

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

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

Bulletin No. 2022-18
May 2, 2022

EMPLOYEE PLANS

Notice 2022-16, page 1044.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for April 2022 used under § 417(e)(3)(D), the 24-month average segment rates applicable for April 2022, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

EXCISE TAX

Notice 2022-15, page 1043.

This notice provides relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalties imposed by section 6656 of the Internal Revenue Code (Code) as those penalties relate to the excise taxes imposed on certain chemicals under section 4661 of the Code and on certain imported substances under section 4671 of the Code (collectively, Superfund chemical taxes). This notice also provides that during the first, second, and third calendar quarters of 2023, the Internal Revenue Service (IRS) will not withdraw a taxpayer's right to use the deposit safe harbor rules of § 40.6302(c)-1(b)(2) of the Excise Tax Procedural Regulations for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

INCOME TAX

Notice 2022-17, page 1048.

This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year

2021. The reference price applies in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit for qualified crude oil production under § 45I, and the applicable percentage under § 613A to be used in determining percentage depletion in the case of oil and natural gas produced from marginal properties.

Notice 2022-18, page 1048.

The notice provides the applicable reference price for qualified natural gas production from qualified marginal wells during taxable years beginning in calendar year 2021 for the purpose of determining the marginal well production credit under §45I. The applicable reference price for taxable years beginning in calendar year 2021 is \$1.52 per 1,000 cubic feet. The notice also provides the credit amount used for the purpose of determining the marginal well production credit. The credit amount for taxable years beginning in calendar year 2021 is \$0.67 per 1,000 cubic feet.

Notice 2022-19, page 1050.

This notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2022 calendar year. The format of the notice is identical to the format of previously published notices on this issue. The notice concludes that because the reference price for the 2021 calendar year (\$65.90) exceeds \$28 multiplied by the inflation adjustment factor for the 2022 calendar year (\$28 multiplied by 1.8607 = \$52.10) by \$13.80, the enhanced oil recovery credit for qualified costs paid or incurred in 2022 is phased-out completely.

Rev. Proc. 2022-23, page 1052.

This revenue procedure provides guidance allowing a taxpayer to make late elections under §§ 168(j)(8) and 168(l)(3)(D) of the Internal Revenue Code for the taxpayer's taxable year ending in 2018 or in 2019 for certain property placed in service by the taxpayer after December 31, 2017. This revenue procedure also provides guidance allowing a taxpayer to make a late election under § 181(a)(1) of the Code for the taxpayer's taxable year ending in 2018 or in 2019

for certain film, television, or live theatrical productions commenced by the taxpayer after December 31, 2017.

Rev. Rul. 2022-9, page 1041.

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 May 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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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. 2022-9

This revenue ruling provides various prescribed rates for federal income

tax purposes for May 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 appropriate

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

REV. RUL. 2022-9 TABLE 1					
Applicable Federal Rates (AFR) for May 2022					
<i>Period for Compounding</i>					
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>	
		<i>Short-term</i>			
AFR	1.85%	1.84%	1.84%		1.83%
110% AFR	2.03%	2.02%	2.01%		2.01%
120% AFR	2.22%	2.21%	2.20%		2.20%
130% AFR	2.40%	2.39%	2.38%		2.38%
		<i>Mid-term</i>			
AFR	2.51%	2.49%	2.48%		2.48%
110% AFR	2.76%	2.74%	2.73%		2.72%
120% AFR	3.01%	2.99%	2.98%		2.97%
130% AFR	3.27%	3.24%	3.23%		3.22%
150% AFR	3.77%	3.74%	3.72%		3.71%
175% AFR	4.41%	4.36%	4.34%		4.32%
		<i>Long-term</i>			
AFR	2.66%	2.64%	2.63%		2.63%
110% AFR	2.92%	2.90%	2.89%		2.88%
120% AFR	3.20%	3.17%	3.16%		3.15%
130% AFR	3.46%	3.43%	3.42%		3.41%

REV. RUL. 2022-9 TABLE 2					
Adjusted AFR for May 2022					
<i>Period for Compounding</i>					
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>	
Short-term adjusted AFR	1.40%	1.40%	1.40%		1.40%
Mid-term adjusted AFR	1.90%	1.89%	1.89%		1.88%
Long-term adjusted AFR	2.01%	2.00%	2.00%		1.99%

REV. RUL. 2022-9 TABLE 3
Rates Under Section 382 for May 2022

Adjusted federal long-term rate for the current month	2.01%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.01%

REV. RUL. 2022-9 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for May 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	7.60%
Appropriate percentage for the 30% present value low-income housing credit	3.26%

REV. RUL. 2022-9 TABLE 5
Rate Under Section 7520 for May 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	3.0%
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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 May 2022. See Rev. Rul. 2022-9, page 1041.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2022. See Rev. Rul. 2022-9 page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of May 2022. See Rev. Rul. 2022-9, page 1041.

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 May 2022. See Rev. Rul. 2022-9, page 1041.

Part III

Temporary Relief from Penalty for Failure to Deposit Superfund Chemical Taxes

Notice 2022-15

SECTION 1. PURPOSE

This notice provides relief for the third and fourth calendar quarters of 2022, and the first calendar quarter of 2023, regarding the failure to deposit penalties imposed by section 6656 of the Internal Revenue Code (Code) as those penalties relate to the excise taxes imposed on certain chemicals under section 4661 of the Code and on certain imported substances under section 4671 of the Code (collectively, Superfund chemical taxes). This notice also provides that during the first, second, and third calendar quarters of 2023, the Internal Revenue Service (IRS) will not withdraw a taxpayer's right to use the deposit safe harbor rules of § 40.6302(c)-1(b)(2) of the Excise Tax Procedural Regulations for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

SECTION 2. BACKGROUND

(a) *Superfund chemical taxes.*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, 94 Stat. 2767 (1980), informally referred to as "Superfund," was enacted, in part, to create a hazardous substance cleanup program. Section 221 of CERCLA established the "Hazardous Substance Response Trust Fund," which was funded, in part, by the Superfund chemical taxes. The Superfund chemical taxes expired on December 31, 1995.

Effective July 1, 2022, section 80201 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 135 Stat. 429 (November 15, 2021), reinstates the Superfund chemical taxes with certain modifications. Pursuant to section 80201(c) (3) of the IIJA, Notice 2021-66, 2021-52

I.R.B. 901, provided initial guidance related to the Superfund chemical taxes and requested comments on whether any issues related to the reinstated Superfund chemical taxes require clarification or additional guidance. To date, the Department of the Treasury (Treasury Department) and the IRS have received seven (7) public comments in response to Notice 2021-66. One of these comments requested relief from failure to deposit penalties, which is provided by this notice. The Treasury Department and the IRS continue to consider the other comments. All comments can be accessed via the Federal Rulemaking Portal at www.regulations.gov (type IRS-2021-0018 or Notice 2021-66 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find the comments).

(b) *Collection of Superfund chemical taxes.*

The Superfund chemical taxes are codified in subtitle D, chapter 38 of the Code (chapter 38), which pertains to environmental excise taxes. Chapter 38 taxes are reported on Form 6627, *Environmental Taxes*, which is required to be attached to the tax return made on Form 720, *Quarterly Federal Excise Tax Return* (Form 720 return). See §§ 40.0-1(a) and 40.6011(a)-1(a)(1) of the Excise Tax Procedural Regulations.

Section 6302 of the Code authorizes the IRS to establish the mode and time for collecting certain taxes, including the taxes imposed by chapter 38. Section 40.6302(c)-1(a)(1) requires each person that is required to file a Form 720 return to make deposits of tax for each semi-monthly period in which the tax liability is incurred. A semi-monthly period is the first fifteen (15) days of a calendar month or the portion of a calendar month following the 15th day of the month. See § 40.0-1(c) of the Excise Tax Procedural Regulations.

The tax deposit for each semi-monthly period must not be less than ninety-five percent (95%) of the amount of net tax liability incurred during the semi-monthly period unless a deposit safe harbor in § 40.6302(c)-1(b)(2)(ii) or (iii) applies (deposit safe harbor). See § 40.6302(c)-1(b)(1). Under the deposit safe harbor

applicable to taxes imposed by chapter 38, any person that filed a Form 720 return for the second preceding calendar quarter (look-back quarter) is considered to have met the semi-monthly deposit requirement for the current quarter if: (i) the deposit for each semi-monthly period in the current calendar quarter is not less than 1/6 of the net tax liability reported for the look-back quarter; (ii) each deposit is made on time; (iii) the amount of any underpayment is paid by the due date of the Form 720 return; and (iv) the person's liability does not include any tax that was not imposed during the look-back quarter. Section 40.6302(c)-1(b)(2) (v) provides that if a person fails to make deposits as required, the IRS may withdraw the person's right to use the deposit safe harbor.

Section 40.6302(c)-1(c)(1) provides that, in general, the deposit of tax for any semi-monthly period must be made by the 14th day of the following semi-monthly period unless such day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which case the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia is treated as the 14th day. Thus, generally, the deposit of tax for the first semi-monthly period in a month is due by the 29th day of that month and the deposit of tax for the second semi-monthly period in a month is due fourteen (14) days after the close of the second semi-monthly period. (See § 40.6302(c)-2 for special deposit rules for September.)

Section 6656 imposes a penalty in the case of any failure by any person to make timely deposits as required by section 6302, including as required by §§ 40.6302(c)-1 and 40.6302(c)-2. A taxpayer may avoid penalties under section 6656 for failure to make deposits of taxes if the taxpayer makes an affirmative showing that such failure is due to reasonable cause and not due to willful neglect. See section 6656(a).

(c) *Deposit safe harbor not applicable until first calendar quarter of 2023.*

As the Superfund chemical taxes are effective beginning July 1, 2022, the first deposit, covering the first fifteen (15) days

of July 2022, is due by July 29, 2022. As noted in section 2(b) of this notice, § 40.6302(c)-1(b)(2) provides a deposit safe harbor for calculating the amount of semimonthly deposits. Because the deposit safe harbor rules require a second preceding calendar quarter (look-back quarter) in which the same taxes are imposed to determine deposit amounts in the current quarter, a person liable for any Superfund chemical taxes will be ineligible to use the deposit safe harbor to calculate semimonthly deposits of Superfund chemical taxes until the first calendar quarter of 2023. See § 40.6302(c)-1(b)(2)(ii) and (iii). For purposes of the deposit safe harbor, the third calendar quarter of 2022 is the look-back quarter for the semimonthly periods during the first calendar quarter of 2023.

The Treasury Department and the IRS recognize the short time frame between the reinstatement of the Superfund chemical taxes and the due date of the first deposit, the unavailability of the § 40.6302(c)-1(b)(2) deposit safe harbor in 2022, the possible difficulties of computing the correct amount of tax during the third calendar quarter of 2022 (which is both the first calendar quarter the taxes are in effect and the look-back quarter for the first calendar quarter of 2023), and the number of new taxpayers owing Superfund chemical taxes that have not previously had to comply with the deposit requirements of section 6302. In consideration of these issues, the Treasury Department and the IRS have determined that it is in the interest of sound tax administration to provide relief regarding the section 6656 penalty with respect to deposits of Superfund chemical taxes for the last two calendar quarters of 2022, and the first calendar quarter of 2023, as described in section 3 of this notice. For the foregoing reasons, the Treasury Department and the IRS have also determined that during the first, second, and third calendar quarters of 2023, the IRS will not withdraw the taxpayer's right to use the deposit safe harbor of § 40.6302(c)-1(b)(2) for failure to make required deposits of Superfund chemical taxes if certain requirements are met.

SECTION 3. RELIEF REGARDING SECTION 6656 PENALTY

(a) *Deemed satisfaction of reasonable cause standard.*

As noted in section 2(b) of this notice, a taxpayer may avoid penalties under section 6656 for underpayment of deposits of the Superfund chemical taxes if the taxpayer makes an affirmative showing that such failure is due to reasonable cause and not due to willful neglect (reasonable cause standard). For semimonthly periods in the third and fourth calendar quarters of 2022 and the first calendar quarter of 2023, a taxpayer owing Superfund chemical taxes will be deemed to have satisfied the reasonable cause standard and no penalty under section 6656 for failure to deposit Superfund chemical taxes will be imposed if (i) the taxpayer makes timely deposits of applicable Superfund chemical taxes, even if the deposit amounts are computed incorrectly, and (ii) the amount of any underpayment of the applicable Superfund chemical taxes for each calendar quarter is paid in full by the due date for filing the Form 720 return for that quarter.

(b) *Non-exercise of authority to withdraw use of deposit safe harbor.*

During the first, second, and third calendar quarters of 2023, the IRS will not exercise its authority under § 40.6302(c)-1(b)(2)(v) to withdraw the taxpayer's right to use the deposit safe harbor of § 40.6302(c)-1(b)(2) due to a failure to make deposits of Superfund chemical taxes as required, provided the taxpayer satisfies the requirements of section 3(a) of this notice for the look-back quarter at issue.

SECTION 4. DRAFTING INFORMATION

The principal authors of this notice are Stephanie Bland, Amanda Dunlap, and Natalie Payne of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For questions regarding this notice, contact Stephanie Bland or Amanda Dunlap at (202) 317-6855 (not a toll-free number).

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

Notice 2022-16

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

YIELD CURVE AND SEGMENT RATES

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

¹ Pursuant to § 433(h)(3)(A), the third 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(e)(7)(C)).

yield curve derived from March 2022 data is in Table 2022-3 at the end of this notice. The spot first, second, and third segment rates for the month of March 2022 are, respectively, 2.44, 3.71, and 3.94

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 2021 and 2022 were published in 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 April 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
April 2022	0.87	2.67	3.29

25-YEAR AVERAGE SEGMENT RATES

Section 9706(a) of the American Rescue Plan Act of 2021, Pub. L. 117-2 (the ARP), which was enacted on March 11, 2021, changed the 25-year average segment rates and the applicable minimum and maximum percentages used under § 430(h)(2)(C)(iv) of the Code to adjust the 24-month average segment rates.² Prior to this change, the applicable minimum and maximum percentages were 85% and 115% for a plan year beginning in 2021, and 80% and 120% for

a 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 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 the ARP, these changes apply with respect to plan years beginning on or after January 1, 2020. However, § 9706(c)(2) of the 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 the ARP. These adjusted 24-month average segment rates apply only for plan years for which an election under § 9706(c)(2) of the ARP is not in effect. For a plan year for which such an election does not apply, the 24-month averages applicable for April 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
2021	April 2022	4.75	5.36	6.11
2022	April 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 the ARP. These adjusted 24-month average

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

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
2021	April 2022	3.32	4.79	5.47

²Section 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.

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

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

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

30-year Treasury securities for March 2022 is 2.41 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in February 2052. For plan years beginning in April 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%
April 2022	2.09	1.88 to 2.20

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates

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

present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for March 2022 are as follows:

<i>Minimum Present Value Segment Rates</i>			
Month	First Segment	Second Segment	Third Segment
March 2022	2.44	3.71	3.94

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate

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

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

Table 2022-3
 Monthly Yield Curve for March 2022
 Derived from February 2022 Data

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	1.31	20.5	3.98	40.5	3.94	60.5	3.93	80.5	3.92
1.0	1.79	21.0	3.98	41.0	3.94	61.0	3.93	81.0	3.92
1.5	2.19	21.5	3.98	41.5	3.94	61.5	3.93	81.5	3.92
2.0	2.47	22.0	3.97	42.0	3.94	62.0	3.93	82.0	3.92
2.5	2.65	22.5	3.97	42.5	3.93	62.5	3.93	82.5	3.92
3.0	2.73	23.0	3.97	43.0	3.93	63.0	3.93	83.0	3.92
3.5	2.77	23.5	3.96	43.5	3.93	63.5	3.93	83.5	3.92
4.0	2.80	24.0	3.96	44.0	3.93	64.0	3.93	84.0	3.92
4.5	2.83	24.5	3.96	44.5	3.93	64.5	3.93	84.5	3.92
5.0	2.87	25.0	3.96	45.0	3.93	65.0	3.93	85.0	3.92
5.5	2.92	25.5	3.95	45.5	3.93	65.5	3.93	85.5	3.92
6.0	2.98	26.0	3.95	46.0	3.93	66.0	3.93	86.0	3.92
6.5	3.06	26.5	3.95	46.5	3.93	66.5	3.93	86.5	3.92
7.0	3.14	27.0	3.95	47.0	3.93	67.0	3.93	87.0	3.92
7.5	3.22	27.5	3.95	47.5	3.93	67.5	3.93	87.5	3.92
8.0	3.31	28.0	3.95	48.0	3.93	68.0	3.93	88.0	3.92
8.5	3.39	28.5	3.95	48.5	3.93	68.5	3.93	88.5	3.92
9.0	3.47	29.0	3.94	49.0	3.93	69.0	3.93	89.0	3.92
9.5	3.55	29.5	3.94	49.5	3.93	69.5	3.93	89.5	3.92
10.0	3.61	30.0	3.94	50.0	3.93	70.0	3.93	90.0	3.92
10.5	3.68	30.5	3.94	50.5	3.93	70.5	3.93	90.5	3.92
11.0	3.73	31.0	3.94	51.0	3.93	71.0	3.93	91.0	3.92
11.5	3.78	31.5	3.94	51.5	3.93	71.5	3.93	91.5	3.92
12.0	3.83	32.0	3.94	52.0	3.93	72.0	3.93	92.0	3.92
12.5	3.87	32.5	3.94	52.5	3.93	72.5	3.93	92.5	3.92
13.0	3.90	33.0	3.94	53.0	3.93	73.0	3.93	93.0	3.92
13.5	3.92	33.5	3.94	53.5	3.93	73.5	3.93	93.5	3.92
14.0	3.94	34.0	3.94	54.0	3.93	74.0	3.93	94.0	3.92
14.5	3.96	34.5	3.94	54.5	3.93	74.5	3.93	94.5	3.92
15.0	3.97	35.0	3.94	55.0	3.93	75.0	3.93	95.0	3.92
15.5	3.98	35.5	3.94	55.5	3.93	75.5	3.93	95.5	3.92
16.0	3.99	36.0	3.94	56.0	3.93	76.0	3.93	96.0	3.92
16.5	3.99	36.5	3.94	56.5	3.93	76.5	3.93	96.5	3.92
17.0	4.00	37.0	3.94	57.0	3.93	77.0	3.93	97.0	3.92
17.5	4.00	37.5	3.94	57.5	3.93	77.5	3.93	97.5	3.92
18.0	4.00	38.0	3.94	58.0	3.93	78.0	3.93	98.0	3.92
18.5	4.00	38.5	3.94	58.5	3.93	78.5	3.92	98.5	3.92
19.0	3.99	39.0	3.94	59.0	3.93	79.0	3.92	99.0	3.92
19.5	3.99	39.5	3.94	59.5	3.93	79.5	3.92	99.5	3.92
20.0	3.99	40.0	3.94	60.0	3.93	80.0	3.92	100.0	3.92

2021 Section 45K(d)(2)(C) Reference Price

Notice 2022-17

SECTION 1. PURPOSE

This notice publishes the reference price under § 45K(d)(2)(C) of the Internal Revenue Code for calendar year 2021. The credit period for the nonconventional source production credit under § 45K ended on December 31, 2013, for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under § 43, the marginal well production credit for qualified crude oil production under § 45I, and the applicable percentage under § 613A to be used in determining percentage depletion in the case of oil and natural gas produced from marginal properties.

SECTION 2. BACKGROUND

Section 45K(d)(2)(C) provides that the term “reference price” means, with respect to a calendar year, the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 43(a) provides that, for purposes of § 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer’s qualified enhanced oil recovery costs for such taxable year.

Section 43(b)(1) provides that the amount of enhanced oil recovery credit for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as - (A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds \$28, bears to (B) \$6. Section 43(b)(2) provides that the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

Section 45I(a) provides that, for purposes of § 38, the marginal well production credit for any taxable year is an amount equal to the product of the credit amount and the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

Section 45I(b)(1) provides that for crude oil production, the amount of the marginal well production credit is \$3 per barrel of qualified crude oil production.

Section 45I(b)(2) provides that the \$3 amount under § 45I(b)(1) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as - (i) the excess (if any) of the applicable reference price over \$15, bears to (ii) \$3. The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

Section 45I(b)(2)(C) provides that for qualified crude oil production the term “reference price” means, with respect to any calendar year, the reference price determined under § 45K(d)(2)(C).

Section 613A(c)(6)(A) provides, in general, that the allowance for depletion under § 611 shall be computed in accordance with § 613 with respect to - (i) so much of the taxpayer’s average daily marginal production of domestic crude oil as does not exceed the taxpayer’s depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and (ii) so much of the taxpayer’s average daily marginal production of domestic natural gas as does not exceed the taxpayer’s depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)), and the applicable percentage shall be deemed to be specified in subsection (b) of § 613 for purposes of subsection (a) of that section.

Section 613A(c)(6)(C) provides that the term “applicable percentage” means the percentage (not greater than 25 percent) equal to the sum of - (i) 15 percent, plus (ii) 1 percentage point for each whole dollar by which \$20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins. For purposes of this paragraph, the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C).

SECTION 3. REFERENCE PRICE

The reference price under § 45K(d)(2)(C) for calendar year 2021 is \$65.90.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Christopher F. Price of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Price on (202) 317-6853 (not a toll-free number).

Reference Price for Section 45I Credit for Production of Natural Gas from Marginal Wells During Taxable Years Beginning in Calendar Year 2021

Notice 2022-18

SECTION 1. PURPOSE

This notice provides the applicable reference price for qualified natural gas production from qualified marginal wells during taxable years beginning in calendar year 2021 for the purpose of determining the marginal well production credit (MWC) under §45I of the Internal Revenue Code. The applicable reference price for taxable years beginning in calendar year 2021 is \$1.52 per 1,000 cubic feet (Mcf).

This notice also provides the credit amount used for the purpose of determining the MWC for taxable years beginning in calendar year 2021. The credit amount is determined using the 2021 inflation adjustment factor of 1.3402 and the applicable reference price of \$1.52 per Mcf. The credit amount for taxable years beginning in calendar year 2021 is \$0.67 per Mcf.

SECTION 2. BACKGROUND

Section 45I(a), as it relates to qualified natural gas production, provides that, for purposes of § 38, the MWC for any taxable year is an amount equal to the product of (1) the credit amount and (2)

the qualified natural gas production that is attributable to the taxpayer.

Section 45I(c)(1) provides that “qualified natural gas production” means domestic natural gas produced from a qualified marginal well. Section 45I(c)(3)(A) provides that a qualified marginal well is a domestic well (i) the production from which during the taxable year is treated as marginal production under § 613A(c)(6), or (ii) which, during the taxable year (I) has average production of not more than 25 barrel-of-oil equivalents per day, and (II) produces water at a rate not less than 95 percent of total well effluent.

Section 613A(c)(6)(D) and (E) provide that “marginal production” means domestic natural gas produced during any taxable year from a property which is a stripper well property for the calendar year in which the taxable year begins. A “stripper well property” is, with respect to any calendar year, any property producing not more than 15 barrel equivalents per day, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for such calendar year by the number of such wells.

Section 45I(c)(2)(A) provides that generally only the first 1,095 barrels or barrel-of-oil equivalents (as defined in § 45K(d)(5)) produced during the taxable year qualify for the MWC. This limitation is proportionately reduced in the case of a short taxable year or in the case of a well that is not capable of production each day of a taxable year. *See* § 45I(c)(2)(B). The number of wells on which a taxpayer may claim the MWC is not limited.

Section 45I(d)(2) provides that to claim the credit a taxpayer must hold an operating interest in the qualified marginal well producing the natural gas to which the credit relates. Under § 45I(d)(1) if a well is owned by more than one owner and the natural gas production exceeds the limitation under § 45I(c)(2), the qualifying natural gas production attributable to the taxpayer is determined on the basis of the ratio which taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production. Finally, § 45I(d)(3) provides that the MWC is not

allowable if the taxpayer is also eligible to claim the § 45K nonconventional sources credit for the taxable year, unless the taxpayer elects not to claim the credit under § 45K for the well.

For purposes of § 45I(a)(1), the credit amount is 50 cents (adjusted for inflation) per Mcf of qualified natural gas production (tentative credit amount). *See* § 45I(b)(1)(B) and (b)(2)(B).

Section 45I(b)(2)(A) and (B) provide that the tentative credit amount (adjusted for inflation) is reduced (but not below zero) to the extent that the applicable reference price exceeds \$1.67 (adjusted for inflation). More specifically, § 45I(b)(2)(A) provides that the tentative credit amount (adjusted for inflation) is reduced by an amount which bears the same ratio to the tentative credit amount (adjusted for inflation) as the excess (if any) of the applicable reference price over \$1.67 (adjusted for inflation), bears to \$0.33 (adjusted for inflation). As a result, the MWC is not available if the applicable reference price for qualified natural gas production is \$2.00 (adjusted for inflation) or more.

Section 45I(b)(2)(A) also provides that the applicable reference price for a taxable year is the reference price for the calendar year preceding the calendar year in which the taxable year begins. Section 45I(b)(2)(C)(ii) provides that the term “reference price” means, with respect to any calendar year, in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per Mcf for all domestic natural gas.

Section 45I(b)(2)(B) provides that in the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in § 45I(b)(2)(A) will be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under § 43(b)(3)(B) by substituting “2004” for “1990”).

SECTION 3. INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE

1 Inflation Adjustment. The inflation adjustment factor under § 45I(b)(2)(B) for calendar year 2021 is 1.3402.

2 Reference Price. The Secretary’s estimate of the calendar year 2020 annual average wellhead price per Mcf for all domestic natural gas under § 45I(b)(2)(C)(ii) was calculated by applying the Producer Price Index commodity index for “Natural Gas from the Wellhead” (WPU053101051)¹ published by the Bureau of Labor Statistics (BLS) as part of its Producer Price Index program, to the 2019 annual average wellhead price (\$1.94) published in Notice 2021-34, 2021-23 I.R.B. 1194. The annual Producer Price Index commodity index for natural gas published by the BLS was 60.4 in 2019 and 47.4 in 2020, which implies a ratio of 0.785 (47.4 / 60.4). Therefore, the Secretary’s estimate of the calendar year 2020 annual average wellhead price per Mcf for all domestic natural gas is \$1.52 per Mcf (0.785 x \$1.94 per Mcf).

For years after 2020, the Secretary intends to continue calculating the reference price by application of the Producer Price Index commodity index for “Natural Gas from the Wellhead” (WPU053101051) published by the BLS to the previous year’s reference price.

SECTION 4. CALCULATION OF CREDIT AMOUNT

Under § 45I(b)(1)(B) and (2)(B), the tentative credit amount used to calculate the MWC for taxable years beginning in calendar year 2021 is 67 cents per Mcf (\$0.50 x 1.3402 inflation adjustment factor). Because the applicable reference price (\$1.52) does not exceed \$2.24 (\$1.67 x 1.3402 inflation adjustment factor), there is no reduction in the tentative credit amount under § 45I(b)(2)(A). Therefore, the credit amount used to calculate the MWC for taxable years beginning in calendar year 2021 is \$0.67 per Mcf.

SECTION 5. EFFECTIVE DATE

This notice is effective for qualified natural gas production during taxable years beginning in calendar year 2021.

¹ <https://data.bls.gov/cgi-bin/srgate>. The BLS publishes indexes and not actual or average prices.

SECTION 6. DRAFTING AND CONTACT INFORMATION

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

2022 Section 43 Inflation Adjustment

Notice 2022-19

Section 43(a) provides that for purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount

equal to 15 percent of the taxpayer’s qualified enhanced oil recovery costs for such taxable year.

Section 43(b)(1) provides that the amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as — (A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds \$28, bears to (B) \$6.

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the “reference price,” determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins

is greater than \$28 multiplied by the inflation adjustment factor for the current calendar year.

The term “inflation adjustment factor” means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2021 calendar year (\$65.90) exceeds \$28 multiplied by the inflation adjustment factor for the 2022 calendar year (\$28 multiplied by 1.8607 = \$52.10) by \$13.80, the enhanced oil recovery credit for qualified costs paid or incurred in 2022 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2022 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2021 calendar years.

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)
2009	109.764 (used for 2010)*****
2010	110.654 (used for 2011)
2011	113.347 (used for 2012)*****
2012	115.387 (used for 2013)
2013	106.710 (used for 2014)*****
2014	108.407 (used for 2015)*****
2015	109.868 (used for 2016)
2016	111.528 (used for 2017)
2017	113.500 (used for 2018)
2018	110.308 (used for 2019)*****
2019	112.257 (used for 2020)
2020	113.586 (used for 2021)
2021	118.349 (used for 2022)*****

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

***** Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

***** Beginning in 2011, the 1990 GNP implicit price deflator used to compute the 2012 § 43 inflation adjustment factor is 72.260.

***** Beginning in 2013, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2014 § 43 inflation adjustment factor is 66.803.

***** Beginning in 2014, the 1990 GNP implicit price deflator used to compute the 2015 § 43 inflation adjustment factor is 66.732.

***** Beginning in 2018, the 1990 GNP implicit price deflator used to compute the 2019 § 43 inflation adjustment factor is 63.637.

***** Beginning in 2021, the 1990 GNP implicit price deflator used to compute the 2022 § 43 inflation adjustment factor is 63.604.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2022 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in the 1991 through 2021 calendar years.

Notice 2022-19 TABLE 2 INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS		
<i>Calendar Year</i>	<i>Inflation Factor</i>	<i>Adjustment Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent
2010	1.5203	100 percent
2011	1.5326	100 percent
2012	1.5686	100 percent
2013	1.5968	100 percent
2014	1.5974	100 percent
2015	1.6245	100 percent

2016	1.6464	0
2017	1.6713	0
2018	1.7008	1.069 percent
2019	1.7334	100 percent
2020	1.7640	100 percent
2021	1.7849	0
2022	1.8607	100 percent

DRAFTING INFORMATION

The principal author of this notice is John M. Deininger of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Deininger at (202) 317-6853 (not a toll-free number).

26 CFR 1.181-2: Election to deduct production costs.
(Also Part I, §§ 168, 181, 446; 1.181, 1.446-1)

Rev. Proc. 2022-23

SECTION 1. PURPOSE

This revenue procedure provides guidance allowing a taxpayer to make late elections under §§ 168(j)(8) and 168(l)(3)(D) of the Internal Revenue Code (Code) for the taxpayer's taxable year ending in 2018 or in 2019 for certain property placed in service by the taxpayer after December 31, 2017. This revenue procedure also provides guidance allowing a taxpayer to make a late election under § 181(a)(1) of the Code for the taxpayer's taxable year ending in 2018 or in 2019 for certain film, television, or live theatrical productions commenced by the taxpayer after December 31, 2017.

SECTION 2. BACKGROUND

.01 *Amendments to §§ 168(j), 168(l), and 181.*

(1) *Section 168(j).* Section 168(j)(1) provides that for purposes of § 168(a), the applicable recovery period for qualified Indian reservation property, as defined in § 168(j)(4), is determined in accordance with the table contained in § 168(j)(2), instead of the table contained in § 168(c). Prior to amendment by § 116 of the Taxpayer Certainty and Disaster Tax Relief Act of

2019 (2019 Act), enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534, 3229 (December 20, 2019), § 168(j)(9) provided that § 168(j) did not apply to property placed in service after December 31, 2017. Section 116(a) of the 2019 Act amended § 168(j)(9) to provide that § 168(j) does not apply to property placed in service after December 31, 2020, which made § 168(j) applicable to property placed in service after December 31, 2017, and on or before December 31, 2020. Subsequent legislation further amended § 168(j)(9) to provide that § 168(j) does not apply to property placed in service after December 31, 2021, which made § 168(j) applicable to property placed in service after December 31, 2020, and on or before December 31, 2021. *See* § 138 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (2020 Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 3054 (December 27, 2020).

(2) *Section 168(l).* Section 168(l)(1) allows a 50-percent additional first year depreciation deduction (also sometimes referred to as a "special depreciation allowance") for qualified second generation biofuel plant property, as defined in § 168(l)(2) and (3), for the taxable year in which the qualified second generation biofuel plant property is placed in service by the taxpayer. Prior to amendment by § 130 of the 2019 Act, § 168(l)(2)(D) defined qualified second generation biofuel plant property, in part, as property placed in service by the taxpayer before January 1, 2018. Section 130(a) of the 2019 Act amended § 168(l)(2)(D) by inserting "January 1, 2021" in place of "January 1, 2018," which made § 168(l)(1) applicable to property placed in service after December 31, 2017, and before January 1, 2021.

(3) *Section 181.* Section 181(a)(1) allows a taxpayer to elect to treat the cost of any qualified film, television, or live

theatrical production, subject to the dollar limitations in § 181(a)(2), as an expense that is not chargeable to capital account (§ 181 election). Prior to amendment by § 117 of the 2019 Act, § 181(g) provided that § 181 did not apply to qualified film, television, or live theatrical productions commencing after December 31, 2017. Section 117(a) of the 2019 Act amended § 181(g) to provide that § 181 does not apply to qualified film, television, or live theatrical productions commencing after December 31, 2020, which made § 181 applicable to qualified film, television, or live theatrical productions commencing after December 31, 2017, and on or before December 31, 2020. Subsequent legislation further amended § 181(g) to provide that § 181 does not apply to qualified film, television, or live theatrical productions commencing after December 31, 2025, which made § 181 applicable to qualified film, television, or live theatrical productions commencing after December 31, 2020, and on or before December 31, 2025. *See* § 116 of the 2020 Act.

(4) In sum, the 2019 Act retroactively extended the application of §§ 168(j) and 168(l) to certain property placed in service by the taxpayer after December 31, 2017, and before January 1, 2021, and § 181 to a qualified film, television, or live theatrical production commencing after December 31, 2017, and before January 1, 2021. Unless otherwise provided, all references hereinafter in this revenue procedure to §§ 168(j), 168(l), and 181 are references to §§ 168(j), 168(l), and 181 as in effect on the day before the enactment date of the 2020 Act.

.02 *Elections.*

(1) *Section 168(j)(8) election.* Section 168(j)(8) allows a taxpayer to make an election not to apply § 168(j) for all property that is in the same class of property and placed in service by the taxpayer in the same taxable year (§ 168(j)(8) election). For purposes of § 168(j), the term

“class of property” means each class of property described in the table contained in § 168(j)(2) (for example, 3-year property). As set forth in Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, the § 168(j)(8) election generally must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer places in service the qualified Indian reservation property. Rev. Proc. 2017-33 further provides that the § 168(j)(8) election generally must be made in the manner prescribed in the instructions for Form 4562, *Depreciation and Amortization*. The instructions for Form 4562 for the 2018 taxable year and the 2019 taxable year provide that the § 168(j)(8) election is made by attaching a statement to the taxpayer’s timely filed tax return, including extensions, indicating the class of property for which the taxpayer is making the § 168(j)(8) election and, for such class, that the taxpayer is electing not to apply § 168(j).

(2) *Section 168(l)(3)(D) election.* Section 168(l)(3)(D) allows a taxpayer to elect not to apply § 168(l) for all property that is in the same class of property and placed in service in the same taxable year (§ 168(l)(3)(D) election). The procedures for making the § 168(l)(3)(D) election are provided in the instructions for Form 4562. The instructions for Form 4562 for the 2018 taxable year and the 2019 taxable year provide that any election not to deduct the additional first year depreciation for any class of property, which includes the § 168(l)(3)(D) election, is made by attaching a statement to the taxpayer’s timely filed tax return, including extensions, indicating the class of property for which the taxpayer is making the § 168(l)(3)(D) election and, for such class, that the taxpayer is not claiming the additional first year depreciation.

(3) *Section 181 election.* Section 181(c)(1) provides that the § 181 election for any qualified film, television, or live theatrical production is made in such manner as prescribed by the Secretary of the Treasury or her delegate and by the due date, including extensions, for filing the taxpayer’s return of tax under chapter 1 of the Code for the taxable year in which costs of the production are first incurred.

(a) Last updated in 2012, the rules and procedures concerning a § 181 election for

qualified film and television productions are set forth in § 1.181-0 through § 1.181-6 (§ 181 regulations). Congress added “qualified live theatrical production” to § 181 of the Code in 2015. As of the date of issuance of this revenue procedure, the § 181 regulations have not been updated to incorporate rules and procedures for qualified live theatrical productions.

(b) Section 1.181-2(a) provides that an owner, as defined in § 1.181-1(a)(2), generally makes the § 181 election to deduct production costs, as defined in § 1.181-1(a)(3), of a production only if that owner has not deducted in a previous taxable year any production costs for that production under any provision of the Code other than § 181. Pursuant to § 1.181-2(b)(1), the § 181 election generally must be made by the due date, including any extension, for filing the owner’s Federal income tax return for the first taxable year in which (i) any aggregate production costs, as defined in § 1.181-1(a)(4), have been paid or incurred, and (ii) the owner reasonably expects, based on all of the facts and circumstances, that the production will be set for production and will, upon completion, be a qualified production. Pursuant to § 1.181-2(c)(1), an owner must make the § 181 election separately for each production. Further, for each production to which the § 181 election applies, § 1.181-2(c)(2)(i) provides that the owner must attach a statement to the owner’s Federal income tax return for the taxable year of the § 181 election stating that the owner is making the § 181 election and providing the information specified in § 1.181-2(c)(2)(i)(A) through (H). If the owner pays or incurs additional production costs in any taxable year subsequent to the taxable year for which production costs are first deducted under § 181, § 1.181-2(c)(2)(ii) provides that the owner must attach a statement to the owner’s Federal income tax return for that subsequent taxable year providing the information specified in § 1.181-2(c)(2)(ii)(A) through (H).

.03 Method of accounting.

(1) Section 446(e) of the Code and § 1.446-1(e)(2) of the Income Tax Regulations require a taxpayer to secure the consent of the Commissioner of Internal Revenue (Commissioner) before changing a method of accounting for Federal income tax purposes. Section 1.446-1(e)(3)(ii)

authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting.

(2) Section 1.446-1(e)(2)(ii)(d)(3)(iii) provides that the making of a late depreciation election or the revocation of a timely valid depreciation election is not a change in method of accounting, except as otherwise expressly provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. Section 1.446-1(e)(2)(ii)(d)(5)(iii) provides that except as otherwise expressly provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, no § 481 adjustment is required or permitted for a change from one permissible method of computing depreciation to another permissible method of computing depreciation.

(3) Because of the retroactive extension of the application of §§ 168(j), 168(l), and 181, guidance is needed for taxpayers that want to make late elections under §§ 168(j)(8), 168(l)(3)(D), and 181(a)(1). The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined it appropriate to treat the making of late elections under §§ 168(j)(8), 168(l)(3)(D), and 181(a)(1) for certain property and certain film, television, or live theatrical productions as a change in method of accounting with a § 481(a) adjustment for a limited period of time. Accordingly, this revenue procedure permits taxpayers to make these late elections by filing an amended return or an administrative adjustment request under § 6227 of the Code (AAR), as applicable, or a Form 3115, *Application for Change in Accounting Method*. See sections 4 and 6 of this revenue procedure for the procedures to make these late elections.

SECTION 3. SCOPE

.01 This revenue procedure applies to a taxpayer that:

(1) Placed in service (a) qualified Indian reservation property after December 31, 2017, during the taxpayer’s taxable year ending in 2018 (2018 taxable year) or in 2019 (2019 taxable year), or (b)

qualified second generation biofuel plant property after December 31, 2017, during the taxpayer's 2018 taxable year or 2019 taxable year;

(2) Timely filed the taxpayer's Federal income tax return or Form 1065, *U.S. Return of Partnership*, for the placed-in-service year of such property; and

(3) Wants to make a (a) late § 168(j)(8) election to not apply § 168(j) for the placed-in-service year for one or more classes of qualified Indian reservation property, or (b) late § 168(l)(3)(D) election not to apply § 168(l) for the placed-in-service year for one or more classes of qualified second generation biofuel plant property.

.02 This revenue procedure also applies to a taxpayer that:

(1) Is the owner, as defined in § 1.181-1(a)(2), of a qualified film, television, or live theatrical production commencing after December 31, 2017;

(2) Wants to make a late § 181 election for the production costs of such qualified film, television, or live theatrical production for the taxpayer's 2018 taxable year or 2019 taxable year, as applicable; and

(3) Timely filed the taxpayer's Federal income tax return or Form 1065 for the taxpayer's 2018 taxable year or 2019 taxable year, as applicable.

SECTION 4. AUTOMATIC EXTENSION OF TIME TO FILE ELECTIONS UNDER SECTIONS 168(j)(8), 168(l)(3)(D), and 181(a)(1)

.01 *Time and manner of making a late § 168(j)(8) election or late § 168(l)(3)(D) election.* A taxpayer within the scope of section 3.01 of this revenue procedure may make a late § 168(j)(8) election or late § 168(l)(3)(D) election by filing either:

(1) An amended Federal income tax return or amended Form 1065 for the placed-in-service year of the property on or before December 31, 2022, but in no event later than the applicable period of limitations on assessment for the taxable year for which the amended return is being filed. A partnership subject to the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015 (BBA partnership) may file an AAR for the placed-in-service year of the property on or before December 31, 2022, but

in no event later than the applicable period of limitations on making adjustments under § 6235 of the Code for the reviewed year as defined in § 301.6241-1(a)(8) of the Procedure and Administration Regulations. This amended return or AAR must include the adjustment to taxable income for the late election and any collateral adjustments to taxable income or to tax liability. Such collateral adjustments also must be made on original or amended Federal returns or AARs for any affected succeeding taxable years; or

(2) A Form 3115 with the taxpayer's first or second timely filed original Federal income tax return or Form 1065 that is filed after April 19, 2022. A late § 168(j)(8) election or late § 168(l)(3)(D) election made pursuant to this section 4.01(2) will be treated as a change in method of accounting with a § 481(a) adjustment. The procedures for making this change in method of accounting are described in section 6 of this revenue procedure.

.02 *Time and manner of making a late § 181 election.* A taxpayer within the scope of section 3.02 of this revenue procedure may make the late § 181 election by filing either:

(1) An amended Federal income tax return or amended Form 1065 for the taxpayer's 2018 taxable year or 2019 taxable year, as applicable, on or before December 31, 2022, but in no event later than the applicable period of limitations on assessment for the taxable year for which the amended return is being filed. A BBA partnership may file an AAR for the taxpayer's 2018 taxable year or 2019 taxable year, as applicable, on or before December 31, 2022, but in no event later than the applicable period of limitations on making adjustments under § 6235 for the reviewed year as defined in § 301.6241-1(a)(8). This amended return or AAR must include the adjustment to taxable income for the late election, any collateral adjustments to taxable income or to tax liability, and the statement required under § 1.181-2(c)(2)(i). Such collateral adjustments also must be made on, and the statement required under § 1.181-2(c)(2)(ii) must be included with, original or amended Federal returns or AARs for any affected succeeding taxable years; or

(2) A Form 3115 with the taxpayer's first or second timely filed original Federal

income tax return or Form 1065 that is filed after April 19, 2022. A late § 181 election made pursuant to this section 4.02(2) will be treated as a change in method of accounting with a § 481(a) adjustment. The procedures for making this change in method of accounting are described in section 6 of this revenue procedure.

SECTION 5. APPLICATION OF THE § 181 REGULATIONS TO QUALIFIED LIVE THEATRICAL PRODUCTIONS FOR 2018 AND 2019

A taxpayer within the scope of this revenue procedure may treat the § 181 regulations (as described in section 2.02(3) of this revenue procedure) as if such regulations were amended to apply to the production costs of qualified live theatrical productions for purposes of making the late § 181 election under section 4.02 of this revenue procedure for the taxpayer's 2018 taxable year or 2019 taxable year.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *In general.* The making of a late election under section 4.01(2) or 4.02(2) of this revenue procedure is treated as a change in method of accounting to which §§ 446(e) and 481, and the corresponding regulations, apply. A taxpayer that wants to make a late election under section 4.01(2) or 4.02(2) of this revenue procedure must use the automatic change procedures in Rev. Proc. 2015-13, 2015-5 I.R.B. 419, or its successor.

.02 *New automatic change.* Rev. Proc. 2022-14, 2022-7 I.R.B. 502, is modified to add new section 6.23 to read as follows:

6.23 Late elections under § 168(j)(8), § 168(l)(3)(D), and § 181(a)(1).

(1) *Description of Change.*

(a) *Applicability.* This change applies to:

(i) A taxpayer within the scope of section 3.01 of Rev. Proc. 2022-23, 2022-18 I.R.B. XXX, that wants to make the late election provided in section 4.01(2) of Rev. Proc. 2022-23 under § 168(j)(8) or § 168(l)(3)(D); or

(ii) A taxpayer within the scope of section 3.02 of Rev. Proc. 2022-23 that wants to make the late election provided

in section 4.02(2) of Rev. Proc. 2022-23 under § 181(a)(1).

(b) *Inapplicability.* The IRS will treat the making of a late election provided in section 4 of Rev. Proc. 2022-23 under §§ 168(j)(8), 168(l)(3)(D), and 181(a)(1) as a change in method of accounting with a § 481(a) adjustment only for the taxable years specified in section 6.23(2) of this revenue procedure. This treatment does not apply to a taxpayer that makes these late elections before or after the time specified in section 6.23(2) of this revenue procedure, and any such late election is not a change in method of accounting.

(2) *Time for making the change.* The change under section 6.23(1)(a)(i) or (ii) of this revenue procedure must be made with the taxpayer's first or second timely filed original Federal income tax return or Form 1065, as applicable, that is filed after April 19, 2022.

(3) *Certain eligibility rules inapplicable.* The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, do not apply to a change under section 6.23(1)(a)(i) or (ii) of this revenue procedure.

(4) *Certain audit protection exception temporarily inapplicable.* Sections 8.02(1) and (7) of Rev. Proc. 2015-13 do not apply to a change in method of accounting made under section 6.23(1)(a)(i) or (ii) of this revenue procedure. However, sections 8.02(1) and (7) of Rev. Proc. 2015-13 continue to apply for purposes of determining the § 481(a) adjustment

period provided in section 7.03(3)(b) of Rev. Proc. 2015-13.

(5) *Short Form 3115.*

(a) A taxpayer making a change under section 6.23(1)(a)(i) of this revenue procedure is required to complete only the following information on Form 3115 (Rev. December 2018):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, lines 6, 7, 8, 9, 14, and 18;

(v) Part IV, all lines except line 25; and

(vi) Schedule E, all lines except lines 1, 4b, 5, and 6.

(b) A taxpayer making the change under section 6.23(1)(a)(ii) of this revenue procedure is required to attach to the taxpayer's Form 3115 the statement required under § 1.181-2(c)(2)(i) and, if applicable, the statement required under § 1.181-2(c)(2)(ii), and to complete only the following information on Form 3115 (Rev. December 2018):

(i) The identification section of page 1 (above Part I);

(ii) The signature section at the bottom of page 1;

(iii) Part I;

(iv) Part II, lines 6, 7, 8, 9, 14, and 18; and

(v) Part IV, all lines except line 25.

(6) *Concurrent automatic change.* A taxpayer making one or more late elections under section 4.01(2) or 4.02(2) of Rev. Proc. 2022-23 for the same year of change should file a single Form 3115 for

all such changes. The single Form 3115 must provide a single net § 481(a) adjustment for all such changes. See section 6.03(1)(b) of Rev. Proc. 2015-13 for information on making concurrent changes.

(7) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change to the method of accounting under this section 6.23 is "264."

(8) *Contact information.* For further information regarding a change under this section 6.23, contact James Liechty at (202) 317-7005 (not a toll-free number).

SECTION 7. EFFECT ON OTHER DOCUMENTS

Section 6 of Rev. Proc. 2022-14 is modified to include the accounting method change provided in section 6.02 of this revenue procedure.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective April 19, 2022.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Kathleen Reed and James Liechty of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Liechty at (202) 317-7005 (not a toll-free number).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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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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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/.

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