a) section 530 is not applicable to an employment tax issue between a taxpayer and the IRS³, or (b) the taxpayer does not meet the statutory requirements of section 530 with respect to an individual whom the IRS is reclassifying as an employee as part of an employment tax exam⁴.

(4) Determinations made by the IRS in connection with proposed employment tax adjustments that do not involve the reclassification of individuals from non-employees to employees or the denial of section 530 relief are not determinations subject to § 7436. Determinations not subject to § 7436 review include determinations supporting proposed employment tax adjustments that have rejected assertions by a taxpayer that amounts paid to employees are loan repayments, distributions, or are excepted from the definition of “wages”, or are for services excepted from “employment” under the FICA, FUTA, or ITW provisions. Determinations not subject to § 7436 review also include determinations that a taxpayer is liable for backup withholding under § 3406 since backup withholding does not apply with respect to workers determined to be employees.

.04 *Actual controversy involving worker classification or section 530 relief.*

(1) An actual controversy involving worker reclassification determinations

³Based on the language of section 530(a)(1) and the legislative history of section 530, section 530 applies only to matters involving the issue of the status of an individual as an employee or non-employee and not to matters involving the issue of the proper characterization of payments to that individual. Specifically, section 530 does not apply to matters involving the issue of whether a particular type of payment made to an employee constitutes “wages” as defined under the FICA, FUTA, or income tax withholding provisions. Nor does section 530 apply to matters involving the issue of whether services performed by an employee constitute “employment” as defined under the FICA, FUTA, or income tax withholding provisions. Section 530 is not applicable to these matters since there is no issue concerning whether the individual is an employee or non-employee.

⁴If section 530 applies to the matter (see footnote 3, *supra*) for any period, a taxpayer must meet each of the following requirements for the period to be entitled to section 530 relief: (1) the taxpayer timely filed all required federal tax returns, including information returns, consistent with the taxpayer’s treatment of the individual as not being an employee (reporting consistency requirement); (2) the taxpayer did not treat the individual or any individual holding a substantially similar position as an employee (substantive consistency requirement); and (3) the taxpayer had a reasonable basis for not treating the individual as an employee (reasonable basis requirement). See Rev. Proc. 85-18, 1985-1 C.B. 518, for more information on section 530.

exists if, for the taxable period: (a) a taxpayer did not treat an individual as an employee (or treated an individual as both an employee and a non-employee); (b) the IRS reclassifies the individual as an employee and proposes to assess employment tax on the remuneration paid to the individual as a non-employee (including with respect to just the portion of services for which the taxpayer treated the worker as a non-employee); and (c) no agreement is reached on the issue during the examination process. A taxpayer will be considered to have treated an individual as an employee for the taxable period or taxable year according to the guidelines set forth in Section 3.03 of Rev. Proc. 85-18 or any subsequent guidance.

(2) No actual controversy involving worker reclassification exists if the taxpayer agrees the amounts were paid in connection with an employer-employee relationship but argues that under the FICA, FUTA, or income tax withholding provisions of the Code the amounts are not “wages” (for example, because the amounts are paid as loan repayments, distributions, or are otherwise not wages) or the services do not constitute “employment.”

(3) An actual controversy involving section 530 relief determinations exists if: (a) a taxpayer alleges that it is entitled to section 530 relief; (b) the IRS determines that section 530 is not applicable or that the taxpayer has not satisfied the statutory requirements of section 530; and (c) no agreement is reached on the issue during the examination process.

(4) However, any such determination will not be subject to § 7436 review if the taxpayer agrees to the proposed employment tax adjustments and executes a waiver that includes specific language that waives the restrictions on assessment and Tax Court review.

.05 Filing of an appropriate pleading.

(1) Section 7436(a) confers jurisdiction on the Tax Court to review the requisite determinations only upon the filing of a proper pleading (i.e., petition). Pursuant to § 7436(b)(1), a petition may be filed only by the person for whom the services are performed. Thus, individuals who perform services may not seek review of the IRS determinations under § 7436. In addition, because § 7436(a) specifies that there

must be an actual controversy regarding a determination that the individuals performing services for the person are employees of the person, review may not be sought by a third party, including a CPEO, reporting agent, payroll processing entity, or an agent under § 3504, that has not been determined by the IRS to be the person for whom the services are performed as an employee.

(2) Pursuant to § 7436(b)(2), a taxpayer’s petition for review must be filed with the Tax Court before the 91st day after the IRS mails a § 7436 Notice by certified or registered mail. Pursuant to § 6213(a), however, the taxpayer’s petition for review must be filed with the Tax Court within 150 days after the IRS has mailed a § 7436 Notice addressed to a person outside of the United States. The IRS will specify the last day by which the taxpayer may timely file a petition on the first page of the § 7436 Notice. The period to timely file a petition may not be extended or suspended. Thus, contacting the IRS for more information, or receiving other correspondence from the IRS, will not change the period for timely filing a petition with the Tax Court.

(3) A taxpayer that does not file a Tax Court petition within the allotted time may still obtain judicial review of the IRS determinations by paying the tax for one worker for each taxable period or taxable year and filing a claim for refund as required by § 7422. If the claim for refund is denied, or if the IRS has not responded to the claim for refund after six months, the taxpayer may file a refund suit in the appropriate federal district court or the United States Court of Federal Claims.

SECTION 4. ISSUANCE OF § 7436 NOTICE

.01 § 7436 Notice.

(1) The § 7436 Notice informs a taxpayer that the IRS has made one or both of the following determinations:

(a) that for purposes of employment taxes, one or more individuals performing services for the taxpayer are to be legally reclassified as employees (worker reclassification determination); and/or

(b) that the taxpayer is not entitled to section 530 relief either because the taxpayer does not satisfy the statutory re-

quirements or because section 530 does not apply (section 530 relief determination).

(2) The § 7436 Notice will set forth the amount of employment tax, additions to tax, and/or penalties resulting from the determinations and will be sent by certified or registered mail.

(3) The § 7436 Notice advises taxpayers of the opportunity to seek Tax Court review and provides information on how to do so. It shows each type of tax (FICA, FUTA, and/or ITW) with the proposed employment tax adjustment by taxable period or taxable year.

.02 Pre-Determination Letter. In most cases, a taxpayer that receives a § 7436 Notice will have previously received a Letter 950-C that: (a) explains the reasons for the IRS’s determinations; (b) lists the proposed employment tax adjustments, penalties, and additions to tax; and (c) describes the taxpayer’s right to either agree to the proposed employment tax adjustments or to protest the proposed adjustments to Appeals within thirty days of the date of the letter. If the taxpayer does not respond to the letter by agreeing to the proposed adjustments or by filing a timely protest to Appeals, the IRS will provide the taxpayer a § 7436 Notice. If the taxpayer responds to the letter by filing a timely protest to Appeals (or if the case proceeds to Appeals by way of the employment tax early referral procedures) and the § 7436 issues are not resolved in Appeals, the IRS will provide the taxpayer a § 7436 Notice. *See* Sec. 4 of Rev. Proc. 99-28, 1999-2 C.B. 109, for information concerning the employment tax early referral procedures.

.03 Agreement. The IRS will provide taxpayers with a § 7436 Notice at the conclusion of the examination process involving a determination of worker reclassification or section 530 relief, or after consideration of these determinations by Appeals, unless the taxpayer has agreed to the employment tax liabilities. Agreement is generally accomplished using Form 2504-T “Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436).”

.04 Presumption of Correctness. The determinations made in the § 7436 Notice

are presumptively correct and the taxpayer (petitioner) bears the burden of proving that those determinations are erroneous. *Ewens and Miller, Inc. v. Commissioner*, 117 T.C. 263 (2001). See also Tax Court Rule 142(a).

SECTION 5. SMALL TAX CASE PROCEEDINGS

At the option of the taxpayer, and with the concurrence of the Tax Court, proceedings under § 7436 may be conducted pursuant to the Tax Court's simplified procedures for small tax cases if the amount of employment taxes in dispute is \$50,000 or less for each calendar quarter involved. See § 7436(c). The simplified procedures for small tax cases are set forth in § 7463 and Title XVII (Rules 170 – 174) of the Tax Court's Rules of Practice and Procedure.

SECTION 6. RESTRICTIONS ON ASSESSMENT

.01 Pursuant to § 7436(d)(1), the principles of § 6213 regarding restrictions on assessment apply to § 7436 proceedings in the same manner as if the § 7436 Notice were a notice of deficiency.⁵ Therefore, after the mailing of the § 7436 Notice, the IRS is precluded from assessing the taxes identified in the § 7436 Notice prior to expiration of the 90-day period, or 150-day period if the § 7436 Notice is addressed to a person outside of the United States, during which the taxpayer may file a Tax Court petition.

.02 If the taxpayer does not file a timely Tax Court petition, the IRS will assess the employment taxes identified in the § 7436 Notice.

.03 Employment tax adjustments that do not arise from worker reclassification or section 530 relief determinations are not reviewable by the Tax Court pursuant to § 7436 and may be assessed pursuant to § 6201 without issuance of a § 7436 Notice.

SECTION 7. SUSPENSION OF PERIOD OF LIMITATION

.01 Pursuant to § 7436(d)(1), the principles of § 6503(a) regarding the suspension of the running of the period of limitation on assessment apply to § 7436 proceedings in the same manner as if the § 7436 Notice were a notice of deficiency. Therefore, the mailing of the § 7436 Notice by certified or registered mail will suspend the period of limitation on assessment attributable to the IRS worker reclassification and/or section 530 relief determinations.

.02 Under the principles of § 6503(a), the period of limitation on assessment is suspended for the 90-day period during which the taxpayer can begin a suit in the Tax Court, plus an additional 60 days thereafter. If the taxpayer files a timely petition in the Tax Court, the period of limitation on assessment will be suspended until the decision of the Tax Court becomes final and for 60 days thereafter.

SECTION 8. APPEALS CONSIDERATION AFTER THE FILING OF A TAX COURT PETITION

Cases docketed in the Tax Court will generally be referred to Appeals for consideration of settlement. See Rev. Proc. 2016-22, 2016-15 I.R.B. 577.

SECTION 9. AGREED SETTLEMENTS

.01 If the taxpayer wishes to settle the § 7436 issues on an agreed basis, either before or after issuance of the § 7436 Notice, but before expiration of the 90-day period for filing a Tax Court petition, the taxpayer must formally waive the restrictions on assessment set forth in §§ 7436(d)(1) and 6213(a). This waiver will generally be accomplished using Form 2504-T.

.02 The IRS will not assess employment taxes attributable to worker reclassification or section 530 relief determinations unless either: (a) the IRS has provided a § 7436 Notice to the taxpayer and the 90-day period for filing a Tax Court petition has expired, or (b) the taxpayer has waived the restrictions on assessment. If the IRS erroneously assesses taxes attributable to these determinations without first either providing taxpayer a § 7436 Notice or obtaining a waiver of the restrictions on assessment from the taxpayer, the IRS will abate the assessment. However, once any such procedural defects are corrected, the IRS may reassess the employment taxes to the same extent as if the abated assessment had not occurred, provided the period of limitations remains open.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Notice 2002-5, 2002-1 C.B. 320, is modified and superseded. Furthermore, Revenue Ruling 2009-39, 2009-52 I.R.B. 951, is modified in that Letter 3523 “Notice of Employment Tax Determination Under IRC § 7436,” is not a jurisdictional prerequisite to Tax Court review.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective on February 7, 2022.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Nina Roca of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Roca at (202) 317-6798 (not a toll-free number).

⁵ Only the principles of subsections (a), (b), (c), (d), and (f) of § 6213 apply to proceedings under § 7436.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2021.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2021.

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