INTERNAL REVENUE BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–28
July 8, 2024

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.

EXEMPT ORGANIZATIONS

Announcement 2024-28, page 39.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

EMPLOYEE PLANS

Notice 2024-55, page 31.

Notice 2024-55 provides guidance in the form of questions and answers with respect to sections 115 and 314 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act). Section 115 of the SECURE 2.0 Act adds section 72(t)(2)(I) to the Internal Revenue Code (Code), which permits a distribution from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Section 314 of the SECURE 2.0 Act adds section 72(t)(2)(K) to the Code, which permits a distribution from an applicable eligible retirement plan to a domestic abuse victim if made during the 1-year period beginning on the date on which the individual is a victim of domestic abuse by a spouse or domestic partner. These two types of distributions are includible in gross income but are not subject to the 10 percent additional tax under section 72(t)(1).

INCOME TAX

Notice 2024-54, page 24.

This notice announces that the Department of the Treasury and the Internal Revenue Service intend to issue two sets of proposed regulations that would provide special rules for certain transactions under §§ 732, 734, 743, 755, and 1502 of the Internal Revenue Code. First, proposed regulations under §§ 732, 734, 743, and 755 would provide special rules for the cost recovery of positive basis adjustments or the ability to take positive basis adjustments into account in computing gain or loss on the disposition of basis adjusted property following certain transactions. Second, proposed regulations under § 1502 would provide rules to clearly reflect the taxable income and tax liability of a consolidated group whose members own interests in a partnership.

REG-124593-23, page 40.

REG-124593-23 is a notice of proposed rulemaking (NPRM) that identifies certain partnership transactions as "transactions of interest," a type of reportable transaction. The transactions include either the distribution of partnership property when the partnership has two or more related partners, or the transfer of a partnership interest in a nonrecognition transaction when the transferor is related to the transferee or the transferee is related to one or more of the partners. The transactions of interest involve related parties as defined under section 267(b) (without regard to section 267(c)(3)) or section 707(b)(1), a transfer of a partnership interest or distribution of partnership property, and a resulting aggregate increase to the basis of partnership property or distributed property under sections 732(b) or (d), 734(b), or 743(b) for the taxable year that exceeds the gain recognized, if any on which tax is required to be paid by any of the related partners by $5 million or more. The basis increase allows related parties an opportunity to decrease their taxable income through increased cost recovery allowances or reduced taxable gain (or increased taxable loss) on the disposition of the property in a transaction in which gain or loss is recognized in whole or in part.

Rev. Rul. 2024-13, page 18.

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 July 2024.

Finding Lists begin on page ii.

Rev. Rul. 2024-14, page 18.

This Revenue Ruling advises taxpayers of the Service's position challenging certain partnership related-party transactions under the codified economic substance doctrine in § 7701(o). Under the ruling, the Service applies the economic substance doctrine in three situations involving related parties where some or all of whom are partners in a partnership, and the parties: (1) create basis disparities through various methods; (2) capitalize on these basis disparities either by transferring a partnership interest in a nonrecognition transaction or by making a current or liquidating distribution of partnership property to a partner; and (3) claim a basis adjustment under §§ 732(b), 734(b), or 743(b). The ruling holds that these transaction structures lack economic substance under § 7701(o). In such cases, the Service will disregard the basis adjustments.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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Part I

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

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

Rev. Rul. 2024-13

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2024 (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%. 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. Finally, Table 6 contains the blended annual rate for 2024 for purposes of section 7872.

REV. RUL. 2024-13 TABLE 1
Applicable Federal Rates (AFR) for July 2024
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	5.06%	5.00%	4.97%	4.95%
110% AFR	5.58%	5.50%	5.46%	5.44%
120% AFR	6.09%	6.00%	5.96%	5.93%
130% AFR	6.61%	6.50%	6.45%	6.41%
		Mid-term		
AFR	4.49%	4.44%	4.42%	4.40%
110% AFR	4.94%	4.88%	4.85%	4.83%
120% AFR	5.40%	5.33%	5.29%	5.27%
130% AFR	5.85%	5.77%	5.73%	5.70%
150% AFR	6.77%	6.66%	6.61%	6.57%
175% AFR	7.92%	7.77%	7.70%	7.65%
		Long-term		
AFR	4.61%	4.56%	4.53%	4.52%
110% AFR	5.08%	5.02%	4.99%	4.97%
120% AFR	5.54%	5.47%	5.43%	5.41%
130% AFR	6.02%	5.93%	5.89%	5.86%

REV. RUL. 2024-13 TABLE 2
Adjusted AFR for July 2024
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.84%	3.80%	3.78%	3.77%
Mid-term adjusted AFR	3.40%	3.37%	3.36%	3.35%
Long-term adjusted AFR	3.49%	3.46%	3.45%	3.44%

REV. RUL. 2024-13 TABLE 3 Rates Under Section 382 for July 2024	
Adjusted federal long-term rate for the current month	3.49%
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.)	3.62%

REV. RUL. 2024-13 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for July 2024	
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	8.06%
Appropriate percentage for the 30% present value low-income housing credit	3.45%

REV. RUL. 2024-13 TABLE 5 Rate Under Section 7520 for July 2024	
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	5.4%

REV. RUL. 2024-13 TABLE 6 Blended Annual Rate for 2024	
Section 7872(e)(2) blended annual rate for 2024	5.03%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2024. See Rev. Rul. 2024-13, page 15.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of July 2024. See Rev. Rul. 2024-13, page 15.

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 July 2024. See Rev. Rul. 2024-13, page 15.

Section 7701(o).— Clarification of economic substance doctrine

(Also §§ 732, 734, 743, 754, 755)

Rev. Rul. 2024-14

ISSUE

Does the economic substance doctrine apply to disallow tax benefits associated with a series of transactions involving a related-party partnership, through which the parties first generate a disparity between inside basis and outside basis and then trigger a basis adjustment to property under § 732(b), § 734(b), or § 743(b),[1] which generates increased cost recovery deductions with respect to the property or reduced gain (or increased loss) upon a sale of the property?

FACTS

C is a domestic corporation engaged in operating a trade or business, including through several subsidiary entities commonly managed by C or in which C directly or indirectly holds controlling financial interests (C Subsidiaries) such that C is related to each of the C Subsidiaries under § 267(b) or § 707(b)(1). The C Subsidiaries include, among other entities, Sub 1, Sub 2, Sub 3, Partnership A, Partnership B, Partnership C, and Partnership D, each of which is indirectly owned by C through one or more C Subsidiaries. The C Subsidiaries own various depreciable or amortizable assets used in, and have incurred various liabilities as part of, the conduct of C's trade or business. C issues financial statements for its trade or business that report these assets and liabilities of the C Subsidiaries (C Financial Statements).

Situation 1. C indirectly owns more than 50 percent of the stock of each of Sub 1, Sub 2, and Sub 3, all domestic corporations. Sub 1 and Sub 2 are the only partners in Partnership A with each holding a 50 percent interest in the capital, profits, and losses of Partnership A. Sub 1 and Sub 3 are the only partners in Partnership B with each holding a 50 percent interest in the capital, profits, and losses of Partnership B.

Prior to Date 1, Partnership A had a valid election in place under § 754. Also prior to Date 1, Sub 1's share of the adjusted tax basis of Partnership A's property (that is, Sub 1's share of Partnership A's inside basis) was equal to $20x and the adjusted tax basis of Sub 1's interest in Partnership A (that is, Sub 1's outside basis) was $100x. This $80x disparity between Sub 1's share of Partnership A's inside basis and Sub 1's outside basis in Partnership A prior to Date 1 resulted from Sub 1 and Sub 2 making contributions to Partnership A, and Partnership A making distributions to Sub 1 and Sub 2, of property with specific Federal income tax attributes, and the allocation of Federal income tax items in accordance with § 704(b) and (c). Such contributions, distributions, and allocations were undertaken with a view to creating a disparity between Sub 1's share of Partnership A's inside basis and Sub 1's outside basis in Partnership A.

On Date 1, Sub 1 transfers its interest in Partnership A to Partnership B in a contribution that qualifies for nonrecognition of gain or loss under § 721(a) (Sub 1 Contribution). The stated business purpose for the Sub 1 Contribution is to achieve cost savings for C and the C Subsidiaries by cleaning up intercompany accounts, reducing administrative complexity, and achieving other administrative efficiencies.

Immediately after the Sub 1 Contribution, Partnership B's outside basis in its interest in Partnership A is $100x under § 723 while its share of Partnership A's inside basis is $20x (without regard to § 743(b)). Under § 743(b), Partnership A increases the adjusted basis of its property by $80x (the excess of Partnership B's $100x outside basis over its $20x proportionate share of inside basis) with respect to Partnership B only.[2] Partnership A allocates substantially all of this $80x basis increase to its depreciable or amortizable property (Basis-Adjusted Property) under § 755 and § 1.755-1(b)(5). The Sub 1 Contribution on Date 1 was undertaken with a view to exploiting the disparity between Sub 1's share of Partnership A's inside basis and Sub 1's outside basis in Partnership A created before Date 1 and increasing Partnership B's share of Partnership A's inside basis in the depreciable or amortizable property.

The cost savings resulting from the Sub 1 Contribution are insubstantial in relation to the reduction in the aggregate Federal income tax liability of the C Subsidiaries resulting from the $80x increase in Partnership A's basis in the Basis-Adjusted Property, which results in Partnership B being allocated increased amounts of deductions for depreciation or amortization or reduced amounts of gain (or increased amounts of loss) upon the sale of the Basis-Adjusted Property. C reports the relatively small cost savings in the C Financial Statements.

Situation 2. C indirectly owns more than 50 percent of the stock of Sub 1 and Sub 2, both domestic corporations. Sub 1 and Sub 2 are the only partners in Partnership C with each having a 50 percent interest in the capital, profits, and losses of Partnership C. Partnership C owns 100 percent of the stock of Sub 3, a domestic corporation, a depreciable asset, and $100x of money deposited in a bank account.

Prior to Date 2, Partnership had a valid election in place under § 754. Also prior to Date 2, Partnership C held the Sub 3 stock with an adjusted basis of $90x and fair market value of $100x and held the depreciable asset with an adjusted basis of $10x and fair market value of $100x. Also, Sub 1's outside basis in Partnership C was $100x and Sub 2's outside basis in Partnership C was $10x as a result of Sub 1 and Sub 2 making contributions to Partnership C, and Partnership C making distributions to Sub 1 and Sub 2, of property with specific Federal income tax attributes, and the allocation of Federal income tax items in

[1] *Unless otherwise specified, all "Section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).*

[2] *This section shows a mechanical application of the rules of subchapter K of chapter 1 of the Code (subchapter K). The tax effect will be disregarded if the economic substance doctrine applies. Later sections of this revenue ruling address whether the economic substance doctrine applies.*

accordance with § 704(b) and (c). Such contributions, distributions, and allocations were undertaken with a view to creating a disparity between Sub 2's outside basis and Partnership C's inside basis in the Sub 3 stock.

On Date 2, Partnership C distributes all of the Sub 3 stock to Sub 2 other than in liquidation of Sub 2's interest in Partnership C (Sub 3 Stock Distribution). The stated business purpose for the Sub 3 Stock Distribution is to achieve cost savings for C and the C Subsidiaries by cleaning up intercompany accounts, reducing administrative complexity, and achieving other administrative efficiencies.

Immediately after the Sub 3 Stock Distribution, Sub 2's adjusted basis in the Sub 3 stock is $10x under § 732(a)(2), the same as Sub 2's outside basis in Partnership C prior to the Sub 3 Stock Distribution. In addition, the Sub 3 Stock Distribution reduces Sub 2's outside basis in Partnership C from $10x to zero under § 733(2). Following the Sub 3 Stock Distribution, Partnership C increases the inside basis of its assets by $80x under § 734(b)(1)(B). Under § 755 and § 1.755-1(c)(2)(i), Partnership C increases the adjusted basis of its remaining depreciable asset from $10x to $90x.[3] The Sub 3 stock Distribution on Date 2 was undertaken with a view to exploiting the disparity between Sub 2's outside basis in Partnership C and Partnership C's inside basis in the Sub 3 stock created before Date 2 and transferring basis from nondepreciable Sub 3 stock to Partnership C's remaining depreciable asset.

The cost savings resulting from the Sub 3 Stock Distribution are insubstantial in relation to the reduction in the aggregate Federal income tax liability of the C Subsidiaries resulting from the $80x increase in Partnership C's inside basis in the remaining depreciable asset, which results in Sub 1 and Sub 2 being allocated increased amounts of deductions for depreciation or reduced amounts of gain (or increased amounts of loss) upon the sale of Partnership C's remaining depreciable asset. C reports the relatively small cost savings in the C Financial Statements.

Situation 3. C indirectly owns more than 50 percent of the stock of Sub 1 and Sub 2, both domestic corporations. Sub 1 and Sub 2 are the only partners in Partnership D with each having a 50 percent interest in the capital, profits, and losses of Partnership D.

Prior to Date 3, Partnership D owned two assets: a depreciable asset with an adjusted basis of $20x and a fair market value of $100x and nondepreciable land with an adjusted basis of $90x and fair market value of $100x. Also prior to Date 3, Sub 1's outside basis in Partnership D was $100x, and Sub 2's outside basis in Partnership D was $20x as a result of Sub 1 and Sub 2 making contributions to Partnership D, and Partnership D making distributions to Sub 1 and Sub 2, of property with specific Federal income tax attributes, and the allocation of Federal income tax items in accordance with § 704(b) and (c). Such contributions, distributions, and allocations were undertaken with a view to creating a disparity between Partnership D's inside basis in the depreciable asset and Sub 1's outside basis in Partnership D.

On Date 3, Partnership D liquidates by distributing the depreciable asset to Sub 1 and the nondepreciable land to Sub 2 (Partnership D Liquidation). The stated business purpose for the Partnership D Liquidation is to achieve cost savings for C and the C Subsidiaries by cleaning up intercompany accounts, reducing administrative complexity, and achieving other administrative efficiencies.

Immediately after the Partnership D Liquidation, Sub 1's adjusted basis in the depreciable asset is $100x under § 732(b), the same as Sub 1's outside basis in Partnership D prior to the Partnership D Liquidation, reflecting an increase of $80x to the adjusted basis of the depreciable asset in the hands of Sub 1. Also immediately after the Partnership D Liquidation, Sub 2's adjusted basis in the nondepreciable land is $20x under § 732(b), the same as Sub 2's outside basis in Partnership D prior to the Partnership D Liquidation, reflecting a decrease of $70x to the adjusted basis of the nondepreciable land in the hands of Sub 2. The distribution of the depreciable asset to Sub 1 as part of the Partnership D Liquidation on Date 3 was undertaken with a view to exploiting the disparity between Partnership D's inside basis in the depreciable asset and Sub 1's outside basis in Partnership D created before Date 3 and transferring basis from nondepreciable land distributed to Sub 2 to the depreciable asset distributed to Sub 1.

The cost savings resulting from the Partnership D Liquidation are insubstantial in relation to the reduction in the aggregate Federal income tax liability of the C Subsidiaries resulting from the $80x increase in Sub 1's adjusted basis in the depreciable asset, which results in increased deductions for depreciation or reduced amounts of gain (or increased amounts of loss) upon the sale of the depreciable asset for Sub 1. C reports the relatively small cost savings in the C Financial Statements.

LAW

Section 267(a) generally disallows deductions in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of § 267(b), other than any loss of a distributing corporation (or the distributee) in the case of a distribution in complete liquidation. Section 267(b)(3) provides that two corporations that are members of the same controlled group (as defined in § 267(f)) have a relationship referred to in § 267(a). Section 267(f)(1) provides that a controlled group has the meaning given by § 1563(a), except that "more than 50 percent" is substituted for "at least 80 percent" each place it appears in § 1563(a), and the determination is made without regard to § 1563(a)(4) and (e)(3)(C). In addition, § 267(b)(10) provides that a corporation and a partnership owned by the same persons have a relationship referred to in § 267(a) if the same persons own more than 50 percent of both the value of the outstanding stock of the corporation and the capital interest, or the profits interest, in the partnership.

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[3] *The distribution of Sub 3 stock (controlled corporation) to Sub 2 (corporate partner) meets the requirements of § 732(f) because Partnership C's adjusted basis in the Sub 3 stock prior to the Sub 3 Stock Distribution exceeds the adjusted basis of the stock in the hands of the corporate partner (Sub 2). Under § 732(f), the aggregate adjusted bases of Sub 3's property must be reduced by $80x, subject to the limitations in § 732(f)(3). Additionally, this revenue ruling does not address the application of § 751(b) to the facts of Situations 2 and 3.*

Section 707(b)(1)(A) disallows any deduction for losses from sales or exchanges of property (other than an interest in the partnership) directly or indirectly, between a partnership and a partner owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership. Section 707(b)(1)(B) disallows any deduction for losses from sales or exchanges of property (other than an interest in the partnership) directly or indirectly, between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

Section 721(a) provides that no gain or loss is recognized to a partnership or to any of its partners on the contribution of property to the partnership in exchange for an interest in the partnership. Section 723 provides that the basis of property contributed to a partnership by a partner is the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount of gain (if any) recognized under § 721(b) to the contributing partner at such time.

Section 731(b) provides that no gain or loss is recognized to a partnership on the distribution to a partner of property, including money. Section 732(a)(1) generally provides that the basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest is its adjusted basis to the partnership immediately before the distribution. However, § 732(a)(2) limits the basis to the distributee partner to the adjusted basis of that partner's interest in the partnership reduced by any money distributed in the same transaction. Section 732(b) provides that the basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest equals the adjusted basis of the partner's interest in the partnership reduced by any money distributed in the same transaction. Section 732(c) provides rules for the allocation of basis among properties received in a distribution to which § 732(a)(2) or § 732(b) applies.

Section 733 provides that the adjusted basis of a distributee partner's interest in a partnership following a non-liquidating distribution is reduced (but not below zero) by (1) the amount of any money distributed to the partner, and (2) the adjusted basis of distributed property (other than money), as determined under § 732.

Section 734(a) provides that the basis of partnership property is not adjusted as the result of a distribution of property to a partner unless an election provided in § 754 is in effect or there is a substantial basis reduction (as defined in § 734(d)) with respect to such distribution. Section 734(b) provides that a partnership, with respect to which an election provided in § 754 is in effect or with respect to which there is a substantial basis reduction, increases or decreases the adjusted basis of partnership property to take into account the gain or loss recognized by a distributee partner under § 731(a) or changes in the basis of distributed property under § 732. Under § 734(b)(1)(B), in the case of distributed property to which § 732(a)(2) applies, the amount of increase includes the excess of the adjusted basis of the distributed property immediately before the distribution over the basis of the distributed property to the distributee. If § 734(b) is applicable, § 734(c) provides that the allocation of basis among partnership properties is made in accordance with the rules provided in § 755. Section 734(d) provides that there is a substantial basis reduction with respect to a distribution if, had an election provided in § 754 been in effect, there would be a negative net basis adjustment to partnership property of more than $250,000.

Section 743(a) provides that the basis of partnership property is not adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless an election provided in § 754 is in effect or there is a substantial built-in loss (as defined in § 743(d)) immediately after such transfer. Section 743(b) provides that, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which an election provided in § 754 is in effect or a partnership that has a substantial built-in loss immediately after such transfer, increases the adjusted basis of the partnership property by the excess of the basis to the transferee partner of the transferee partner's interest in the partnership over such partner's proportionate share of the adjusted basis of the partnership property, or decreases the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of such partner's interest in the partnership. Section 743(b) further provides that, under regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), such increase or decrease constitutes an adjustment to the basis of partnership property with respect to the transferee partner only. If § 743(b) is applicable, § 743(c) provides that the allocation of basis among partnership properties is made in accordance with the rules provided in § 755.

Section 754 provides, in part, that if a partnership files an election, in accordance with the regulations prescribed by the Secretary, the basis of partnership property is adjusted, in the case of a distribution of property, in the manner provided in § 734, and, in the case of a transfer of a partnership interest, in the manner provided in § 743. A § 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

Section 755(a) provides that a basis adjustment under § 734(b) or § 743(b) is allocated among partnership properties in a manner that reduces the difference between the fair market values and adjusted bases of those properties or in any other manner permitted by the regulations prescribed by the Secretary. Section 755(b) provides that in applying the allocation rules of § 755(a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, capital assets and property described in § 1231(b), or any other property of the partnership, are allocated to partnership property of like character. The allocation of basis adjustments under §§ 743(b) and 734(b) among partnership property is provided in § 1.755-1(b) and (c), respectively.

Section 7701(o)(1) provides that, in the case of any transaction to which the economic substance doctrine is relevant, the transaction is treated as having economic substance only if (i) the transaction changes in a meaningful way (apart from

Federal income tax effects) the taxpayer's economic position, and (ii) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction. For this purpose, achieving a financial accounting benefit is not taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax. Section 7701(o)(4).

Section 7701(o)(5)(A) provides that the "economic substance doctrine" means the common law doctrine under which tax benefits under subtitle A of the Code with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

Section 7701(o)(5)(C) provides that the determination of whether the economic substance doctrine is relevant to a transaction is made in the same manner as if § 7701(o) had never been enacted.

Section 7701(o)(5)(D) provides that the term "transaction" includes a series of transactions.

Section 7701(o)(2)(A) provides that if a taxpayer relies on profit potential to help prove that a transaction has economic substance, profit potential will only be taken into account if the present value of the reasonably-expected pretax profit of that transaction is substantial in relation to the present value of the expected net tax benefits of the transaction that would be allowed if the Federal income tax effects of the transaction were not disregarded.

Section 6662(b)(6) provides that a 20 percent penalty applies to an underpayment attributable to a transaction lacking economic substance under § 7701(o) or failing to meet the requirements of any similar rule of law. Under § 6662(i), the penalty is increased to 40 percent on any portion of an underpayment that is attributable to one or more nondisclosed noneconomic substance transactions. Under § 6664(c)(2), there is no reasonable cause exception to the penalties described in § 6662(b)(6) or (i).

ANALYSIS

The basis adjustment rules under §§ 732(b), 734(b), and 743(b) are intended to reduce disparities between inside and outside basis that would otherwise result from a distribution of property or transfer of a partnership interest. In each of *Situations 1-3*, however, the parties engaged in a concerted effort to create disparities between inside and outside basis through various methods, such as the contribution or distribution of property with specific Federal income tax attributes or the allocation of Federal income tax items in accordance with § 704(b) and (c). They then exploited the created disparities by engaging in transfers resulting in basis adjustments under the mechanical rules of § 732(b), 734(b), or 743(b) to inappropriately reduce taxable income through increased deductions or reduced gain (or increased loss).

In *Situation 1*, the actions of the parties creating a disparity between Sub 1's outside basis and share of Partnership A's inside basis, the transfer of Sub 1's interest in Partnership A to Partnership B in the Sub 1 Contribution, and the resulting positive basis adjustment to Partnership B's share of inside basis of Partnership A's property under § 743(b) were undertaken with a view to increasing Partnership B's share of Partnership A's inside basis in depreciable or amortizable property by $80x while avoiding recognition of gain or loss under § 721(a) through a nonrecognition transaction. Additionally, the $80x basis increase was relatively large in amount compared to the cost savings to C and the C Subsidiaries.

In *Situation 2,* the actions of the parties creating a disparity between Sub 2's outside basis and Partnership C's inside basis in the Sub 3 stock, the distribution of Sub 3 stock (a high-inside basis asset) to Sub 2 (a partner with a low outside basis in its partnership interest) and the resulting adjustment to the inside basis of Partnership C's remaining property were undertaken with a view to transferring $80x of basis from nondepreciable Sub 3 stock to Partnership C's remaining depreciable asset while avoiding recognition of gain or loss under § 731 through a nonrecognition distribution. Additionally, the $80x basis increase was relatively large in amount compared to the cost savings.

In *Situation 3*, the actions of the parties creating a disparity between Sub 1's outside basis and Partnership D's adjusted basis in the depreciable asset, the liquidating distribution of the depreciable asset (a low-inside basis asset) to Sub 1 (a partner with a high outside basis in its partnership interest) in the Partnership D Liquidation and the resulting adjustment to the adjusted basis of the depreciable asset to Sub 1 under § 732(b) were undertaken with a view to transferring basis from nondepreciable land distributed to Sub 2 to the depreciable asset distributed to Sub 1 while avoiding recognition of gain or loss under § 731 through a nonrecognition distribution. Additionally, the $80x basis increase was relatively large in amount compared to the cost savings to C and the C Subsidiaries.

Situations 1-3 all involve persons related to each other under § 267(b) or § 707(b)(1). A transaction among related parties to avoid Federal income tax by generating inflated basis adjustments falls outside the plain intent of §§ 732(b), 734(b), 743(b), and 754. While the differing economic interests of unrelated parties generally make it less likely that unrelated partners will engage in transactions such as those in *Situations 1-3*, partnerships composed of related partners have no such disincentive.[4]

Congress intended that the provisions of subchapter K apply to transactions between partnerships and their partners to preserve parity between inside and outside basis "so as to prevent any unintended tax benefit or detriment to the partners." H.R. Rep. No. 1337, 83d Cong., 2d Sess. A225 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 384 (1954). Congress also expressed its desire to prevent related parties from exploiting the rules of subchapter K to avoid tax "through the realization of fictitious losses or increasing the basis of property for purposes of depreciation." H.R. Rep. No. 1337, at A226; S. Rep. No. 1622, at 386-87.

Congress did not intend that taxpayers be able to *avoid or indefinitely defer taxation* altogether by creating basis disparities through contributions or distributions of property or through allocations

[4] *This revenue ruling does not address the application of § 7701(o) to transactions among unrelated partners. Depending on the specific facts, § 7701(o) may apply to transactions among unrelated partners.*

of tax items by reason of a § 743(b) basis adjustment after a nonrecognition transaction, such as the Sub 1 Contribution in *Situation 1*; by reason of a § 734(b) basis adjustment after distribution of property, such as the Sub 3 Stock Distribution in *Situation 2*; or by reason of a § 732(b) basis adjustment after a liquidating distribution of property, such as the Partnership D Liquidation in *Situation 3*. The shared economic interests of related parties make them more likely than unrelated parties to attempt to generate such tax benefits in a manner not intended by Congress by entering into transactions with no meaningful economic change.

Unless a "meaning plainly appears" that Congress intended a provision to grant a tax benefit to transactions without economic substance or business purpose, such an intent "will not [be] attribute[d] to Congress." *Knetsch v. United States*, 364 U.S. 361, 367-69 (1960). The economic substance doctrine is intended to apply "despite literal compliance with the statute." *Coltec Indus., Inc. v. United States*, 454 F.3d 1340, 1354 (Fed. Cir. 2006); *see Gregory v. Helvering*, 293 U.S. 465, 470 (1935). The economic substance doctrine was developed to address transactions such as these, which follow the literal words of the Code but lie outside of Congress's plain intent. *Gregory*, 293 U.S. at 469-70.

Each series of transactions described in *Situations 1-3* lacks economic substance. In each of those situations, the economic substance doctrine is applied to basis adjustments generated by the following series of connected transactions involving related parties, which may occur over the course of several taxable years: (i) the parties generate basis disparities through various methods, such as contributions of property with specific Federal income tax attributes to the partnership, the allocation of Federal income tax items in accordance with § 704(b) and (c), or distributions of property with specific attributes to the partners, and (ii) either (1) a partner transfers its partnership interest in a nonrecognition transaction while there exists an inside/outside basis disparity, or (2) the partnership distributes property with specific Federal income tax attributes (for example, high inside basis) to one or more partners with specific Federal income tax attributes (for example, low outside basis) in a current or liquidating distribution. The resulting basis adjustments, if allowed, would permit the parties to shift basis in a manner that enables the parties to claim increased cost recovery deductions or reduced gain (or increased loss) upon the sale of the basis-adjusted property.

In applying the conjunctive test of § 7701(o)(1), each of two prongs must be met for the transactions described in *Situations 1-3* to have economic substance. First, under § 7701(o)(1)(A), the transaction must change in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position. Second, under § 7701(o)(1)(B), the taxpayer must have had a substantial purpose (apart from Federal income tax effects) for entering into the transaction.

With respect to the first prong under § 7701(o)(1)(A), the transactions in *Situations 1-3* have a negligible effect on C's economic position because the transactions shift ownership of property among commonly controlled entities without "effect[ing] any real change in the 'flow of economic benefits,' or provid[ing] any real 'opportunity to make a profit' . . . ." *Coltec*, 454 F.3d at 1360; *see Reddam v. Commissioner*, 755 F.3d 1051, 1060-62 (9th Cir. 2014). The transactions fail to "*appreciably* affect the [taxpayer's] beneficial interest except to reduce . . . tax"; that is, the transactions do not appreciably affect C's beneficial interests in the C Subsidiaries or their assets, except to reduce the aggregate Federal income tax liability of the related persons involved. *Knetsch*, 364 U.S. at 366 (quoting *Gilbert v. Commissioner*, 248 F.2d 399, 411 (2d Cir. 1957) (Learned Hand, J., dissenting)) (emphasis added). The only potential economic gains are derived from purported cost savings from cleaning up intercompany accounts between the C Subsidiaries, reducing administrative complexity, and achieving administrative efficiencies. However, any such cost savings do not change C and the C Subsidiaries' economic position in a meaningful way because any economic benefits attributable to purported cost savings (apart from the Federal income tax effects) are insubstantial compared to the $80x in Federal income tax benefits from the basis adjustments attributable to these transactions. The basis increases of $80x resulting from the transactions in *Situations 1-3* can be used to reduce taxable income of the C Subsidiaries through depreciation, amortization, or other deductions or reduce gain recognized upon the sale of the property. The transactions were "designed to generate" basis increases, and those basis increases "would always . . . have overshadowed" the economic gain, including gain derived from cost savings. *Reddam*, 755 F.3d at 1061-62. Even if there had been "some prospect of profit" from transferring a partnership interest or partnership property among related parties, the calculable Federal income tax benefits would have "far exceeded any independent potential for economic return." *Bank of New York Mellon Corp. v. Commissioner*, 801 F.3d 104, 117-18, 120 (2d Cir. 2015); *Salem Fin., Inc. v. United States*, 786 F.3d 932, 949 (Fed. Cir. 2015) (citing *Knetsch*, 364 U.S. at 365-66). Thus, any change in economic position (apart from the Federal income tax effects) in the transactions described in *Situations 1-3* is not meaningful within the meaning of § 7701(o)(1)(A).

With respect to the second prong of the conjunctive test under § 7701(o)(1)(B), the transactions described in *Situations 1-3* demonstrate a lack of any substantial purpose (apart from Federal income tax effects) to enter into these transactions. The stated business purpose of achieving cost savings from cleaning up intercompany accounts between the C Subsidiaries, reducing administrative complexity, and achieving administrative efficiencies may be a legitimate nontax economic purpose. However, any such business purpose is not substantial compared to the Federal income tax purposes the transactions were designed to carry out. *See Reddam*, 755 F.3d at 1061. Many of the facts in these transactions demonstrating a lack of meaningful change in economic position (apart from Federal income tax effects) also demonstrate a lack of substantial purpose (apart from Federal income tax effects) for these related parties to enter into these transactions. Reasonable inferences into a taxpayer's purpose for entering a transaction can be drawn from the facts and circumstances surrounding such transaction, including results from a transaction that the taxpayer could have reasonably

anticipated as well as results from a transaction that were by design. The fact that the cost savings were insubstantial compared to relatively large basis increases of $80x, that there was no appreciable effect on the parties' economic ownership of the property allocated the basis increases, and that the transactions were structured to guarantee basis increases of $80x to depreciable or amortizable property while carrying a *de minimis* risk of economic loss compared to the designed Federal income tax benefit, *Altria Grp.*, 658 F.3d at 290-91, "indicate[] that the taxpayer's true motivation for the transaction is tax avoidance." *See Bank of New York Mellon Corp. v. United States*, 140 T.C. 15, 38 (2013). Therefore, C lacked a substantial purpose (apart from Federal income tax effects) for causing its subsidiaries to enter into the transactions described in *Situations 1-3* within the meaning of § 7701(o)(1)(B).

If a transaction or series of transactions lacks economic substance, it may be disregarded for Federal income tax purposes. *See Gregory*, 293 U.S. 465; *Coltec*, 454 F.3d at 1352; *ACM P'ship v. Commissioner*, 157 F.3d 231, 247-48 (3d Cir. 1998). While a transaction might meet the literal requirements of the Code, courts will not recognize a transaction that is not within the intent of the Code. *Gregory*, 293 U.S. at 469-70. The series of transactions described in *Situations 1-3*—related-party contributions or distributions of property or allocations of tax items and the subsequent transfer of a partnership interest or distribution of property to generate a basis adjustment to property that is eligible for cost recovery (or is held for future sale)—failed both prongs under § 7701(o)(1) and, therefore, lack economic substance. As a result, their Federal income tax effects must be disregarded. The transactions did not change in a meaningful way (apart from Federal income tax effects) the economic position of C or the C Subsidiaries within the meaning of § 7701(o)(1)(A), and C lacked a substantial business or other purpose (apart from Federal income tax effects) for causing the C Subsidiaries to enter into these transactions within the meaning of § 7701(o)(1)(B).

In addition, under § 6662(b)(6), the transactions described in *Situations 1-3* give rise to a 20 percent penalty applicable to an underpayment attributable to a transaction lacking economic substance under § 7701(o). The penalty is increased to 40 percent on any portion of the underpayment attributable to one or more nondisclosed noneconomic substance transactions. *See* § 6662(i). Under § 6664(c)(2), a reasonable cause exception to the penalties described in § 6662(b)(6) and (i) may not be asserted.

The series of transactions described in *Situations 1-3* may also be subject to the partnership anti-abuse rule under § 1.701-2 or the § 704(c) anti-abuse rule under § 1.704-3(a)(10). Other anti-abuse doctrines including, but not limited to, the substance-over-form doctrine and step-transaction doctrine may apply, depending on the facts and circumstances of a specific transaction or series of transactions.

HOLDING(S)[5]

(1) The series of transactions in *Situations 1-3* lack economic substance under § 7701(o). The transactions did not change the economic position of C or the C Subsidiaries in a meaningful way (aside from the Federal income tax effects). Additionally, neither C nor the C Subsidiaries had a substantial purpose for entering the transactions (aside from Federal income tax effects).

(2) In *Situation 1*, the basis adjustment under § 743(b) is disregarded. As a result, Partnership B is not entitled to an increase of $80x in its share of the inside basis of Partnership A's assets, and Partnership B's share of the inside basis of Partnership A's assets remains $20x.

(3) In *Situation 2*, the basis adjustment under § 734(b) is disregarded. As a result, Partnership C is not entitled to an increase of $80x to the inside basis of the remaining depreciable asset, and the inside basis of the depreciable asset remains $10x.

(4) In *Situation 3*, the basis adjustment to Sub 1 under § 732(b) is disregarded. As a result, Sub 1 is not entitled to an increase of $80x to the adjusted basis of the depreciable asset, and the adjusted basis of Sub 1's depreciable asset remains $20x.

(5) C and/or the C Subsidiaries, as applicable, are subject to the 20 percent penalty under § 6662(b)(6) or the 40 percent penalty under § 6662(i) for a nondisclosed noneconomic substance transaction, as applicable.

DRAFTING INFORMATION

The principal author of this revenue ruling is Anthony P. Sacco of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Anthony P. Sacco at (202) 317-5805.

[5] *This revenue ruling makes no interpretations regarding which audit procedures (for example, the application of subchapter C of chapter 63 of the Code) might apply to effectuate the substantive interpretations of the Holdings section. Any such interpretations would require facts that are outside the scope of this revenue ruling.*

Part III

Forthcoming Guidance Regarding Certain Partnership Related-Party Transactions

Notice 2024-54

SECTION 1. PURPOSE

.01 This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to publish two sets of forthcoming proposed regulations that would address certain basis-shifting transactions involving partnerships and related parties. These transactions, referred to as "covered transactions" in this notice, (1) involve partners in a partnership and their related parties, (2) result in increases to the basis of property under § 732, § 734(b), or § 743(b) of the Internal Revenue Code (Code),[1] and (3) generate increased cost recovery allowances or reduced gain (or increased loss) upon the sale or other disposition of the basis-adjusted property.

First, the Treasury Department and the IRS intend to propose regulations under §§ 732, 734(b), 743(b) and 755 (forthcoming Proposed Related-Party Basis Adjustment Regulations) that would (1) provide the required method of recovering adjustments to the bases of property held by a partnership, property distributed by a partnership, or both, arising from the covered transactions described in section 3 of this notice, (2) provide rules governing the determination of gain or loss on the disposition of such basis-adjusted property, and (3) include similar transactions involving tax-indifferent parties (for example, certain foreign persons, a tax-exempt organization, or a party with tax attributes that make it tax-indifferent) rather than related parties.

Second, the Treasury Department and the IRS intend to propose regulations under § 1502 (forthcoming Proposed Consolidated Return Regulations) to clearly reflect the taxable income and tax liability of a consolidated group (as defined in § 1.1502-1(h)) whose members own interests in a partnership. More specifically, the Treasury Department and the IRS anticipate that the forthcoming Proposed Consolidated Return Regulations would provide for single-entity treatment of members that are partners in a partnership, so that covered transactions cannot shift basis among group members and distort group income.

.02 Section 2 of this notice provides a summary of relevant law. Section 3 of this notice provides an overview of the need for the forthcoming proposed regulations[2] and a description of the covered transactions. Sections 4 and 5 of this notice describe the forthcoming Proposed Related-Party Basis Adjustment Regulations and the forthcoming Proposed Consolidated Return Regulations, respectively. Section 6 of this notice describes the proposed applicability dates of the forthcoming proposed regulations. Section 7 of this notice contains a request for comments.

SECTION 2. BACKGROUND

.01 *Basis adjustments under subchapter K*

(1) *In general*. Under subchapter K of chapter 1 of the Code (subchapter K), a distribution by a partnership of the partnership's property (partnership property) or a transfer of an interest in a partnership (partnership interest) may result in an adjustment to the basis of the distributed property, partnership property, or both.

A distribution of partnership property may result in an adjustment to the basis of the distributed property under § 732(a), (b), or (d). In the case of a distribution of partnership property to a partner by a partnership with an election under § 754 (§ 754 election) in effect, or with respect to which there is a substantial basis reduction as described in § 734(d), the distribution may also result in an adjustment to the basis of the partnership's remaining partnership property under § 734(b).

If a partnership interest is transferred by sale or exchange or on the death of a partner, and the partnership either has a § 754 election in effect or has a substantial built-in loss with respect to the transfer of the partnership interest as described in § 743(d), the transfer may result in an adjustment to the basis of partnership property under § 743(b) with respect to the transferee partner.

Section 754 provides that if a partnership makes an election in accordance with regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in § 734, and in the case of a transfer of a partnership interest, in the manner provided in § 743. Unless the election is revoked in accordance with the regulations under § 754, the § 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

(2) *Basis adjustments under § 732*. Section 732 governs a distributee partner's basis in distributed property other than money. In the case of a current distribution, and except as provided under § 732(a)(2), § 732(a)(1) provides that the distributee partner's basis in distributed property (other than money) is equal to the partnership's adjusted basis in the distributed property immediately before the distribution. Under § 732(a)(2), however, a distributee partner's basis in distributed property is limited to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a liquidating distribution, § 732(b) provides that the distributee partner's basis in distributed property (other than money) is equal to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

[1] *Unless otherwise noted, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).*

[2] *References in this notice to the "forthcoming proposed regulations" are references to the forthcoming Proposed Related-Party Basis Adjustment Regulations and the forthcoming Proposed Consolidated Return Regulations, collectively.*

In the case of a distribution of more than one property from a partnership, the basis of the distributed properties to which § 732(a)(2) and (b) apply must be allocated among the distributed properties under the rules of § 732(c) and the regulations thereunder.

(3) *Basis adjustments under § 734*. In the case of a distribution of property by a partnership with a § 754 election in effect, and for which either the distributee partner recognizes gain or loss on the distribution, or for which the basis of the distributed property in the distributee partner's hands, as determined under § 732, differs from the partnership's adjusted basis in the distributed property immediately before the distribution, § 734(b) requires the partnership to increase or decrease (as applicable) the basis of its remaining partnership property. Also, in the case of a distribution of property by a partnership that results in a substantial basis reduction under § 734(d), the basis of remaining partnership property must be adjusted under § 734(b), even if the partnership does not have a § 754 election in effect.

Section 734(b)(1) requires a partnership to increase the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing gain under § 731(a)(1), or if property (other than money) to which § 732(a)(2) or (b) applies is distributed to the distributee partner and the property's adjusted basis to the partnership immediately before the distribution is greater than the distributee partner's basis in the distributed property as determined under § 732. Section 731(a)(1) requires a distributee partner to recognize gain in a current or liquidating distribution to the extent that any money distributed to that partner in the distribution exceeds the adjusted basis of that partner's partnership interest immediately before the distribution. The amount of the basis increase to the partnership's remaining property under § 734(b)(1) following a distribution of partnership property to a partner is equal to the amount of gain recognized by the distributee partner in the distribution under § 731(a)(1) and the excess of the partnership's adjusted basis in the distributed property immediately before the distribution over the distributee partner's basis in the distributed property as determined under § 732.

Section 734(b)(2) requires a partnership to decrease the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing loss under § 731(a)(2), or if property (other than money) to which § 732(b) applies is distributed to the distributee partner in a distribution and the property's adjusted basis to the partnership immediately before the distribution is less than the distributee partner's basis in the distributed property as determined under § 732. Under § 731(a)(2), a distributee partner may recognize a loss in a liquidating distribution of that partner's interest in the partnership to the extent that such partner received only money, unrealized receivables described in § 751(c), or inventory items described in § 751(d) in the distribution. In such a case, the distributee partner is required to recognize a loss to the extent that such partner's adjusted basis in the partnership interest exceeds the sum of any money distributed to that partner in the distribution and the basis to the distributee partner (determined under § 732) of any unrealized receivables or inventory received by that partner in the distribution. The amount of the basis decrease to the partnership's remaining property under § 734(b)(2) following a distribution of partnership property to a partner is equal to the amount of loss recognized by the distributee partner in the distribution under § 731(a)(2) and the excess of the distributee partner's basis in the distributed property as determined under § 732 over the partnership's adjusted basis in the distributed property immediately before the distribution.

A partnership without a § 754 election in effect is subject to a mandatory basis adjustment under § 734(b)(2) if there is a substantial basis reduction with respect to a distribution of partnership property. Under § 734(d), a substantial basis reduction with respect to a distribution of partnership property occurs if the sum of the amount of loss recognized to the distributee partner on the distribution, plus any increase in basis in the distributed property to the distributee partner under § 732(b), exceeds $250,000.

(4) *Basis adjustments under § 743(b)*. Generally, if a partnership interest is transferred in a sale or exchange or on the death of a partner, the transferee partner's basis in the transferred partnership interest is determined under § 742 and the basis of partnership property is determined under § 743(a). Section 742 provides that the transferee partner's basis in a partnership interest acquired other than by contribution is determined under part II of subchapter O of chapter 1 of the Code, beginning at § 1011 and following. Thus, for example, a transferee partner's basis in a partnership interest acquired by purchase generally is cost basis under § 1012.

Section 743(a) provides that, in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, the basis of partnership property is not adjusted unless either the partnership has a § 754 election in effect or the partnership has a substantial built-in loss with respect to the transfer of the partnership interest.

Under § 743(b), in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, a partnership with a § 754 election in effect or that has a substantial built-in loss with respect to the transfer of the partnership interest must increase or decrease (as applicable) the adjusted basis of partnership property with respect to the transferee partner.

Section 743(b)(1) provides that the adjusted basis of partnership property is increased by the excess of the transferee partner's basis in the transferred partnership interest over the transferee partner's proportionate share of the adjusted basis of partnership property.

Section 743(b)(2) provides that the adjusted basis of partnership property is decreased by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property over the transferee partner's basis in the transferred partnership interest.

A partnership without a § 754 election is subject to a mandatory basis adjustment under § 743(b) with respect to a transfer of a partnership interest if the partnership has a substantial built-in loss with respect to the transfer of the partnership interest. Under § 743(d)(1), a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if either the partnership's adjusted basis in

its property exceeds the fair market value of such property by more than $250,000, or the transferee partner would be allocated a loss of more than $250,000 if the partnership assets were sold for cash equal to their fair market value immediately after the transfer.

Under regulations prescribed by the Secretary, a basis adjustment under § 743(b) is an adjustment to the basis of partnership property with respect to the transferee partner only. The transferee partner's proportionate share of the partnership's adjusted basis in its property generally is determined in accordance with the transferee partner's interest in the partnership's previously taxed capital (including the transferee partner's share of partnership liabilities) under regulations prescribed by the Secretary.

(5) *Allocation of § 734(b) or § 743(b) basis adjustments*. Section 734(c) states that a basis adjustment under § 734(b) is allocated among partnership properties under the rules of § 755. Section 743(c) states that a basis adjustment under § 743(b) is allocated among partnership properties under the rules of § 755.

Section 755(a) generally requires basis adjustments under § 734(b) or § 743(b) to be allocated in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties or in any other manner permitted by regulations. In addition, § 755(b) requires these basis adjustments to be allocated to partnership property of a like character or to subsequently acquired partnership property of a like character if such property is not available or has insufficient basis at the time of the basis adjustment (because a decrease in the adjusted basis of the property would reduce the basis of such property below zero). Section 755(c) provides a special rule that prohibits allocating a basis decrease under § 734(b) to the stock of a corporation that is a partner of the partnership (or that is related to a partner of the partnership within the meaning of § 267(b) or § 707(b)(1)).

(6) *Common terminology for bases with respect to a partnership interest*. A partner's adjusted basis in its partnership interest commonly is referred to as the partner's "outside basis" in its partnership interest. A partnership's adjusted basis in its property commonly is referred to as the "inside basis" of the partnership's property. Each partner has a share of inside basis. For ease of explanation, this terminology is used in section 3 of this notice.

.02 *Affiliated group of corporations filing a consolidated return*. Section 1501 grants an affiliated group of corporations the privilege of making a consolidated return, in lieu of separate returns, for Federal income tax purposes. Section 1502 authorizes the Secretary to prescribe consolidated return regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (that is, a consolidated group as defined in § 1.1502-1(h)) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability (§ 1502 regulations). For purposes of carrying out those objectives, § 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the § 1502 regulations generally are defined in § 1.1502-1.

The § 1502 regulations provide rules to clearly reflect the Federal income tax liability of both the consolidated group and each of its members. Therefore, these regulations reflect a mix of single- and separate-entity treatment. For example, the intercompany-transaction rules in § 1.1502-13(c) generally respect the existence of intercompany transactions between the separate members but recompute and redetermine the members' tax items from the transaction to produce the same effect on the group as if the transacting members were divisions of a single corporation.

.03 *Basis-adjustment reporting for consolidated groups*

Form 1120, *U.S. Corporation Income Tax Return*, includes a new question on Schedule K, Question 31, applicable to certain large, consolidated groups for any taxable year ending on or after December 31, 2023. This question asks consolidated groups with gross receipts or sales of $1 billion or more to report certain subchapter K basis adjustments, as described in the Instructions to the 2023 Form 1120 (released for public comment on December 20, 2023). The intent of this question is for taxpayers to identify certain related-party basis adjustment transactions that were entered into by members of the consolidated group in consolidated years ending on or after December 31, 2023.

SECTION 3. COVERED TRANSACTIONS

.01 *Overview of the need for the forthcoming proposed regulations*.

The Treasury Department and the IRS are aware of related persons using partnerships to engage in transactions that inappropriately exploit the basis-adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests discussed in section 2 of this notice. This awareness results from the IRS's review of various partnership transactions involving related parties in which basis adjustments were created to artificially generate or regenerate Federal income tax benefits that resulted in significant tax savings without a corresponding economic outlay. These transactions were carefully structured to exploit the mechanical basis-adjustment provisions of subchapter K to produce significant tax benefits with little or no economic impact on the related parties, and in a manner that would not be a likely arrangement between partners negotiating at arm's-length.

Generally, in a covered transaction, partnership property is distributed to a partner who is related to one or more other partners, and that distribution results in a person related to the distributee partner, the distributee partner, or both, receiving all or a share of a basis increase in the distributed property or remaining partnership property under § 732 or § 734(b) (as applicable); alternatively, a partnership interest is transferred between related persons or to a transferee partner who is related to an existing partner in the partnership, and that transfer results in an increase to the inside basis in partnership property with respect to the transferee partner under § 743(b).

The covered transactions generally are structured so that, under the applicable allocation rules (§§ 732(c), 734(c), 743(c), and 755), the basis increase is allocated to property that is eligible for cost recovery

allowances (or eligible for a shorter cost recovery period) or that the partnership or the distributee partner disposes of in a taxable sale or exchange. Accordingly, the basis increase results in related partners decreasing their overall taxable income through additional or accelerated cost recovery allowances or decreasing their taxable gain or increasing their taxable loss on the subsequent taxable disposition of the property subject to the basis increase.

The related partners receive these tax benefits directly in the case of a distribution of property in which the basis of the distributed property is increased in the distributee partner's hands under § 732(b) or § 732(d). They receive these benefits indirectly in the case of a transfer of a partnership interest in which the inside basis of partnership property is increased for the transferee partner under § 743(b) or in the case of a distribution of property that results in an increase to the common basis of partnership property under § 734(b). Whether the tax benefits are received directly or indirectly, the resulting decrease in taxable income or gain (or increase in taxable loss) benefits the related-party group as a whole. Further, because the partners are related, the distributions or transfers may have little or no effect on the overall economic ownership of the property yet produce significant tax benefits shared by the related partners.

A related partner's partnership interest must have certain characteristics to create the opportunity for a covered transaction. In general, these characteristics are (1) a partner's outside basis in its partnership interest that is low compared to the partnership's basis in property it distributes to such partner, (2) a partner's outside basis in its partnership interest that is high compared to such partner's share of the partnership's basis in the partnership property (that is, the partner's share of inside basis), or (3) a partner's outside basis in its partnership interest that is high compared to the partnership's basis in property it distributes to such partner in liquidation of the partner's interest. Partnerships with related parties can create these characteristics through orchestrated contributions and distributions, as well as allocations under § 704(b) and (c). In most commercial transactions involving unrelated parties, the opportunity for abuse is limited because each party has separate, and often competing, economic and tax interests, and the parties transact at arm's length. In contrast, for related parties, basis can be manipulated to provide a material net tax benefit to the related parties. Such basis shifting is contrary to congressional intent in enacting subchapter K. Congress intended that the provisions of subchapter K apply to transactions between partnerships and their partners to preserve parity between inside and outside basis "so as to prevent any unintended tax benefit or detriment to the partners." H.R. Rep. No. 1337, 83d Cong., 2d Sess. A225 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 384 (1954). Congress also expressed its desire to prevent related parties from exploiting the rules of subchapter K to avoid tax "through the realization of fictitious losses or increasing the basis of property for purposes of depreciation." H.R. Rep. No. 1337, at A226; S. Rep. No. 1622, at 386-87.

.02 *Covered transactions under § 734(b)*.

In a covered transaction under § 734(b), a partnership with a § 754 election in effect and two or more partners that are related to each other makes a current or liquidating distribution of property to one or more of the related partners. Immediately before the distribution, the partnership's basis in the distributed partnership property exceeds the distributee partner's basis in its partnership interest (that is, the partnership distributes property with a relatively high inside basis to a distributee partner with a relatively low outside basis). Under § 732(a)(2) or (b), the low-outside basis partner takes a basis in the distributed property that is lower than the inside basis of the property immediately before the distribution.

As a result of the basis decrease to the distributed property in the hands of the distributee partner under § 732(a)(2) or (b), the partnership increases the basis of its remaining properties under § 734(b) by an amount equal to the excess of the partnership's basis in the distributed property immediately before the distribution over the basis of the distributed property in the hands of the distributee partner immediately after the distribution. Under §§ 734(c) and 755, the partnership allocates this basis increase among remaining partnership properties.

.03 *Covered transactions under § 743(b)*.

In a covered transaction under § 743(b), (1) a partner transfers an interest in a partnership that has a § 754 election in effect or a substantial built-in loss immediately after such transfer (2) to a related transferee or a transferee that is related to one or more of the partners (3) in a nonrecognition transaction within the meaning of § 7701(a)(45) in which the gain recognized, if any, and for which tax imposed by subtitle A of the Code (subtitle A) is required to be paid, is less than the aggregate amount of the increase(s) in the basis of partnership property with respect to the transferee partner under §§ 743(b) and 755.

In order for the transfer to give rise to a basis adjustment under § 743(b), the transferee partner must have an inside-outside basis disparity with respect to its partnership interest so that the transferee partner's outside basis does not equal the transferee partner's share of inside basis. Because a § 754 election is in effect for the taxable year of the transfer or the partnership or a substantial built-in loss immediately after such transfer, a basis adjustment is made under § 743(b) or (d) to partnership property with respect to the transferee partner to eliminate the inside-outside basis disparity of the transferee partner. As a result of the transfer, the partnership allocates one or more basis increases to partnership property with respect to the transferee partner under §§ 743(c) and 755.

.04 *Covered transactions under § 732*.

In a covered transaction under § 732, a partner (distributee partner) receives a liquidating distribution of property resulting in a basis increase in the distributed property under § 732(b) and (c), and either—

(1) The partnership liquidates and distributes the partnership's remaining partnership property to one or more parties related to the distributee partner (related distributee partner) resulting in a basis adjustment that reduces the basis (basis decrease) of such property to the related distributee partners under § 732(b) and (c), or

(2) The partnership continues, and a related party to the distributee partner is a continuing partner (related continuing

partner) that has a share of the partnership's basis decrease under § 734(b) or (d) resulting from the liquidating distribution or would have had a share of the partnership's basis decrease under § 734(b) if the partnership had a § 754 election in effect.

SECTION 4. FORTHCOMING PROPOSED RELATED-PARTY BASIS ADJUSTMENT REGULATIONS

.01. *In general*. The forthcoming Proposed Related-Party Basis Adjustment Regulations would provide special rules that would apply to the cost recovery of basis adjustments arising from the covered transactions described in section 3 of this notice, as well as rules that would govern whether and how a basis adjustment arising from a covered transaction would be taken into account upon the disposition of such basis-adjusted property. These proposed regulations would be mechanical rules applicable to all covered transactions without regard to the taxpayer's intent and without regard to whether the transactions could be abusive or lacking in economic substance. Additionally, these proposed regulations would apply only if, and to the extent that, property has been allocated a basis increase. If, and to the extent, property has been allocated a basis decrease, the proposed rules would not apply.

.02 *Related persons; cost recovery*. In general, for purposes of the forthcoming Proposed Related-Party Basis Adjustment Regulations, partners and other persons would be considered as related if they have a relationship described in § 267(b) (without regard to § 267(c)(3)) or § 707(b)(1) immediately before or immediately after a transaction. For purposes of the forthcoming Proposed Related-Party Basis Adjustment Regulations, the term "cost recovery" means an allowance for depreciation, amortization, or depletion under subtitle A.

.03 *Related-party basis adjustments; cost recovery and disposition rules*. Based on the authority provided in §§ 482, 732, 734(b), 743(b), 755, and 7805, as well as the provisions of the Code that otherwise permit cost recovery allowances with respect to basis increases under subchapter K, the forthcoming Proposed Related-Party Basis Adjustment Regulations would provide that a basis increase allocated to property retained or distributed by a partnership following a covered transaction (related-party basis adjustment, or RPBA) would be subject to specific rules providing the required method of recovering the basis adjustment and the treatment of the basis adjustment upon the disposition of the property to which the adjustment applies.

.04 *Treatment of basis adjustments resulting from covered transactions under § 734(b)*.

The forthcoming Proposed Related-Party Basis Adjustment Regulations would provide that an RPBA arising from a covered transaction described in section 3.02 of this notice (§ 734(b) RPBA) would be recovered using the cost recovery method and remaining recovery period, if any, of the corresponding distributed property that gave rise to such § 734(b) RPBA. In addition, the partnership would not be eligible to take the § 734(b) RPBA into account upon the sale or other disposition of partnership property to which a § 734(b) RPBA applies, subject to the rules described below. After a qualifying disposition of a corresponding distributed property, the basis adjustment would cease to be a § 734(b) RPBA. A qualifying disposition would mean a disposition of a corresponding distributed property to an unrelated person in an arm's-length transaction in which taxable gain or loss is fully recognized. Except as otherwise provided, if a basis adjustment ceases to be a § 734(b) RPBA, the remaining basis attributable to the former RPBA would be treated as giving rise to newly placed in service property that is subject to the cost recovery period and method of the property to which it was allocated, to the extent the property is eligible for cost recovery allowances, and the basis adjustment would be taken into account in computing gain or loss upon the sale or other disposition of the property. These rules would not apply to the share of any § 734(b) basis adjustment of a partner that is unrelated to the distributee partner. For purposes of this rule, a partner's share of a basis adjustment under § 734(b) would be determined under principles similar to those in § 1.197-2(h)(12)(iv)(D).

If a partnership distributes to a partner property with respect to which there is a § 734(b) RPBA in place, the partner would take into account the § 734(b) RPBA in determining the basis of the property in the partner's hands and the partner's outside basis in the partnership, and the basis adjustment would remain a § 734(b) RPBA until the basis adjustment ceases to be a § 734(b) RPBA, as described above.

If a partnership disposes of property to which a § 734(b) RPBA applies (other than in a distribution to a partner) or a partner disposes of property to which a § 734(b) RPBA applies, the amount of the § 734(b) RPBA would be reallocated to other property of the partnership or the partner (under rules similar to the rules of § 1.755-1(c)) and would remain a § 734(b) RPBA. If the partnership or partner cannot reallocate a § 734(b) RPBA to any asset under the preceding sentence because the partnership or partner does not own property of a like character, the reallocation would be made when property of a like character is subsequently acquired.

.05 *Treatment of basis adjustments resulting from covered transactions under § 743(b)*.

The forthcoming Proposed Related-Party Basis Adjustment Regulations would provide that an RPBA arising from a covered transaction described in section 3.03 of this notice (§ 743(b) RPBA) would be ineligible for cost recovery until the transferee partner becomes unrelated to both the transferor partner and to all existing partners as described below. In addition, the transferee partner would not be eligible to take the § 743(b) RPBA into account upon the sale or other disposition of partnership property to which a § 743(b) RPBA applies, subject to the rules described below. If a transferee partner that has a § 743(b) RPBA in place ceases to be related to both the transferor and all persons who were partners immediately before or immediately after the covered transaction, then the basis adjustment would cease to be a § 743(b) RPBA. Except as otherwise provided, if a basis adjustment ceases to be a § 743(b) RPBA, the basis attributable to the former RPBA would be treated as giving rise to newly placed in service property that is subject to the cost recovery period and method of the property to which it was allocated, to the extent the property is eligible for cost recovery allowances, and the basis adjust-

ment would be taken into account in computing gain or loss upon the sale or other disposition of the property.

If a partnership distributes to a transferee partner property with respect to which there is a § 743(b) RPBA in place, the transferee partner would take into account the § 743(b) RPBA in determining the basis of the property in the partner's hands as well as in determining the partner's outside basis in the partnership, and the basis adjustment would remain a § 743(b) RPBA until the basis adjustment ceases to be a § 743(b) RPBA, as described above. That is, the § 743(b) RPBA would be taken into account for purposes of applying § 732 but would remain ineligible for cost recovery and would not be used in computing gain or loss on the sale or disposition of the distributed property by the transferee partner.

If a partnership disposes of property to which a § 743(b) RPBA applies (other than in a distribution to the transferee partner) or a transferee partner disposes of property to which a § 743(b) RPBA applies, then the amount of the § 743(b) RPBA would be reallocated to other property (under rules similar to the rules of § 1.755-1(c)) and would remain a § 743(b) RPBA. If the partnership or transferee partner cannot reallocate a § 743(b) RPBA to any asset under the preceding sentence because the partnership or transferee partner does not own property of a like character, the reallocation would be made when property of a like character is subsequently acquired. If any gain is recognized in a covered transaction described in section 3.03 of this notice, and tax imposed by subtitle A is required to be paid on such gain, the portion of each basis increase attributable to the gain would not be treated as a § 743(b) RPBA.

.06 *Treatment of basis adjustments resulting from covered transactions under § 732*.

The forthcoming Proposed Related-Party Basis Adjustment Regulations would generally require that a basis increase to distributed property under § 732(b) and (c) be treated as a § 732 RPBA to the extent such increase corresponds to a basis decrease of a related partner (or the basis decrease a related partner would have had if the partnership had a § 754 election in effect). In the case of a covered transaction described in section 3.04(1) of this notice (complete liquidation of the partnership), if a partnership makes liquidating distributions to all partners, a basis increase under § 732(b) and (c) to property distributed to the distributee partner would be treated as one or more § 732 RPBAs to the extent of a basis decrease under § 732(b) and (c) to property distributed to a related distributee partner. In the case of a covered transaction described in section 3.04(2) of this notice (continuation of the partnership), if a partnership makes a liquidating distribution to one partner and there is a resulting basis decrease under § 734(b), including a basis decrease that is suspended under § 1.755-1(c)(4) (or there would have been if the partnership had a § 754 election in effect), a basis increase under § 732(b) and (c) to property distributed to the distributee partner would be treated as one or more § 732 RPBAs to the extent of a related continuing partner's share of a resulting basis decrease under § 734(b) (or the basis decrease under § 734(b) that would have resulted if the partnership had a § 754 election in effect).

The forthcoming Proposed Related-Party Basis Adjustment Regulations would require that a § 732 RPBA arising from a covered transaction described in section 3.04(1) of this notice resulting in a basis increase under § 732(b) and (c) to the property of the distributee partner would be recovered using the cost recovery method and remaining recovery period, if any, of the corresponding property the basis of which a related distributee partner reduced. In addition, the distributee partner would not be eligible to take the § 732 RPBA into account upon the sale or other disposition of the property to which the § 732 RPBA applies, subject to the rules described below. These rules would not apply to any portion of the basis increase that corresponds to a basis decrease to property distributed to an unrelated partner.

The forthcoming Proposed Related-Party Basis Adjustment Regulations would require that a § 732 RPBA arising from a covered transaction described in section 3.04(2) of this notice and resulting in a basis increase under § 732(b) and (c) to the property of the distributee partner would be recovered using the cost recovery method and remaining recovery period, if any, of the corresponding property the basis of which the partnership reduced under § 734(b), or would have reduced under § 734(b) if the partnership had a § 754 election in effect. In addition, the distributee partner would not be eligible to take the § 732 RPBA into account upon the sale or other disposition of the property to which the § 732 RPBA applies, subject to the rules described below. These rules would not apply to any portion of the basis increase that corresponds to the share of any basis decrease under § 734(b) of a partner unrelated to the distributee partner (or the unrelated partner's share of a basis decrease under § 734(b) if the partnership had a § 754 election in effect). For purposes of this rule, a partner's share of a basis decrease under § 734(b) would be determined under principles similar to those in § 1.197-2(h)(12)(iv)(D).

For purposes of all covered transactions described in section 3.04 of this notice, in the case of multiple distributed properties, the proposed regulations would treat each distributed property as having a separate § 732 RPBA with respect to each basis decrease to corresponding property. The amount of a § 732 RPBA would be proportional to the share of the basis decrease to that § 732 RPBA's corresponding property out of the aggregate basis decrease to all corresponding property. A § 732 RPBA would be recovered using the cost recovery method and remaining recovery period, if any, of that § 732 RPBA's corresponding property. For purposes of this section 4.06, "corresponding property" would mean, in the case of a covered transaction described in section 3.04(1) of this notice, property distributed to a related distributee partner and allocated a basis decrease under § 732(b) and (c) and, in the case of a covered transaction described in section 3.04(2) of this notice, property allocated a basis decrease under § 734(b) of which a related continuing partner has a share (or would have a share if the partnership had a § 754 election in effect). In addition, the partner would not be eligible to take the § 732 RPBA into account upon the sale or other disposition of property to which a § 732 RPBA applies, subject to the rules described below.

For purposes of all covered transactions described in section 3.04 of this notice, upon a qualifying disposition of a corresponding property, any § 732 RPBA to which that property corresponds would cease to be a § 732 RPBA. If a basis adjustment ceases to be a § 732 RPBA, the remaining basis attributable to the former RPBA would be treated as giving rise to newly placed in service property that is subject to the cost recovery period and method of the distributed property, to the extent the property is eligible for cost recovery allowances, and the basis adjustment would be taken into account in computing gain or loss upon the sale or other disposition of the property. A qualifying disposition would mean a disposition of property to an unrelated person in a fully taxable, arm's-length transaction.

.07 *Special rules and tax-indifferent parties*. Special rules in the forthcoming Proposed Related-Party Basis Adjustment Regulations would apply to covered transactions that involve other related subchapter K provisions, such as § 732(d) and (f), and additional steps, as well as to tiered-partnership structures. The forthcoming Proposed Related-Party Basis Adjustment Regulations would also treat as a covered transaction certain partnership arrangements involving taxable and tax-indifferent parties that would otherwise be a covered transaction if the relatedness requirement of section 3.02, 3.03, or 3.04 of this notice were satisfied. For example, if a partnership, in which no partners are related, makes a distribution to an organization exempt from tax imposed by subtitle A by reason of § 501(a) of property that results in a basis increase to remaining partnership property under § 734(b)(1), this transaction would be treated as a covered transaction described in section 3.02 of this notice. For purposes of the forthcoming Proposed Related-Party Basis Adjustment Regulations, a tax-indifferent party would be defined as a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status or, also in certain cases, to which gain from the transaction would not result in Federal income tax liability for the person's taxable year within which such gain is recognized.

SECTION 5. FORTHCOMING PROPOSED CONSOLIDATED RETURN REGULATIONS

.01 *In general*. As a result of the interplay between the § 1502 regulations and the rules of subchapter K, a consolidated group's income from investments in partnerships often is not clearly reflected in the group's consolidated taxable income (as determined under § 1.1502-11 and other applicable § 1502 regulations) and consolidated tax liability (as determined under § 1.1502-2 and other applicable § 1502 regulations). In particular, anomalous results arise in certain situations in which the group's ownership interest in a partnership is split among members of the group, or in which a partnership interest is transferred from one member to another.

The Treasury Department and the IRS are concerned that some consolidated groups have attempted to alter consolidated taxable income or consolidated tax liability through basis adjustments to the property of partnerships owned by a group's members simply by: (i) transferring partnership interests from one member to another; or (ii) separating the group's ownership interest in a partnership between different members and causing the partnership to distribute property to one or more of the member partners. Such an alteration of consolidated taxable income or consolidated tax liability does not clearly reflect the income of the group, which files a single tax return for each taxable year and generally reports its income and tax liability as if it were a single corporation. *See* §§ 1501 and 1502.

To prevent distortion of a consolidated group's income from investments in partnerships, the forthcoming Proposed Consolidated Return Regulations would apply a single-entity approach with respect to interests in a partnership held by members of a consolidated group. It is intended that the forthcoming Proposed Consolidated Return Regulations would prevent direct or indirect basis shifts among the members of the group resulting from the covered transactions described in section 3 of this notice. This approach would avoid many of the anomalous results that arise from split ownership of partnership interests among members of the group or from intercompany transfers of partnership interests.

SECTION 6. PROPOSED APPLICABILITY DATES

.01 The Treasury Department and the IRS intend to propose that the Treasury decision that adopts the Proposed Related-Party Basis Adjustment Regulations described in section 4 of this notice as final regulations would apply to taxable years ending on or after June 17, 2024. That is, once finalized, the regulations would govern the availability and amount of cost recovery deductions and gain or loss calculations for taxable years ending on or after June 17, 2024 even if the relevant covered transaction was completed in a prior taxable year.

.02 The applicability date for the Treasury decision that adopts the forthcoming Proposed Consolidated Return Regulations described in section 5 of this notice will not relate to the issuance of this notice but will be proposed in the notice of proposed rulemaking containing the forthcoming Proposed Consolidated Return Regulations.

SECTION 7. REQUEST FOR COMMENTS AND SUBMISSION INFORMATION

.01 *Request for comments*. The Treasury Department and the IRS request comments on the approaches to addressing distortions of income from partnership related-party basis shifting transactions described in sections 4 and 5 of this notice.

.02 *Procedures for submitting comments*.

(1) *Deadline*. Written comments should be submitted by July 17, 2024. However, consideration will be given to any written comments submitted after July 17, 2024, if such consideration will not delay the issuance of the proposed regulations.

(2) *Form and manner*. The subject line for the comments should include a reference to Notice 2024-54. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2024-0027 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2024-54), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) *Publication of comments*. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on *https://www.regulations.gov*.

SECTION 8. DRAFTING INFORMATION

The principal authors of this notice are Kevin I. Babitz and Anthony P. Sacco of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Elizabeth V. Zanet at (202) 317-6007 or Anthony P. Sacco at (202) 317-5805. Regarding the forthcoming Proposed Consolidated Return Regulations, contact Jeremy Aron-Dine at (202) 317-6847.

Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)

Notice 2024-55

I. PURPOSE

This notice provides guidance on the application of the exceptions to the 10 percent additional tax under section 72(t)(1) of the Internal Revenue Code (Code) for emergency personal expense distributions and domestic abuse victim distributions. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing regulations under section 72(t) of the Code, and section IV of this notice solicits public comments with respect to all aspects of section 72(t).

II. BACKGROUND

Section 72(t)(1) of the Code generally provides for a 10 percent additional tax on a distribution from a qualified retirement plan, as defined in section 4974(c), unless the distribution qualifies for one of the exceptions listed in section 72(t)(2). The 10 percent additional tax applies only to the portion of the distribution that is includible in gross income. For purposes of section 72(t), the term "qualified retirement plan," as defined in section 4974(c), means a plan described in section 401(a) that includes a trust exempt from tax under section 501(a), an annuity plan described in section 403(a), an annuity contract described in section 403(b), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b).[1]

Section 72(t)(2) provides several exceptions to the 10 percent additional tax imposed by section 72(t)(1), including, for example, exceptions for distributions:

- made on or after the date on which the employee[2] attains age 59 ½;
- made to a beneficiary (or to the estate of the employee) on or after the death of the employee;
- attributable to the employee being disabled within the meaning of section 72(m)(7);
- that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary; and
- made, if the distributions are not made from an IRA, to an employee after separation from service after attainment of age 55.

On December 29, 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), was enacted. Sections 115 and 314 of the SECURE 2.0 Act amended section 72(t) of the Code to add exceptions to the 10 percent additional tax, and this notice provides guidance on those sections.

III. PROVISIONS OF THE SECURE 2.0 ACT

A. SECTION 115 OF THE SECURE 2.0 ACT -- EMERGENCY PERSONAL EXPENSE DISTRIBUTIONS

Section 115 of the SECURE 2.0 Act amended section 72(t)(2) of the Code by adding section 72(t)(2)(I), which provides a new exception to the 10 percent additional tax for a distribution from an applicable eligible retirement plan to an individual for emergency personal expenses. An emergency personal expense distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1).

Section 72(t)(2)(I)(iv) provides that the term "emergency personal expense distribution" means any distribution made from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Section 72(t)(2)(I)(iv) also provides that the term "applicable eligible retirement plan" has the same meaning as in section 72(t)(2)(H)(vi)(I), where the term is defined as an eligible retirement plan described in section 402(c)(8)(B) other than a defined benefit plan.

Emergency personal expense distributions are subject to three limitations. First, section 72(t)(2)(I)(ii) provides that not more than one distribution per calendar year is permitted to be treated as an emergency personal expense distribution by any individual. Second, section 72(t)(2)(I)(iii) permits an individual to treat a distribution as an emergency personal expense distribution in any calendar year in an amount up to a maximum of $1,000.[3] Third, section 72(t)(2)(I)(vii) provides rules that limit taking subsequent emergency personal expense distributions.

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[1] *For purposes of this notice, the term "IRA" includes an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).*

[2] *The term "employee" includes any participant in an employee retirement plan, and in the case of an IRA, the individual for whose benefit the IRA was established. See generally section 72(t)(5).*

[3] *This $1,000 amount is not indexed for inflation.*

Section 72(t)(2)(I)(iv) provides that an administrator of an applicable eligible retirement plan may rely on an employee's written certification that the employee satisfies the conditions for an emergency personal expense distribution. The Secretary may provide by regulations for exceptions to the rule regarding a plan administrator's reliance on an employee's certification, and for procedures for addressing cases of employee misrepresentation.

Section 72(t)(2)(I)(v) provides that if a distribution from an applicable eligible retirement plan to an individual would be an emergency personal expense distribution (without regard to the limitations in section 72(t)(2)(I)(ii) and (iii)), a plan will not be treated as failing to meet any requirement under the Code merely because the plan treats the distribution as an emergency personal expense distribution, unless the aggregate amount of the distributions from all plans maintained by the employer (and any member of any controlled group[4] that includes the employer) to that individual exceeds the limitations described in section 72(t)(2)(I)(ii) and (iii).

Section 72(t)(2)(I)(vi) provides that the rules relating to repayment of emergency personal expense distributions should follow the rules for repayment of qualified birth or adoption distributions in section 72(t)(2)(H)(v). Therefore, an individual generally may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay an emergency personal expense distribution (not to exceed the aggregate amount of the emergency personal expense distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made.

Section 72(t)(2)(I)(viii) provides that the special rules in section 72(t)(2)(H)(vi)(II) and (IV) (for qualified birth or adoption distributions) also apply for emergency personal expense distributions. Thus, an emergency personal expense distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), or the mandatory withholding rules under section 3405. In addition, emergency personal expense distributions are treated as meeting the distribution requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

The amendment made to section 72(t)(2) by section 115 of the SECURE 2.0 Act applies to emergency personal expense distributions made after December 31, 2023.

Questions and Answers Relating to Individuals Receiving Emergency Personal Expense Distributions

Q. A-1: What is an emergency personal expense distribution?

A. A-1: An emergency personal expense distribution is a distribution made from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. An emergency personal expense distribution is includible in gross income, but it is not subject to the 10 percent additional tax under section 72(t)(1).

Q. A-2: How does an individual determine whether an expense is an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses?

A. A-2: Whether an individual has an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses is determined by the relevant facts and circumstances for each individual. Factors to be considered include, but are not limited to, whether the individual (or a family member of the individual) has expenses relating to --

(a) medical care (including the cost of medicine or treatment that would be deductible under section 213(d), determined without regard to the limitations in section 213(a)),

(b) accident or loss of property due to casualty,

(c) imminent foreclosure or eviction from a primary residence,

(d) the need to pay for burial or funeral expenses,

(e) auto repairs, or

(f) any other necessary emergency personal expenses.

For purposes of determining whether an individual has an unforeseeable or immediate financial need, the administrator may rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution. See Q&A A-9 of this notice.

Q. A-3: Which types of plans are eligible to permit an emergency personal expense distribution?

A. A-3: An emergency personal expense distribution may be made from an applicable eligible retirement plan, which means an eligible retirement plan described in section 402(c)(8)(B) other than a defined benefit plan. Therefore, generally, a section 401(a) qualified defined contribution plan (such as a section 401(k) plan), a section 403(a) annuity plan, a section 403(b) annuity contract, a governmental section 457(b) plan, or an IRA is eligible to permit an emergency personal expense distribution.

Q. A-4: How frequently can an individual treat a distribution from an applicable eligible retirement plan as an emergency personal expense distribution?

A. A-4: An individual is permitted to treat only one distribution per calendar year as an emergency personal expense distribution.

Q. A-5: Is there a dollar limitation on the amount that an individual may treat as an emergency personal expense distribution under section 72(t)(2)(I)(iii)?

A. A-5: The amount that may be treated as an emergency personal expense distribution by an individual in any calendar year shall not exceed the lesser of $1,000 or an amount equal to the excess of --

(a) the individual's total nonforfeitable accrued benefit under the plan (in the case of an IRA, the individual's total interest in the IRA), determined as of the date of each such distribution, over

(b) $1,000.

For example, Plan C is a section 401(k) plan that permits emergency personal expense distributions, and Employee A is a participant in Plan C. On July 1, 2025, Employee A has a vested account balance

[4] *Section 72(t)(2)(I)(v) applies the controlled group definition in section 72(t)(2)(H)(iv)(II), which defines "controlled group" as any group treated as a single employer under section 414(b), (c), (m), or (o).*

of $1,500 in Plan C. On July 1, 2025, Employee A requests an emergency personal expense distribution of $500 from Plan C. Employee A has not previously received an emergency personal expense distribution. The excess of Employee A's nonforfeitable interest in Plan C over $1,000 is $1,500 - $1,000, or $500. Employee A is permitted to treat $500 from Plan C as an emergency personal expense distribution (the lesser of $1,000 or the amount equal to $1,500 - $1,000 ($500)).

Q. A-6: Once an individual treats a distribution as an emergency personal expense distribution, how soon can that individual take a subsequent emergency personal expense distribution?

A. A-6: Notwithstanding the limitation in Q&A A-4 of this notice, if an individual treats a distribution as an emergency personal expense distribution in any calendar year with respect to an applicable eligible retirement plan, no amount of any subsequent distribution can be treated as an emergency personal expense distribution during the immediately following 3 calendar years with respect to that plan unless --

(a) the previous emergency personal expense distribution is fully repaid to the plan, or

(b) the aggregate of the individual's elective deferrals and employee contributions to the plan (in the case of an IRA, the total amounts that the individual contributed to the IRA) after the previous emergency personal expense distribution is at least equal to the amount of the previous emergency personal expense distribution that has not been repaid.

For example, consider the same facts as Q&A A-5 of this notice (Employee A requests from Plan C an emergency personal expense distribution of $500 on July 1, 2025). Employee A does not repay the emergency personal expense distribution but continues to make elective deferrals to Plan C. On August 1, 2027, Employee A has an account balance in the amount of $5,000. With respect to the $5,000 account balance, Employee A contributed $3,500 in elective deferrals since the July 1, 2025, distribution. On August 1, 2027, Employee A requests an emergency personal expense distribution (which meets the requirements of Q&A A-1 of this notice) of $1,000 from Plan C. This distribution meets the limitation requirements in Q&A A-4 (annual limitation), Q&A A-5 (dollar limitation), and Q&A A-6 (limitation on subsequent distributions) of this notice.

Q. A-7: May an individual repay an emergency personal expense distribution to an applicable eligible retirement plan?

A. A-7: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of an emergency personal expense distribution (up to the entire amount of the emergency personal expense distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

Questions and Answers Relating to Applicable Eligible Retirement Plans Permitting Emergency Personal Expense Distributions.

Q. A-8: Is an applicable eligible retirement plan required to permit emergency personal expense distributions under section 72(t)(2)(I)?

A. A-8: It is optional for an applicable eligible retirement plan to permit emergency personal expense distributions pursuant to section 72(t)(2)(I). Plan amendments adopted to permit emergency personal expense distributions are discretionary amendments for purposes of the plan amendment rules discussed in Section II.J. of Notice 2024-02, 2024-02 IRB 316. For information relating to the deadline for adopting plan amendments, see the plan amendment rules discussed in Section II.J. of Notice 2024-02.

If an applicable eligible retirement plan does not permit emergency personal expense distributions, the individual is permitted to treat an otherwise permissible distribution[5] as an emergency personal expense distribution. See Q&A A-15 of this notice.

Q. A-9: May an administrator rely on a written certification from an employee that the employee is eligible for an emergency personal expense distribution?

A. A-9: In determining whether an employee is eligible for an emergency personal expense distribution, an administrator of an applicable eligible retirement plan is permitted to rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution.[6] For this purpose, an administrator is a plan administrator as defined in section 414(g), or an IRA trustee, custodian, or issuer.

Q. A-10: Do emergency personal expense distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. A-10: Emergency personal expense distributions are treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as an emergency personal expense distribution.

Q. A-11: Is an emergency personal expense distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. A-11: An emergency personal expense distribution is not treated as an eligible rollover distribution for purposes

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[5] *For purposes of this notice, a "permissible distribution" means a distribution that meets the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A) and is permissible under the plan. Thus, for example, a participant in a plan that does not permit emergency personal expense distributions may meet the requirements for a hardship distribution if the plan permits hardship distributions. In addition, a participant who terminated service with an employer with an accrued benefit under a section 401(k) plan that does not permit emergency personal expense distributions may meet the distribution restrictions for severance from employment.*

[6] *The written certification may be provided using the electronic delivery rules in §1.401(a)-21(d).*

of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to an emergency personal expense distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the emergency personal expense distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, an emergency personal expense distribution is subject to the withholding requirements of section 3405(b) and § 35.3405-1T of the withholding tax regulations.

Q. A-12: If an applicable eligible retirement plan permits emergency personal expense distributions, is the plan required to accept a repayment of that distribution to the plan?

A. A-12: An applicable eligible retirement plan must accept the repayment of an emergency personal expense distribution from an individual if the following apply:

(a) the plan permits emergency personal expense distributions;

(b) the individual received an emergency personal expense distribution from that plan; and

(c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the emergency personal expense distribution to the plan.

Q. A-13: Is a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. A-13: In the case of a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. A-14: Is a repayment of an emergency personal expense distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. A-14: In the case of a repayment of an emergency personal expense distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions, may an individual treat an otherwise permissible distribution as an emergency personal expense distribution?

A. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions and an individual receives an otherwise permissible distribution that meets the requirements of an emergency personal expense distribution (as defined in Q&A A-1 of this notice), the individual may treat the distribution on the individual's federal income tax return as an emergency personal expense distribution to the extent the distribution meets the various limitations on an emergency personal expense distribution (see Q&As A-4 through A-6 of this notice). As part of the individual's tax return, the individual will claim on Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, that the distribution is an emergency personal expense distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(I). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

B. SECTION 314 OF THE SECURE 2.0 ACT -- DOMESTIC ABUSE VICTIM DISTRIBUTIONS

Section 314 of the SECURE 2.0 Act amended section 72(t)(2) by adding section 72(t)(2)(K), which provides a new exception to the 10 percent additional tax for an eligible distribution to a domestic abuse victim (domestic abuse victim distribution). A domestic abuse victim distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1). A "domestic abuse victim distribution" is defined in section 72(t)(2)(K)(iii)(I) as any distribution from an applicable eligible retirement plan to a domestic abuse victim if made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. The term "domestic abuse" is defined in section 72(t)(2)(K)(iii)(II) as physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.

Section 72(t)(2)(K)(ii) permits an individual to receive a distribution from an applicable eligible retirement plan of up to $10,000 (indexed for inflation) without application of the 10 percent additional tax if the distribution meets the requirements to be a domestic abuse victim distribution. An "applicable eligible retirement plan" is defined in section 72(t)(2)(K)(vi)(I) as an eligible retirement plan (as defined in section 402(c)(8)(B)) other than a defined benefit plan or a plan to which sections 401(a)(11) and 417 apply.

Section 72(t)(2)(K)(iv) provides that if a distribution from an applicable eligible retirement plan to a domestic abuse victim would be a domestic abuse victim distribution (without regard to the limitation in section 72(t)(2)(K)(ii)), a plan will not be treated as failing to meet any requirement under the Code merely because the plan treats the distribution as a domestic abuse victim distribution, unless the aggregate amount of the distributions from all plans maintained by the employer (and any member of any controlled group that includes the employer) to the domestic abuse victim exceeds the limitation described in section 72(t)(2)(K)(ii).

Section 72(t)(2)(K)(v) provides that the rules relating to repayment of domestic abuse victim distributions should follow the rules in section 72(t)(2)(H)(v) (the rules for repayment of qualified birth

or adoption distributions). Therefore, an individual generally may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay a domestic abuse victim distribution (not to exceed the aggregate amount of the domestic abuse victim distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made.

Section 72(t)(2)(K)(vi)(II) provides that a domestic abuse victim distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), or the mandatory withholding rules under section 3405.

Section 72(t)(2)(K)(vi)(III) provides that any distribution that the employee or participant certifies as a domestic abuse victim distribution shall be treated as meeting the distribution requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

The amendment made to section 72(t)(2) by section 314 of the SECURE 2.0 Act applies to domestic abuse victim distributions made after December 31, 2023.

Questions and Answers Relating to Individuals Receiving Domestic Abuse Victim Distributions

Q. B-1: What is a domestic abuse victim distribution?

A. B-1: A domestic abuse victim distribution is a distribution from an applicable eligible retirement plan to a domestic abuse victim made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. A domestic abuse victim distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1).

Q. B-2: How is domestic abuse defined for the purposes of a domestic abuse victim distribution?

A. B-2: The term "domestic abuse" means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.

Q. B-3: Which types of plans are eligible to permit a domestic abuse victim distribution?

A. B-3: A domestic abuse victim distribution may be made from an applicable eligible retirement plan, which is defined in section 72(t)(2)(K)(vi)(I) as an eligible retirement plan described in section 402(c)(8)(B), other than a defined benefit plan or a plan to which the spousal consent requirements of sections 401(a)(11) and 417 apply. In general, the spousal consent requirements of sections 401(a)(11) and 417 apply to certain qualified retirement plans, including defined benefit plans, money purchase pension plans, and defined contribution plans that (1) do not provide 100 percent death benefits for surviving spouses, (2) provide benefits in the form of a life annuity, or (3) are direct or indirect transferees of a defined benefit or money purchase pension plan. See section 401(a)(11)(B) and § 1.401(a)–20, Q&A–3.

Q. B-4: Is there a dollar limitation on the amount that an individual may treat as a domestic abuse victim distribution under section 72(t)(2)(K)?

A. B-4: The aggregate amount that an individual may treat as a domestic abuse victim distribution cannot exceed the lesser of --

(a) $10,000 (indexed for inflation), or

(b) 50 percent of the present value of the nonforfeitable accrued benefit (vested accrued benefit) of the employee under the plan.

For example, Plan E is a section 403(b) plan that permits domestic abuse victim distributions, and Taxpayer D is a participant in Plan E. On August 15, 2024, Taxpayer D is eligible to receive a domestic abuse victim distribution from Plan E because Taxpayer D was a victim of domestic abuse on January 15, 2024. August 15, 2024, is less than one year after the January 15, 2024, incident. On August 15, 2024, Taxpayer D has a $15,000 vested account balance in Plan E ($7,500 is 50 percent of Taxpayer D's vested account balance). Taxpayer D requests a $7,500 domestic abuse victim distribution from Plan E. Taxpayer D is permitted to take a domestic abuse victim distribution of $7,500 from Plan E (the lesser of $7,500 (50 percent of Taxpayer D's vested account balance) and $10,000).

Q. B-5: How are the cost-of-living adjustments made to the dollar limit for domestic abuse victim distributions?

A. B-5: For taxable years beginning in a calendar year after 2024, the $10,000 amount will be increased annually by an amount equal to –

(a) The $10,000 dollar limitation, multiplied by

(b) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting calendar year 2023, for calendar year 2016 in section 1(f)(3)(A)(ii).

If any amount after adjustment under section 72(t)(2)(K)(vii) is not a multiple of $100, the amount will be rounded to the nearest multiple of $100. The adjusted amounts will be provided in future guidance issued in the Internal Revenue Bulletin.

Q. B-6: May an individual repay a domestic abuse victim distribution to an applicable eligible retirement plan?

A. B-6: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of a domestic abuse victim distribution (up to the entire amount of the domestic abuse victim distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

Questions and Answers Relating to Applicable Eligible Retirement Plans Permitting Domestic Abuse Victim Distributions

Q. B-7: Is an applicable eligible retirement plan required to permit domestic abuse victim distributions under section 72(t)(2)(K)?

A. B-7: It is optional for an applicable eligible retirement plan to permit domestic abuse victim distributions pursuant to section 72(t)(2)(K). Plan amendments adopted to permit domestic abuse victim distributions are discretionary amendments for purposes of the plan amendment

rules discussed in Section II.J. of Notice 2024-02. For information relating to the deadline for adopting plan amendments, see Section II.J of Notice 2024-02.

If an applicable eligible retirement plan does not permit domestic abuse victim distributions, the individual is permitted to treat an otherwise permissible distribution as a domestic abuse victim distribution. See Q&A B-14 of this notice.

Q. B-8: Do domestic abuse victim distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. B-8: If the employee or participant certifies that the employee or participant is eligible to receive a domestic abuse victim distribution, then the distribution is treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as a domestic abuse victim distribution.

Q. B-9: What are the certification requirements for a domestic abuse victim distribution?

A. B-9: Pursuant to section 72(t)(2)(K)(vi)(III), any distribution that an employee or participant certifies as a domestic abuse victim distribution will be treated as meeting the distribution restriction requirements under the Code for the applicable eligible retirement plan. To meet the certification requirements of section 72(t)(2)(K)(vi)(III), the employee or participant could check the box on the distribution request form to certify that (1) the employee or participant is eligible for a domestic abuse victim distribution and (2) the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse. The certification must be provided in writing and the employee or participant may use the electronic delivery rules in §1.401(a)-21(d) to provide the certification.

Q. B-10: Is a domestic abuse victim distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. B-10: A domestic abuse victim distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to a domestic abuse victim distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the domestic abuse victim distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, a domestic abuse victim distribution is subject to the withholding requirements of section 3405(b) and § 35.3405-1T.

Q. B-11: If an applicable eligible retirement plan permits domestic abuse victim distributions, is the plan required to accept a repayment of that distribution to the plan?

A. B-11: An applicable eligible retirement plan must accept the repayment of a domestic abuse victim distribution from an individual if the following apply:

(a) the plan permits domestic abuse victim distributions;

(b) the individual received a domestic abuse victim distribution from that plan; and

(c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the domestic abuse victim distribution to the plan.

Q. B-12: Is a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. B-12: In the case of a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. B-13: Is a repayment of a domestic abuse victim distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. B-13: In the case of a repayment of a domestic abuse victim distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions, may an individual treat an otherwise permissible distribution as a domestic abuse victim distribution?

A. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions and an individual receives an otherwise permissible distribution that meets the requirements of a domestic abuse victim distribution (as defined in Q&A B-1 of this notice), the individual may treat the distribution as a domestic abuse victim distribution on the individual's federal income tax return to the extent the distribution meets the limitation on a domestic abuse victim distribution (see Q&A B-4 of this notice). As part of the individual's tax return, the individual will claim on Form 5329 that the distribution is a domestic abuse victim distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(K). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

IV. REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments on all matters discussed in this notice. In particular, the Treasury

Department and the IRS invite comments on whether the Secretary should adopt regulations providing exceptions to the rule that a plan administrator may rely on an employee's certification relating to emergency personal expense distributions and procedures to address cases of employee misrepresentation.

In addition, as mentioned in the Purpose section of this notice, the Treasury Department and the IRS anticipate issuing regulations under section 72(t) and invite general comments on section 72(t). In particular, because the anticipated proposed regulations would address repayments of certain distributions under section 72(t)(2) (for example, qualified birth or adoption distributions under section 72(t)(2)(H), emergency personal expense distributions under section 72(t)(2)(I), domestic abuse victim distributions under section 72(t)(2)(K), and terminal illness distributions under section 72(t)(2)(L)), the Treasury Department and the IRS request comments relating to repayments. For example, comments are requested on the implementation of the requirement that any repayment made within the 3-year period beginning on the day after the date the distribution was received will be treated as a direct trustee-to-trustee transfer within 60 days of the distribution. Comments are also requested on procedures for determining whether a repayment meets the applicable requirements under section 72(t)(2), particularly whether it would be helpful if the anticipated proposed regulations would permit an administrator to rely on an individual's certification that any requested repayment meets the requirements under section 72(t)(2), is made within the applicable 3-year time period,[7] and does not exceed the amount of the distribution with respect to which a repayment is being made.

Comments should be submitted in writing on or before October 7, 2024, and should include a reference to Notice 2024-55. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS Notice 2024-55" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-55), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

V. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507) under control number 1545-2317. 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 information collection requirements in section III.A and B will be submitted to OMB for review and approval in accordance with 5 CFR 1320.10.

Pursuant to section 72(t)(2)(I)(iv), Q&A A-9 of this notice provides that, in determining whether an employee is eligible for an emergency personal expense distribution, an administrator of an applicable eligible retirement plan is permitted to rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution.

Q&A B-9 of this notice provides that, to meet the certification requirements of section 72(t)(2)(K)(vi)(III), an individual could check the box on the distribution request form to certify that (1) the employee or participant is eligible for a domestic abuse victim distribution and (2) the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse. The certification must be provided in writing and the employee or participant may use the electronic delivery rules in §1.401(a)-21(d) to provide the certification.

According to the Bureau of Labor and Statistics, determined as of March 2023, approximately 45 percent of civilian workers in the United States participated in defined contribution plans. The population of civilian workers represented by the March 2023 National Compensation Survey (NCS) was 145,300,100. Using 45 percent of the population reported in the NCS survey, approximately 65,385,045 civilian workers participated in defined contribution plans in March 2023.

Sections 115 and 314 of the SECURE 2.0 Act became effective January 1, 2024. The IRS does not have all the data necessary for determining paperwork for certifications of emergency personal expense and domestic victim abuse distributions. At this point, the IRS does not know how many applicable eligible retirement plans will offer these distributions or how many employees will request these distributions from applicable eligible retirement plans. Therefore, the paperwork burden is based on an estimated range of the number of employees who would apply for either an emergency personal expense distribution or a domestic abuse victim distribution from an applicable eligible retirement plan that permits such distributions.

The collection of information is required to obtain a benefit. For Q&A A-9 of this notice, the likely respondent is an individual who is requesting an emergency personal expense distribution from an applicable eligible retirement plan, as described in section 72(t)(2)(I)(iv), and self-certifying that the individual is eligible for an emergency personal expense distribution.

Estimated total annual reporting burden: 3,750 to 7,500 hours.

Estimated average annual burden per respondent: 3 minutes.

Estimated number of respondents: 75,000 to 150,000 respondents.

Estimated frequency of responses: 1 per distribution request.

For Q&A B-9 of this notice, the likely respondent is an individual who is requesting a domestic abuse victim distribution

[7] *But see section 311(b)(2) of the SECURE 2.0 Act for a special temporary rule on the effective date of the 3-year rule for repayments relating to qualified birth or adoption distributions made on or before the date of enactment of the SECURE 2.0 Act.*

from an applicable eligible retirement plan, as defined in section 72(t)(2)(K)(vi)(I), and self-certifying that the individual is eligible for a domestic abuse victim distribution and that the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse.

Estimated total annual reporting burden: 3,750 to 7,500 hours.

Estimated average annual burden per respondent: 3 minutes.

Estimated number of respondents: 75,000 to 150,000 respondents.

Estimated frequency of responses: 1 per distribution request.

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 law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

VI. DRAFTING INFORMATION

The principal authors of this notice are Naomi Lehr, Vernon Carter, and Pamela R. Kinard of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact Mr. Vernon Carter at (202) 317-6799, Ms. Naomi Lehr at (202) 317-4102, or Ms. Pamela Kinard at (202) 317-6000 (not toll-free numbers).

Part IV

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2024-28

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The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 08, 2024, and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Mary Duque Juniors of Children’s Hospital Los Angeles	3/1/2020	Los Angeles, CA
Leadville-Lake County Chamber of Commerce Foundation	1/1/2020	Leadville, Co

Notice of Proposed Rulemaking

Certain Partnership Related-Party Basis Adjustment Transactions as

REG-124593-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would identify certain partnership related-party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction. Material advisors and certain participants in these transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors. This document also provides a notice of a public hearing on the proposed regulations.

DATES: *Comments due*: Written or electronic comments must be received by August 19, 2024.

Public hearing: A public hearing on this proposed regulation has been scheduled for Tuesday, September 17, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by August 19, 2024. If no outlines are received by August 19, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 2024. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by 5 p.m. ET on September 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at https://www.regulations.gov (indicate IRS and REG-124593-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-124593-23), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth Zanet of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317-6007; concerning the submission of comments or the hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to the Income Tax Regulations (26 CFR part 1) under section 6011 of the Internal Revenue Code (Code). The proposed additions would add §1.6011-18 to identify certain partnership related-party basis adjustment transactions as transactions of interest for purposes of section 6011 (proposed regulations).

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure to Disclose

Section 6011(a) generally provides that, if required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), any person made liable for any tax imposed by the Code, or with respect to the collection thereof, must make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement must include therein the information required by such forms or regulations.

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of §1.6011-4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in §1.6011-4(e).

Reportable transactions are identified in §1.6011-4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* §1.6011-4(b)(2) through (6). Section 1.6011-4(b)(6) defines a "transaction of interest" as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

Section 1.6011-4(c)(4) provides that a transaction is "substantially similar" if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a transaction of interest even though it may involve different entities or use different Code provisions.

Section 1.6011-4(c)(3)(i)(E) provides that a taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

Section 1.6011-4(d) and (e) provide that the disclosure statement, *Form 8886, Reportable Transaction Disclosure Statement* (or successor form), must be attached to the taxpayer's tax return for each taxable year in which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer

pertaining to a particular reportable transaction.

Section 1.6011-4(e)(2)(i) provides that if a transaction becomes a transaction of interest after the filing of a taxpayer's tax return (including an amended return) reflecting the taxpayer's participation in the transaction of interest and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a transaction of interest. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a transaction of interest. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of transactions of interest in the published guidance identifying the transaction.

Participants required to disclose these transactions under §1.6011-4 who fail to do so are subject to penalties under section 6707A of the Code. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a transaction of interest, the maximum penalty amount is $10,000 in the case of a natural person and $50,000 in any other case.

Additional penalties may also apply. In general, section 6662A of the Code imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

II. *Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure to Disclose*

Section 6111(a) provides that each material advisor with respect to any reportable transaction must make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary.

Section 301.6111-3(a) of the Procedure and Administration Regulations (26 CFR part 301) provides that each material advisor with respect to any reportable transaction, as defined in §1.6011-4(b), must file a return as described in §301.6111-3(d) by the date described in §301.6111-3(e).

Section 301.6111-3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in §301.6111-3(b)(3) for the material aid, assistance, or advice. Under §301.6111-3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in §1.6011-4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in §301.6111-3(d) and (e). Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. A person may become a material advisor with respect to a transaction that is later identified as a transaction of interest. *See* §301.6111-3(b)(4). The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111-3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers for whom the material advisor acts as a material advisor as defined in §301.6111-3(b). The reportable transaction number must be provided at the time the transaction is entered into, or if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) of the Code provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(1), the penalty for reportable transactions other than listed transactions, including transactions of interest, is $50,000.

Additionally, section 6112(a) of the Code provides that each material advisor with respect to any reportable transaction, whether or not required to file a return under section 6111 with respect to such transaction, must maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with §301.6112-1(e).

A material advisor may be subject to a penalty under section 6708 of the Code for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

III. *Basis Adjustments under Subchapter K*

A. *In general*

Under subchapter K of chapter 1 of the Code (subchapter K), a distribution by a partnership of the partnership's property (partnership property) or a transfer of an interest in a partnership (partnership interest) may result in an adjustment to the basis of the distributed property, partnership property, or both.

A distribution of partnership property may result in an adjustment to the basis of the distributed property under section 732(a), (b), or (d) of the Code. In the case of a distribution of partnership property to a partner by a partnership with an election under section 754 of the Code (section 754 election) in effect, or with respect to which there is a substantial basis reduction as described in section 734(d) of the Code, the distribution may also result in an adjustment to the basis of the partnership's remaining property (remaining partnership property) under section 734(b).

If a partnership interest is transferred by sale or exchange or on the death of a partner, and the partnership either has a section 754 election in effect or has a substantial built-in loss with respect to the transfer of the partnership interest as described in section 743(d) of the Code, the transfer may result in an adjustment to the basis of partnership property under section 743(b) with respect to the transferee partner.

Section 754 provides that if a partnership makes an election in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided by section 734, and in the case of a transfer of a partnership interest, in the manner provided in section 743. Unless the election is revoked in accordance with the regulations under section 754, the section 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

B. *Basis adjustments under section 732*

Section 732 governs a distributee partner's basis in distributed property other than money. In the case of a current distribution, and except as provided under section 732(a)(2), section 732(a)(1) provides that the distributee partner's basis in distributed property (other than money) is equal to the partnership's adjusted basis in the distributed property immediately before the distribution. Under section 732(a)(2), however, a distributee partner's basis in distributed property is limited to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a liquidating distribution, section 732(b) provides that the distributee partner's basis in distributed property (other than money) is equal to the adjusted basis of the distributee partner's partnership interest reduced by any money distributed to such partner in the same transaction.

In the case of a distribution of more than one property from a partnership, the basis of the distributed properties to which section 732(a)(2) and (b) apply must be allocated among the distributed properties under the rules of section 732(c) and the regulations thereunder.

C. *Basis adjustments under section 734*

In the case of a distribution of property by a partnership with a section 754 election in effect, and for which either the distributee partner recognizes gain or loss on the distribution, or for which the basis of the distributed property in the distributee partner's hands, as determined under section 732, differs from the partnership's adjusted basis in the distributed property immediately before the distribution, section 734(b) requires the partnership to increase or decrease (as applicable) the basis of its remaining partnership property. Also, in the case of a distribution of property by a partnership that results in a substantial basis reduction under section 734(d), the basis of remaining partnership property must be adjusted under section 734(b), even if the partnership does not have a section 754 election in effect.

Section 734(b)(1) requires a partnership to increase the basis of its remaining partnership property if a distribution of partnership property by the partnership results in the distributee partner recognizing gain under section 731(a)(1) of the Code, or if property (other than money) to which section 732(a)(2) or (b) applies is distributed to the distributee partner and the property's adjusted basis to the partnership immediately before the distribution is greater than the distributee partner's basis in the distributed property as determined under section 732. Section 731(a)(1) requires a distributee partner to recognize gain in a current or liquidating distribution to the extent that any money distributed to that partner in the distribution exceeds the adjusted basis of that partner's partnership interest immediately before the distribution. The amount of the basis increase to the partnership's remaining property under section 734(b)(1) following a distribution of partnership property to a partner is equal to the amount of gain recognized by the distributee partner in the distribution under section 731(a)(1) and the excess of the partnership's adjusted basis in the distributed property immediately before the distribution over the distributee partner's basis in the distributed property as determined under section 732.

Section 734(b)(2) requires a partnership to decrease the basis of its remaining property if a distribution of property by the partnership results in the distributee partner recognizing loss under section 731(a)(2), or if property (other than money) is distributed to the distributee partner in a distribution to which section 732(b) applies and the property's adjusted basis to the partnership immediately before the distribution is less than the distributee

partner's basis in the distributed property as determined under section 732. Under section 731(a)(2), a distributee partner may recognize a loss in a liquidating distribution of that partner's interest in the partnership to the extent that such partner received only money, unrealized receivables described in section 751(c), or inventory items described in section 751(d) of the Code in the distribution. In such a case, the distributee partner is required to recognize a loss to the extent that such partner's adjusted basis in the partnership interest exceeds the sum of any money distributed to that partner in the distribution and the basis to the distributee partner (determined under section 732) of any unrealized receivables or inventory received by that partner in the distribution. The amount of the basis decrease to the partnership's remaining property under section 734(b)(2) following a distribution of partnership property to a partner is equal to the amount of loss recognized by the distributee partner in the distribution under section 731(a)(2) and the excess of the distributee partner's basis in the distributed property as determined under section 732 over the partnership's adjusted basis in the distributed property immediately before the distribution.

A partnership without a section 754 election in effect is subject to a mandatory basis adjustment under section 734(b)(2) if there is a substantial basis reduction with respect to a distribution of partnership property. Under section 734(d), a substantial basis reduction with respect to a distribution of partnership property occurs if the sum of the amount of loss recognized to the distributee partner on the distribution, plus any increase in basis in the distributed property to the distributee partner under section 732(b), exceeds $250,000.

D. *Basis adjustments under section 743(b)*

Generally, if a partnership interest is transferred in a sale or exchange or on the death of a partner, the transferee partner's basis in the transferred partnership interest is determined under section 742 of the Code and the basis of partnership property is determined under section 743(a). Section 742 provides that the transferee partner's basis in a partnership interest acquired other than by contribution is determined under part II of subchapter O of chapter 1 of the Code, beginning at section 1011 of the Code and following. Thus, for example, a transferee partner's basis in a partnership interest acquired by purchase generally is cost basis under section 1012 of the Code. Section 743(a) provides that, in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, the basis of partnership property is not adjusted unless either the partnership has a section 754 election in effect or the partnership has a substantial built-in loss with respect to the transfer of the partnership interest.

Under section 743(b), in the case of a transfer of a partnership interest by sale or exchange or on the death of a partner, a partnership with a section 754 election in effect or that has a substantial built-in loss with respect to the transfer of the partnership interest must increase or decrease (as applicable) the adjusted basis of partnership property with respect to the transferee partner.

Section 743(b)(1) provides that the adjusted basis of partnership property is increased by the excess of the transferee partner's basis in the transferred partnership interest over the transferee partner's proportionate share of the adjusted basis of partnership property.

Section 743(b)(2) provides that the adjusted basis of partnership property is decreased by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property over the transferee partner's basis in the transferred partnership interest.

A partnership without a section 754 election is subject to a mandatory basis adjustment under section 743(b) with respect to a transfer of a partnership interest if the partnership has a substantial built-in loss with respect to the transfer of the partnership interest. Under section 743(d)(1), a partnership has a substantial built-in loss with respect to a transfer of an interest in the partnership if either the partnership's adjusted basis in its property exceeds the fair market value of such property by more than $250,000, or the transferee partner would be allocated a loss of more than $250,000 if the partnership assets were sold for cash equal to their fair market value immediately after the transfer.

Under regulations prescribed by the Secretary, a basis adjustment under section 743(b) is an adjustment to the basis of partnership property with respect to the transferee partner only. The transferee partner's proportionate share of the partnership's adjusted basis in its property generally is determined in accordance with the transferee partner's interest in the partnership's previously taxed capital (including the transferee partner's share of partnership liabilities) under regulations prescribed by the Secretary.

In the case of a transferee partner who acquired all or part of its partnership interest by a transfer to which no section 754 election was in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within two years, section 732(d) and the regulations thereunder allow the partner to make an election to treat as the adjusted basis of the distributed property the adjusted basis such property would have if the adjustment under section 743(b) were in effect with respect to the partnership property.

Under §1.732-1(d)(4), the special basis adjustment under section 732(d) is required to apply to a distribution of property to a partner who acquired all or part of its interest by a transfer from a partnership without a section 754 election in effect for the taxable year of such transfer, whether or not the distribution is made within two years of such transfer, if at the time the partnership interest was transferred, (i) the fair market value of all partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership, (ii) an allocation of basis under section 732(c) upon a liquidation of the transferee partner's interest in the partnership immediately after the transfer of such interest would have resulted in a shift of basis from property not subject to an allowance for depreciation, depletion, or amortization to property subject to such an allowance, and (iii) a basis adjustment under section 743(b) would change the basis to the transferee partner of the property actually distributed.

E. *Allocation of basis adjustments under sections 734 and 743*

Section 734(c) states that a basis adjustment under section 734(b) is allocated among partnership properties under the rules of section 755 of the Code. Section 743(c) states that a basis adjustment under section 743(b) is allocated among partnership properties under the rules of section 755.

Section 755(a) generally requires basis adjustments under section 734(b) or section 743(b) to be allocated in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties or in any other manner permitted by regulations. In addition, section 755(b) requires these basis adjustments to be allocated to partnership property of a like character or to subsequently acquired partnership property of a like character if such property is not available or has insufficient basis at the time of the basis adjustment (because a decrease in the adjusted basis of the property would reduce the basis of such property below zero). Section 755(c) provides a special rule that prohibits allocating a basis decrease under section 734(b) to the stock of a corporation that is a partner of the partnership (or to any related partner in the partnership within the meaning of section 267(b) of the Code or section 707(b)(1) of the Code).

F. *Common terminology for bases with respect to a partnership interest*

A partner's adjusted basis in its partnership interest commonly is referred to as the partner's "outside basis" in its partnership interest. A partnership's adjusted basis in its property commonly is referred to as the "inside basis" of the partnership's property. Each partner has a share of inside basis. For ease of explanation, this terminology is used in part IV of this Background section.

IV. *Partnership Related-Party Basis Adjustment Transactions*

A. *Overview*

The Treasury Department and the IRS are aware of related persons using partnerships to engage in transactions that inappropriately exploit the basis adjustment provisions of subchapter K applicable to distributions of partnership property or transfers of partnership interests discussed in part III of this Background section. This awareness results from the IRS's review of various partnership transactions involving related parties in which basis adjustments were created to artificially generate or regenerate Federal income tax benefits that resulted in significant tax savings without a corresponding economic outlay. These transactions were carefully structured to exploit the mechanical basis adjustment provisions of subchapter K to produce significant tax benefits with little or no economic impact on the related parties, and in a manner that would not be a likely arrangement between partners negotiating at arm's-length.

Four variations of the transactions are referred to in this preamble as "Partnership Related-Party Basis Adjustment Transactions." The manner in which the transactions exploit the basis adjustment provisions of sections 732(b) and (d), 734(b), and 743(b), and the potential for tax abuse presented by the transactions are described in this part IV and part VI of this Background section.

Generally, in a Partnership Related-Party Basis Adjustment Transaction, partnership property is distributed to a partner who is related to one or more other partners, and that distribution results in a person related to the distributee partner, the distributee partner, or both, receiving all or a share of a basis increase in the distributed property or remaining partnership property under section 732 or 734(b) (as applicable); alternatively, a partnership interest is transferred between related persons or to a transferee partner who is related to an existing partner in the partnership, and that transfer results in an increase to the inside basis in partnership property with respect to the transferee partner under section 743(b).

Partnership Related-Party Basis Adjustment Transactions generally are structured so that, under the applicable allocation rules (sections 732(c), 734(c), 743(c), and 755), the basis increase is allocated to property that is eligible for cost recovery allowances (or eligible for a shorter cost recovery period) or that the partnership or the distributee partner disposes of in a taxable sale or exchange. Accordingly, the basis increase results in related partners decreasing their overall taxable income through additional or accelerated cost recovery allowances or decreasing their taxable gain or increasing their taxable loss on the subsequent taxable disposition of the property subject to the basis increase.

The related partners receive these tax benefits directly in the case of a distribution of property in which the basis of the distributed property is increased in the distributee partner's hands under section 732(b) or (d). They receive these benefits indirectly in the case of a transfer of a partnership interest in which the inside basis of partnership property is increased for the transferee partner under section 743(b) or in the case of a distribution of property that results in an increase to the common basis of partnership property under section 734(b). Whether the tax benefits are received directly or indirectly, the resulting decrease in taxable income or gain (or increase in taxable loss) benefits the related-party group as a whole. Further, because the partners are related, the distributions or transfers may have little or no effect on the overall economic ownership of the property yet produce significant tax benefits shared by the related partners.

A related partner's partnership interest must have certain characteristics to create the opportunity for a Partnership Related-Party Basis Adjustment Transaction. In general, these characteristics are (1) a partner's outside basis in its partnership interest that is low compared to the partnership's basis in property it distributes to such partner, (2) a partner's outside basis in its partnership interest that is high compared to such partner's share of the partnership's basis in the partnership property (that is, the partner's share of inside basis), or (3) a partner's outside basis in its partnership interest that is high compared to the partnership's basis in property it distributes to such partner in liquidation of the partner's interest. Partnerships with related parties can create these characteristics through orchestrated contributions and distributions, as well as allocations under section 704(b) and (c). In most

commercial transactions involving unrelated parties, the opportunity for abuse is limited because each party has separate, and often competing, economic and tax interests and the parties transact at arm's length. In contrast, for related parties, basis can be manipulated to provide a material net tax benefit to the related parties, as illustrated in part IV.B, C, D and E of this Background section.

B. Partnership Related-Party Basis Adjustment Transactions under section 734(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 734(b), a partnership with a section 754 election in effect and two or more direct or indirect partners that are related to each other makes a current or liquidating distribution of partnership property to one or more of the related partners. Immediately before the distribution, the partnership's basis in the distributed partnership property exceeds the distributee partner's basis in its partnership interest (that is, the partnership distributes property with a relatively high inside basis to a distributee partner with a relatively low outside basis). Under section 732(a)(2) or (b), the low-outside basis partner takes a basis in the distributed property that is lower than the inside basis of the property immediately before the distribution.

As a result of the basis decrease to the distributed property in the hands of the distributee partner under section 732(a)(2) or (b), the partnership increases the basis of its remaining partnership properties under section 734(b) by an amount equal to the excess of the partnership's basis in the distributed property immediately before the distribution over the basis of the distributed property in the hands of the distributee partner immediately after the distribution.

As a result of the distribution, under sections 734(c) and 755, the partnership allocates the basis increase to its remaining partnership properties; these remaining partnership properties are eligible for cost recovery allowances or are disposed of by the partnership in a taxable sale or exchange. The partnership then claims increased cost recovery allowances or decreased taxable gain (or increased taxable loss) on the disposition of the partnership property with the increased basis.

Because the transaction occurs among related persons, any economic consequences inherent in distributing partnership property to a partner that will have to reduce the basis of the distributed property under section 732(a)(2) or (b) can be minimized. For example, the distributed property might be property that the distributee partner intends to hold indefinitely and that is not eligible for cost recovery allowances. Further, because the transaction occurs among related persons, the overall economic ownership of the property remains substantially the same as before the transaction.

Related parties may choose to structure a distribution of partnership property to a related partner so that gain is recognized, for example, by distributing cash or marketable securities. If the recognized gain is insignificant compared with the increase in basis obtained under section 734(b) or is offset because of a tax attribute of the distributee partner (such as net operating losses), then the transfer may be considered a Partnership Related-Party Basis Adjustment Transaction under section 734(b).

C. Partnership Related-Party Basis Adjustment Transactions under section 743(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 743(b), a partner transfers an interest in a partnership with a section 754 election in effect to a related transferee or a transferee that is related to one or more of the partners in a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code, such as a transfer under section 351(a) or 721(a) of the Code. Because the transfer is accomplished through a nonrecognition transaction, the transferee's basis in the transferred partnership interest generally will be equal to the transferor partner's basis in the transferred partnership interest (that is, the transferred partnership interest will be substituted basis property within the meaning of section 7701(a)(42) of the Code, such as that provided under section 362(a) of the Code in the case of a transfer of property to a corporation in exchange for stock under section 351(a), or under section 722 of the Code in the case of a transfer of property to a partnership in exchange for a partnership interest under section 721(a)).

In order for the transfer to give rise to a basis increase under section 743(b)(1), the transferor partner must have an inside-outside basis disparity with respect to its partnership interest so that the transferor partner's basis in the partnership interest (that is, the transferor partner's outside basis that carries over to the transferee partner) is greater than the transferor partner's share of the partnership's basis in its properties (that is, the transferor partner's share of inside basis immediately prior to the transfer). Because a section 754 election is in effect for the taxable year of the transfer, section 743(b) requires a basis increase to eliminate the inside-outside basis disparity of the transferee partner. The basis increase under section 743(b)(1) is equal to the excess of the transferee partner's outside basis over its proportionate share of the inside basis.

As a result of the transfer, under sections 743(c) and 755, the partnership allocates the basis increase with respect to the transferee partner to its partnership properties; these properties are eligible for cost recovery allowances or are disposed of by the partnership in a taxable sale or exchange. The transferee partner then receives increased allocations of cost recovery allowances or lower allocations of taxable gain (or higher allocations of taxable loss) on the sale or exchange of the property by the partnership. Further, because the transaction occurs among related persons, the overall economic ownership of the partnership among the related partners remains the same as before the transaction.

Related parties may choose to structure a transfer of a partnership interest between a related transferor partner and related transferee so that gain is recognized. If the recognized gain is insignificant compared with the increase in basis obtained under section 743(b)(1) or is offset because of a tax attribute of the transferor (such as net operating losses), then the transfer may be considered a Partnership Related-Party Basis Adjustment Transaction under section 743(b).

D. Partnership Related-Party Basis Adjustment Transactions under section 732(b)

In a Partnership Related-Party Basis Adjustment Transaction under section 732(b), a partnership with two or more direct or indirect partners that are related makes a liquidating distribution of property to a related partner. Immediately before the distribution, the partnership's basis in the distributed property was relatively low and the distributee partner had a relatively high outside basis. Under section 732(b), the distributee partner's basis in the distributed property is equal to the partner's outside basis. As a result, the distributed property's basis is increased by an amount equal to the excess of the distributee partner's outside basis over the partnership's basis in the distributed property. As part of the transaction, under section 732(b) and (c), the distributee partner allocates the basis increase to its distributed property; this property is eligible for cost recovery allowances or is property that the distributee partner disposes of in a taxable sale or exchange. Accordingly, the distributee partner receives increased cost recovery allowances or decreases its taxable gain (or increases taxable loss) on the disposition of the distributed property.

Because the transaction occurs among related parties, any economic consequences inherent in distributing partnership property that may result in tax benefits to the distributee, potentially at the expense of the remaining partners, is minimized. Further, because the transaction occurs among related persons, the overall economic ownership of the property among the related partners remains the same as before the transaction.

As a result of the basis increase to the distributed property, the partnership may be required to decrease the basis of one or more of its remaining properties under the elective or mandatory basis adjustment provisions of section 734(b)(2) or (d). The parties may plan the transaction so that this reduction in basis will not have an adverse tax effect on the related parties because the partnership can allocate the basis reduction to property the partnership intends to hold indefinitely and that is not eligible for cost recovery allowances.

The related parties may achieve similar results through a transaction in which the partnership is liquidated. In a Partnership Related-Party Basis Adjustment Transaction in which a partnership makes liquidating distributions to all partners, a partner with a high outside basis (distributee partner) receives a liquidating distribution of low-inside basis property that is eligible for cost recovery allowances or that the distributee partner disposes of in a taxable sale or exchange. The partnership also distributes property to one or more parties related to the distributee partner (related distributee partner(s)), and such distribution may require a reduction to the basis of property under section 732(b) because the related distributee partner's basis in the partnership interest at the time of liquidation may be low compared to the partnership's basis in the distributed property. Similar to the version of the transaction in which only the distributee partner's partnership interest is liquidated, the property that is subject to reduction in basis as a result of the liquidation may be property that the related distributee partner(s) intend to hold indefinitely and that is not eligible for cost recovery allowances.

E. Partnership Related-Party Basis Adjustment Transactions under section 732(d)

In a Partnership Related-Party Basis Adjustment Transaction under section 732(d), a partnership with two or more direct or indirect partners that are related makes a current or liquidating distribution of property to a related partner. Prior to the distribution, the related partner acquired all or part of its partnership interest in a transaction that would have been a Partnership Related Party Basis Adjustment Transaction under section 743(b) if the partnership had a section 754 election in effect.

The subsequent property distribution to the related transferee partner is made within two years of the transfer (in the case of an elective basis adjustment under section 732(d)) or at any time after the transfer if at the time of the transfer the fair market value of the partnership's property (other than money) exceeded 110 percent of the property's adjusted basis to the partnership (in the case of a mandatory basis under section 732(d)). In either case, under section 732(d), for purposes of section 732(a), (b), and (c), the adjusted partnership basis of the distributed property is treated as equal to the adjusted basis the property would have had if the basis adjustment under section 743(b) were in effect at the time of the transfer.

As part of the transaction, the related distributee partner receives property with a higher basis than the property had before the transaction and either the property is eligible for cost recovery allowances or the distributee partner recovers the property's basis by disposing of it in a taxable sale or exchange.

Similar to a Partnership Related-Party Basis Adjustment Transaction under section 732(b), because the transaction occurs among related parties, any economic consequences inherent in distributing partnership property to a partner that, as a result of the distribution, will receive tax benefits is lessened or eliminated. Further, because the transaction occurs among related persons, the economic ownership of the property remains essentially the same as before the transaction.

V. *Tax-Indifferent Parties involved in Partnership Basis Adjustment Transactions*

The Treasury Department and the IRS are aware that persons using partnerships that include tax-indifferent parties as partners may undertake transactions that accomplish the same results as the Partnership Related-Party Basis Adjustment Transactions. These transactions may take the form of any of the variations of the transactions described in part IV of this Background section and produce the same tax benefits for the taxable partners, except that the partners may not be related and negative tax consequences resulting from the transactions are borne by the tax-indifferent party. For example, a partnership with a section 754 election in effect and unrelated partners, one of which is a tax-indifferent party with a low outside basis, may distribute high-basis nondepreciable property to the tax-indifferent party. Under section 732(a)(2) or (b), the distribution results in the tax-indifferent party taking a basis in the distributed property that is lower than the partnership's basis in

the property immediately before the distribution. Under section 734(b), the partnership must adjust the basis of its remaining property and, as part of the transaction under sections 734(c) and 755, it increases the basis of depreciable property. Since the distributee partner is a tax-indifferent party, it does not experience any negative tax consequences from receiving property subject to a basis decrease as a result of the distribution. At the same time, the partners that are not tax-indifferent receive the tax benefit of increased cost recovery allowances through the partnership.

VI. *Potential Tax Avoidance Using Partnership Related-Party Basis Adjustment Transactions*

In Partnership Related-Party Basis Adjustment Transactions, related persons use partnerships to engage in transactions that inappropriately apply the basis adjustments under section 732, 734(b), or 743(b). These provisions can be exploited to create inappropriate basis increases to the partnership's properties, including any distributed property, but without meaningful change in the economic ownership of the properties or partnership interests because the parties involved in the transactions are related. The basis increases may be used to increase cost recovery allowances or decrease taxable gain or increase taxable loss on the subsequent taxable disposition of the property by the partnership or distributee partner.

The Treasury Department and the IRS propose to identify the Partnership Related-Party Basis Adjustment Transactions and substantially similar transactions as transactions of interest under proposed regulations described in the Explanation of Provisions section of this preamble. Identifying the transactions as transactions of interest would substantially improve the IRS's ability to detect abusive transactions and gather information about their prevalence and the contexts in which they arise.

Explanation of Provisions

I. *Partnership Related-Party Basis Adjustment Transactions of Interest*

Proposed §1.6011-18(a) would identify transactions that are the same as or substantially similar (within the meaning of §1.6011-4(c)(4)) to transactions described in proposed §1.6011-18(c) as transactions of interest for the purposes of §1.6011-4(b)(6). Proposed §1.6011-18(c) would include a relatedness requirement and a $5 million minimum threshold requirement. Further, proposed §1.6011-18(a) would identify transactions that are substantially similar (within the meaning of §1.6011-4(c)(4)) to the transactions described in proposed §1.6011-18(c) as including the transactions described in proposed §1.6011-18(d).

The relatedness requirement would be set forth in proposed §1.6011-18(b)(8) and (9). Proposed §1.6011-18(b)(8) would define "related" as having a relationship described in section 267(b) (without regard to section 267(c)(3)) or 707(b)(1). Proposed §1.6011-18(b)(9) would define "related partners" as partners of a partnership that are related in the following manner—(i) in a transaction described in proposed §1.6011-18(c)(1), the partnership has two or more direct or indirect partners that are related to each other within the meaning of proposed §1.6011-18(b)(8), or (ii) in a transaction described in proposed §1.6011-18(c)(2), the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, within the meaning of proposed §1.6011-18(b)(8). The relatedness requirement may be met either immediately before or immediately after a basis adjustment transaction described in proposed §1.6011-18(c)(1) or (2).

Proposed §1.6011-18(c) would provide that a transaction of interest is a transaction the factual elements of which are described in proposed §1.6011-18(c)(1)(i) through (iii) or (c)(2). A basis adjustment transaction under proposed §1.6011-18(c)(1)(i) would occur when a partnership makes a current or liquidating distribution of property to a partner who is related to one or more partners, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c), and the $5 million threshold under proposed §1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed §1.6011-18(c)(1)(ii) would occur when a partnership distributes property to a partner who is related to one or more partners in liquidation of a partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c), and the $5 million threshold under proposed §1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed §1.6011-18(c)(1)(iii) would occur when a partnership distributes property to a partner who is related to one or more partners, the basis of one or more distributed properties is increased under section 732(d), the related partner acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in proposed §1.6011-18(c)(2) if the partnership had a section 754 election in effect for the year of transfer, and the $5 million threshold under proposed §1.6011-18(c)(3) is met.

A basis adjustment transaction under proposed §1.6011-18(c)(2) would occur when a partner transfers an interest in the partnership to a related transferee or to a person who is related to one or more existing partners in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c), and the $5 million threshold under proposed §1.6011-18(c)(3) is met. Proposed §1.6011-18(b)(2) would define nonrecognition transaction as defined in section 7701(a)(45) (other than a transfer on the death of a partner).

Proposed §1.6011-18(c)(3) would provide rules for determining the $5 million threshold. Under proposed §1.6011-18(c)(3), a basis adjustment would include basis increases from multiple transactions described in proposed §1.6011-18(c)(1) or (2) by the same partner or partnership during the taxable year that in the aggregate (without netting for any basis adjustments in the same transaction or another transaction that reduces basis) and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A of the Code (subtitle A) is required to be paid by any of the related parties to the transaction equal or exceed $5 million. Accordingly, a transaction of a partner or partnership described in proposed §1.6011-18(c)(1) or (2) that results in a basis increase of less than $5 million during the taxable year would be a transaction of interest under proposed §1.6011-18(a) if, in the

same taxable year, the partner or partnership participated in another transaction or transactions described in proposed §1.6011-18(c)(1) or (2), and in the aggregate, the transactions resulted in a basis increase that equals or exceeds $5 million, without regard to any basis decrease resulting from the transactions and after reducing the resulting aggregate amount by the gain recognized, if any, on which tax imposed under subtitle A is required to be paid by any of the related parties to the transactions. A threshold of $5 million of basis increases in a taxable year to which no corresponding tax is paid should be sufficiently large to capture situations that use the provisions of subchapter K to produce significant tax benefits with little or no economic impact.

If a basis adjustment transaction is described in proposed §1.6011-18(c)(1)(i) through (iii) or (c)(2), any basis adjustments to recoverable property must be reported in the taxable year of the basis adjustment transaction, in each taxable year there is a cost recovery allowance, and in the taxable year the recoverable property is disposed of in a transaction in which gain or loss is recognized in whole or in part. Any basis adjustments to other property must be reported in the taxable year of the basis adjustment transaction and the taxable year in which the other property is disposed of in a transaction in which gain or loss is recognized in whole or in part. *See* proposed §1.6011-18(e) and (f).

Proposed §1.6011-18(b)(7) would define recoverable property as property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code.

II. *Examples of Partnership Related-Party Basis Adjustment Transactions of Interest*

The following examples illustrate the transactions of interest described in proposed §1.6011-18(c).

A. Example 1. A Partnership Related-Party Basis Adjustment Transaction under proposed §1.6011-18(c)(1)(i).

XY Partnership is owned by partners X and Y. The partners are related to each other within the meaning of proposed §1.6011-18(b)(8) and (b)(9)(i). Each partner directly owns 50 percent of the capital and profits interests in XY Partnership and shares losses equally. X has an outside basis of $10 million, and Y has an outside basis of $1 million. XY Partnership owns property it uses in its trade or business, including Property 1 and Property 2. For Federal income tax purposes, Property 1 is depreciable property and Property 2 is nondepreciable property. XY Partnership has an adjusted basis in Property 1 of zero, and an adjusted basis in Property 2 of $10 million.

XY Partnership has a section 754 election in effect for the taxable year and makes a current distribution of Property 2 to Y. Under section 732(a)(2), Y's basis in distributed Property 2 is limited to Y's adjusted basis in its partnership interest of $1 million. As a result of the distribution to Y, Property 2's adjusted basis is decreased from $10 million immediately before the distribution to $1 million in Y's hands. Under section 734(b), XY Partnership must increase the basis of its remaining property. The amount of the basis increase is equal to the excess of XY Partnership's basis in Property 2 immediately before the distribution of $10 million over Y's adjusted basis in Property 2 after the distribution of $1 million, which results in an increase to the basis of XY Partnership's remaining property of $9 million.

Under sections 734(c) and 755 and the regulations thereunder, XY Partnership allocates the basis increase of $9 million to Property 1. As a result, XY Partnership claims depreciation deductions based on an increased basis in Property 1.

B. Example 2. A Partnership Related-Party Basis Adjustment Transaction under proposed §1.6011-18(c)(1)(ii).

DEF Partnership is owned by partners D, E and F. The partners are related to each other within the meaning of proposed §1.6011-18(b)(8) and (b)(9)(i). D's outside basis is $7 million. E and F each have an outside basis of $1 million. DEF Partnership owns only two properties, Property 1 and Property 2, both of which it uses in its trade or business. For Federal income tax purposes, Property 1 is depreciable property and Property 2 is nondepreciable property. DEF Partnership has an adjusted basis in Property 1 of zero, and an adjusted basis in Property 2 is $9 million.

DEF Partnership distributes Property 1 to D in liquidation of D's partnership interest. Under section 732(b), D's basis in distributed Property 1 is equal to $7 million. As a result, D claims depreciation deductions based on a $7 million basis in Property 1.

C. Example 3. A Partnership Related-Party Basis Adjustment Transaction under proposed §1.6011-18(c)(1)(iii).

XYZ Partnership is owned by partners X, Y and Z. The partners are related to each other within the meaning of proposed §1.6011-18(b)(8) and (b)(9)(i). Each partner directly owns one-third of the capital and profits interests in XYZ Partnership and shares losses equally.

XYZ Partnership owns Property 1, Property 2, and Property 3. Property 1 is depreciable property, and XYZ Partnership's adjusted basis in Property 1 is zero. Property 2 and Property 3 are nondepreciable property.

X acquired its interest in XYZ Partnership in a nonrecognition transaction from a person related to X within the meaning of proposed §1.6011-18(b)(8). At the time of the transfer, XYZ Partnership did not have a section 754 election in effect. Immediately after the transfer, X's outside basis was $12 million and share of inside basis was $2 million. If XYZ Partnership had a section 754 election in effect at the time of the transfer, XYZ Partnership would have adjusted X's share of inside basis under section 743(b). Assume that the adjustment under section 743(b) would have resulted in a basis increase to Property 1 of $10 million.

In a taxable year that is within two years of the transfer of the partnership interest to X, XYZ Partnership makes a current distribution of Property 1 to X. Under section 732(a)(1), X's adjusted basis in Property 1 is zero. However, X makes an election under section 732(d) to adjust the basis of Property 1 to the adjusted basis it would have if the adjustment under section 743(b) were in effect with respect to the partnership property at the time X acquired its interest. As a result

of the election under 732(d), because the adjusted basis of Property 1 under section 743(b) with respect to X would have been increased by $10 million, X takes a basis in Property 1 equal to $10 million and claims depreciation deductions based on a $10 million basis in Property 1.

D. Example 4. A Partnership Related-Party Basis Adjustment Transaction under proposed §1.6011-18(c)(2).

AB Partnership is owned by partners A and B. A owns 95 percent of the capital and profits interests in AB Partnership and is allocated 95 percent of all losses. B owns 5 percent of the capital and profits interests in AB Partnership and is allocated 5 percent of all losses. A's outside basis is $6 million and share of inside basis is $1 million. AB Partnership owns depreciable property it uses in a trade or business.

In a taxable year in which AB Partnership has a section 754 election in effect, A transfers its entire partnership interest to C, a person related to A within the meaning of proposed §1.6011-18(b)(8) and (b)(9)(ii), in a nonrecognition transaction in which no gain was recognized. Because AB Partnership has a section 754 election in effect for the taxable year of the transfer, under section 743(b)(1), AB Partnership increases the basis of the partnership property with respect to C by $5 million.

Assume that under sections 743(c) and 755 and the regulations thereunder, the basis increase with respect to C of $5 million is allocated to partnership property that is depreciable. As a result, C may be allocated depreciation deductions over the recovery periods of the partnership properties equal to the amount of the basis increase under section 743(b)(1).

III. *Substantially Similar Transactions*

Proposed §1.6011-18(a) would provide that substantially similar transactions include, but are not limited to, the transactions described in proposed §1.6011-18(d). For purposes of proposed §1.6011-18, transactions would be "substantially similar" transactions if the transactions are substantially similar within the meaning of §1.6011-4(c)(4).

Under proposed §1.6011-18(d)(1), a transaction would be substantially similar to a transaction described in proposed §1.6011-18(c) if the transaction is a basis adjustment transaction described in proposed §1.6011-18(c)(1) or (2), except that it does not involve related partners and one or more partners of the partnership is a tax-indifferent party. Under proposed §1.6011-18(b)(11), a tax-indifferent party would mean a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status or to which gain from a transaction described in proposed §1.6011-18(c) would not result in Federal income tax liability for the person's taxable year within which such gain is recognized (for example, because the taxpayer has a net operating loss carryforward or capital loss carryforward).

Under proposed §1.6011-18(d)(2), a transaction would be substantially similar to a transaction described in proposed §1.6011-18(c) in situations in which a partner transfers its partnership interest in a recognition transaction to a related transferee or to a person related to one or more existing partners, and the $5 million threshold under proposed §1.6011-18(c)(3) is met. Proposed §1.6011-18(b)(6) would define a recognition transaction as a transaction other than a nonrecognition transaction as defined in proposed §1.6011-18(b)(2).

IV. *Persons Treated as Participants*

Whether a taxpayer has participated in a transaction of interest described in proposed §1.6011-18(c) during a taxable year is determined under proposed §1.6011-18(e). Participants would include a participating partner within the meaning of proposed §1.6011-18(b)(3), a participating partnership within the meaning of proposed §1.6011-18(b)(4), and a related subsequent transferee within the meaning of proposed §1.6011-18(b)(10). A participant would also include a tax-indifferent party within the meaning of proposed §1.6011-18(b)(11).

Proposed §1.6011-18(b)(3) would define "participating partner" as any partner that directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in proposed §1.6011-18(c), including a person that becomes or ceases to be a partner as a result of such transaction. Accordingly, except for in the case of a related subsequent transferee, the proposed regulations would impose the disclosure requirement only on the direct distributee, transferor, or transferee in the transaction of interest identified under proposed §1.6011-18(a). The person identified as the participating partner must be the owner for Federal income tax purposes of the partnership interest. As a result, in the case of a partnership interest held by a disregarded entity, the participating partner would be the owner of the disregarded entity for Federal income tax purposes. In the case of a partnership interest held by a grantor trust, the participating partner would be the grantor or owner of the grantor trust. Similar principles would be applied in determining the participating partner in circumstances similar to the disregarded entity or grantor trust situations. Under proposed §1.6011-18(e)(2), a participating partner would participate in a transaction of interest in any taxable year in which the partner directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in proposed §1.6011-18(c).

Proposed §1.6011-18(b)(4) would define "participating partnership" as any partnership that makes a distribution of property to a participating partner in a transaction described in proposed §1.6011-18(c)(1), or a partnership interest of which was transferred in a transaction described in proposed §1.6011-18(c)(2). Under proposed §1.6011-18(e)(3), a participating partnership would participate in a transaction of interest in any taxable year in which (i) the partnership makes a distribution of property to a participating partner in a transaction described proposed §1.6011-18(c)(1) or (ii) a participating partnership interest is transferred in a transaction described proposed §1.6011-18(c)(2).

Proposed §1.6011-18(b)(10) would define "related subsequent transferee" as any person related within the meaning of proposed §1.6011-18(b)(8) to a participating partner that directly received in a non-

recognition transaction a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in proposed §1.6011-18(c). Under proposed §1.6011-18(e)(4), any direct transfer, in a nonrecognition transaction, to a related person of property subject to a basis increase resulting from a transaction described in proposed §1.6011-18(c) would result in the related subsequent transferee becoming a participant in the transaction of interest identified under proposed §1.6011-18(a). However, any subsequent transfer (including a distribution) by the related subsequent transferee to a transferee would not cause that transferee to become a participant.

Proposed §1.6011-18(e)(5) would provide that a participating partnership, participating partner, or related subsequent transferee also participates in a transaction described in proposed §1.6011-18(c) in any taxable year in which its tax return reflects the Federal income tax consequences of the basis increase from such transaction.

V. *Information Disclosure Requirements*

Proposed §1.6011-18(f) would require participants to provide the information required under §1.6011-4(d) and the Instructions to Form 8886 (or successor form). For all participants, describing the transaction in sufficient detail would include (but would not be limited to) describing on Form 8886 (or successor form) an increase in basis resulting from a transaction described in proposed §1.6011-18(c) by providing the information required in proposed §1.6011-18(f)(1)(i), through (iii).

Proposed §1.6011-18(f)(1)(i) would require reporting of the names and identifying numbers (for example, social security number, employer identification number) of all participants.

Proposed §1.6011-18(f)(1)(ii) would require participants to provide all basis adjustments resulting from a transaction described in §1.6011-18(c), and basis information, including the participating partnership's adjusted basis in the distributed property immediately before the distribution, any adjustments to basis under sections 732(a)(2), (b), (d) or 734(b), any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and with respect to a participating partner that transfers an interest in a participating partnership, that participating partner's adjusted basis in the participating partnership interest and share of the participating partnership's adjusted basis in its property immediately before the transfer.

Proposed §1.6011-18(f)(1)(iii) would require participants to provide information on Form 8886 (or successor form) of any Federal income tax consequences realized during the taxable year as a result of a transaction described in proposed §1.6011-18(c), including cost recovery allowances attributable to an increase in basis described in proposed §1.6011-18(c) or taxable gain or loss attributable to the disposition of property that was subject to an increase in basis described in proposed §1.6011-18(c). In the case of Federal income tax consequences realized after the taxable year of a transaction described in proposed §1.6011-18(c), such as cost recovery allowances or taxable gain or loss on a disposition, a participant must provide information on the Federal income tax consequences on Form 8886 (or successor form) for the taxable year of realization.

Under proposed §1.6011-18(f)(2), if the property subject to an increase in basis as a result of a transaction described in proposed §1.6011-18(c) is disposed of in a subsequent taxable year in a transaction in which gain or loss is recognized in whole or in part, a participant must send a copy of Form 8886 to OTSA, for the taxable year of the disposition, in addition to sending a copy to OTSA in the taxable year of the basis adjustment transaction.

Proposed §1.6011-18(g) would provide examples of the participants' disclosure requirements for the taxable year in which the transaction of interest occurred and the subsequent taxable years in which a participant continued to realize the Federal income tax consequences of the transaction of interest.

VI. *Effect of Transaction Becoming a Transaction of Interest*

Participants required to disclose these transactions under §1.6011-4 who fail to do so would be subject to penalties under section 6707A. Material advisors required to disclose these transactions under section 6111 who fail to do so would be subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the penalty under section 6700 of the Code for promoting abusive tax shelters, and the penalty under section 6701 of the Code for aiding and abetting understatement of a tax liability.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding §301.6111-3(b)(4)(i) and (iii), material advisors would be required to disclose only if they have made a tax statement on or after six years before the date of the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Proposed Applicability Date

Proposed §1.6011-18(a) would apply to identify certain partnership related-party basis adjustment transactions described in proposed §1.6011-18(c) and substantially similar transactions as transactions of interest effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public regardless of whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 control number assigned by OMB.

The proposed regulations would contain reporting and recordkeeping requirements that are required to identify increases to the basis of partnership property in certain transactions involving adjustments to the basis of partnership property. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper reporting and recordkeeping.

The proposed regulations would identify certain transactions as reportable transactions and require partners and partnerships that participate in the transactions, and material advisors that provide advice on the transactions, to meet the reporting requirements under Sections 6011 and 6111, and material advisors to meet the list maintenance requirements of Section 6112. The reporting requirements contained in the proposed regulations would be met by completing Forms 8886 and 8918. These forms have been approved by OMB under control numbers 1545-1800 and 1545-0865, respectively. Accordingly, the proposed regulations would not be creating new collection of information requirements or changing the collection of information requirements already contained in the burden associated with the control numbers for Forms 8886 and 8918.

III. *Regulatory Flexibility Act*

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on "small entities." 5 U.S.C. 603(a). The term "small entities" is defined in 5 U.S.C. 601 to mean "small business," "small organization," and "small governmental jurisdiction," which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is "small" and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* 13 CFR part 121 (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* 13 CFR part 121.201 for the Small Business Size Standards by NAICS Industry.

Section 605 of the RFA provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities under the RFA.

The IRS's Research, Applied Analytics, and Statistics division (RAAS) estimates that, in the case of a Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest involving a basis adjustment under section 743(b), partnerships with gross receipts or sales of $25 million or less might comprise two-thirds and partnerships with gross receipts or sales of over $25 million might comprise one-third of all partnerships engaging in the transaction. This data provides an estimate that cannot yet be tested or confirmed without actual reporting of these transactions. Further, although the estimate suggests that the majority (two-thirds) of partnerships subject to reporting might be partnerships with gross receipts or sales of $25 million or less, the estimate does not indicate that the majority of partnerships subject to reporting will be small entities. The "$25 million or less" parameter is used as a reference point that does not necessarily correlate with the meaning of small entities under the Small Business Size Regulations. Thus, some or many of the partnerships in the category having gross receipts or sales of $25 million or less might be too large to meet the size standards for small businesses under the Small Business Size Regulations. In addition, the data does not indicate whether the partnerships with gross receipts or sales of $25 million or less are part of larger enterprises.

The proposed regulations will not have a significant economic impact on small entities because the proposed regulations would implement sections 6111 and 6112 and § 1.6011-4 by specifying the manner in which and the time at which a Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest must be reported. Accordingly, because the proposed regulations would be limited in scope to time and manner of information reporting, their economic impact is expected to be minimal.

The Treasury Department and the IRS expect that the reporting burden is low because the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. RAAS estimates that the appropriate wage rate for complying with the proposed regulations is $102.00 (2022 dollars) per hour. Thus, it is estimated that persons required to comply with the proposed regulations would incur costs totaling approximately $2,194.70 per filing. This amount is small in comparison to the $5 million or more of basis increase in a Partnership Related-Party Basis Adjustment Transaction identified as a transaction of interest. As a result, the relatively small cost to comply with the proposed regulations will not pose any significant economic impact to any small entities that would be subject to the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking

has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at https://www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 17, 2024 beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by August 19, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by August 19, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-124593-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-124593-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-125593-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-124593-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-124593-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-124593-23. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-124593-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-124593-23. Requests to attend the public hearing must be received by 5 p.m. ET on September 13, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) at least September 12, 2024.

Drafting Information

The principal author of these proposed regulations is Elizabeth Zanet, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.6011-18 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011-18 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

Par. 2. Section 1.6011-18 is added to read as follows:

§1.6011-18 Certain partnership related-party basis adjustment transactions as transactions of interest.

(a) *Identification as transaction of interest*. Transactions that are the same as or substantially similar (within the meaning of §1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section are identified as transactions of interest for purposes of §1.6011-4(b)(6). Transactions that are substantially similar (within the meaning of §1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section include, but are not limited to, transactions described in paragraph (d) of this section.

(b) *Definitions*. The following definitions apply for purposes of this section:

(1) *Code* means the Internal Revenue Code.

(2) *Nonrecognition transaction* means a nonrecognition transaction within the meaning of section 7701(a)(45) of the Code (other than a transfer on the death of a partner).

(3) *Participating partner* means any partner that directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) of this section, including a person that becomes or ceases to be a partner as a result of such transaction. In the case of a participating partnership interest held by an entity that is disregarded as separate from its owner within the meaning of §301.7701-2(c)(2)(i) of this chapter, participating partner means the owner of the disregarded entity for Federal income tax purposes. In the case of a participating partnership interest held by a grantor trust within the meaning of section 671 of the Code, participating partner means the grantor or other person designated under sections 671 through 679 of the Code as the owner of that portion of the trust that holds the participating partnership interest.

(4) *Participating partnership* means any partnership—

(i) That makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) of this section, or

(ii) A partnership interest which is transferred in a transaction described in paragraph (c)(2) of this section.

(5) *Participating partnership interest* means any partnership interest in a participating partnership.

(6) *Recognition transaction* means a transaction other than a nonrecognition transaction within the meaning of paragraph (b)(2) of this section.

(7) *Recoverable property* means property of a character subject to an allowance for depreciation, amortization, or depletion under subtitle A of the Code (subtitle A).

(8) *Related* means having a relationship described in section 267(b) of the Code (without regard to section 267(c)(3)) or section 707(b)(1) of the Code.

(9) *Related partners* mean partners of a partnership that are related in the following manner:

(i) In the case of a transaction described in paragraph (c)(1) of this section, the partnership has two or more direct or indirect partners that are related immediately before or immediately after a transaction described in paragraph (c)(1) of this section.

(ii) In the case of a transaction described in paragraph (c)(2) of this section, the transferor of a partnership interest is related to the transferee, or the transferee is related to one or more of the partners in the partnership, immediately before or immediately after a transaction described in paragraph (c)(2) of this section.

(10) *Related subsequent transferee* means any person who is related to a participating partner and directly received in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section.

(11) *Tax-indifferent party* means a person that is either not liable for Federal income tax because of its tax-exempt or, in certain cases, foreign status or to which gain from a transaction described in paragraph (c) of this section would not result in Federal income tax liability for the person's taxable year within which such gain is recognized.

(c) *Transaction description*. A transaction is described in this paragraph (c) if the factual elements of the transaction described in paragraph (c)(1)(i) through (iii) or (c)(2) of this section are met.

(1) *Distributions by partnership*. A partnership engages in any of the transactions described in paragraphs (c)(1)(i) through (iii) of this section with one or more of the related partners:

(i) The partnership distributes property to a person who is a related partner in a current or liquidating distribution, the partnership increases the basis of one or more of its remaining properties under section 734(b) and (c) of the Code, and the $5 million threshold described in paragraph (c)(3) of this section is met.

(ii) The partnership distributes property to a person who is a related partner in liquidation of the person's partnership interest (or in complete liquidation of the partnership), the basis of one or more distributed properties is increased under section 732(b) and (c) of the Code, and the $5 million threshold described in paragraph (c)(3) of this section is met.

(iii) The partnership distributes property to a person who is a related partner, the basis of one or more distributed properties is increased under section 732(d) of the Code, the related partner acquired all or a part of its interest in the partnership in a transaction that would have been a transaction described in paragraph (c)(2) of this section if the partnership had a section 754 election in effect for the year of transfer, and the $5 million threshold described in paragraph (c)(3) of this section is met.

(2) *Transfer of partnership interest*. A partner transfers an interest in a partnership to a related partner in a nonrecognition transaction, the basis of one or more partnership properties is increased under section 743(b)(1) and (c) of the Code, and the $5 million threshold described in paragraph (c)(3) of this section is met.

(3) *$5 million threshold*. For the purpose of determining whether a transaction is described in paragraph (c)(1), (c)(2), (d)(1), or (d)(2) of this section, the $5 million threshold is met for a taxable year if the sum of all basis increases resulting from all such transactions of a partnership or partner during the taxable year (without netting for any basis adjustment in the same transaction or another transaction that reduces basis) exceeds by at least $5 million the gain recognized from such transactions, if any, on which tax imposed under subtitle A is required to be paid by any of the related partners (or tax-indifferent party, in the case of a transaction described in paragraphs (d)(1) and (2) of this section) to such transactions.

(d) *Substantially similar transaction*. A transaction that is substantially similar (within the meaning of §1.6011-4(c)(4)) to a transaction described in paragraph (c) of this section includes, but is not limited to:

(1) A transaction that is described in paragraph (c) of this section except that the partners of the partnership are not related and one or more partners of the partnership is a tax-indifferent party that facilitates, by receiving a distribution of property from the partnership or otherwise, an increase in the basis of partnership property or an increase in the basis of property held by another partner in the partnership; and

(2) A transaction in which a partner transfers an interest in a partnership to a related partner in a recognition transaction, and the $5 million threshold described in paragraph (c)(3) of this section is met.

(e) *Participation*--(1) *In general*. Whether a taxpayer has participated in a transaction of interest described in paragraph (c) of this section during a taxable year is determined under this paragraph (e).

(2) *Participating partners.* A participating partner participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the partner directly receives a distribution of property or an interest in a participating partnership, or directly transfers an interest in a participating partnership, in a transaction described in paragraph (c) of this section.

(3) *Participating partnerships.* A participating partnership participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the partnership makes a distribution of property to a participating partner in a transaction described in paragraph (c)(1) of this section, or a participating partnership interest is transferred in a transaction described in paragraph (c)(2) of this section.

(4) *Related subsequent transferees.* A related subsequent transferee participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which the related subsequent transferee directly receives, in a nonrecognition transaction, a transfer (including a distribution) of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section.

(5) *Subsequent realization of tax benefit.* A participating partnership, participating partner or related subsequent transferee also participates in a transaction of interest described in paragraph (c) of this section in any taxable year in which its tax return reflects the tax consequences of a basis increase resulting from a transaction of interest described in paragraph (c) of this section. For example, if a participating partner sells property the basis of which has been increased as a result of a transaction of interest described in paragraph (c) of this section during a taxable year after the year in which the transaction of interest described in paragraph (c) of this section resulting in the basis increase occurred, the participating partner participates in a transaction of interest described in paragraph (c) of this section during the taxable year(s) in which the tax consequences of the sale are reported on the participating partner's tax return.

(f) *Disclosure requirements*--(1) *In general*. Participants must provide the information required under §1.6011-4(d) and the Instructions to Form 8886, *Reportable Transaction Disclosure Statement* (or successor form) for each taxable year in which the participant participated in a transaction described in paragraph (c) of this section as determined under paragraph (e) of this section. For all participants, describing the transaction in sufficient detail includes describing the information described in paragraphs (f)(1)(i) through (iii) of this section, as applicable, on Form 8886 (or successor form) for the taxable year of a transaction described in paragraph (c) of this section.

(i) The names and identifying numbers of all participants, including the participating partnership, participating partners and any related subsequent transferees or tax-indifferent parties.

(ii) All basis adjustments resulting from a transaction described in paragraph (c) of this section, and basis information, including the participating partnership's adjusted basis in the distributed property immediately before the distribution, any adjustments to basis under section 732(a)(2), (b), (d) or 734(b), any adjustments to basis under section 743(b) with respect to a participating partner that is transferred an interest in a participating partnership, and with respect to a participating partner that transfers an interest in a participating partnership, that participating partner's adjusted basis in the participating partnership interest and share of the participating partnership's adjusted basis in its property immediately before the transfer.

(iii) Any Federal income tax consequences realized during the taxable year, as a result of a transaction described in paragraph (c) of this section, including cost recovery allowances attributable to an increase in basis as a result of a transaction described in paragraph (c) of this section, and taxable gain or taxable loss attributable to the disposition of property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section. For example, in the case of a distribution of depreciable property that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section, the Federal income tax consequences realized during the taxable year include the basis increase and cost recovery allowances attributable to the basis increase during the taxable year.

(2) *Disposition in subsequent taxable years.* If the property subject to an increase in basis as a result of a transaction described in paragraph (c) of this section is disposed of in a transaction in which gain or loss is recognized in whole or in part in a subsequent taxable year, the participant must send a copy of Form 8886 to the Office of Tax Shelter Analysis (OTSA). This requirement is in addition

to the requirement that a participant send a copy of Form 8886 to OTSA for the taxable year of the basis increase.

(g) *Examples*. The following examples illustrate the provisions of this section.

(1) *Example 1*: *Reporting by a participating partner and participating partnership in the taxable year of the transaction, including cost recovery allowances*—(i) *Facts*. ABC Partnership is owned by partners A, B and C. Partners A, B and C are related within the meaning of paragraphs (b)(8) and (9) of this section. At the beginning of taxable year 1, ABC Partnership distributes a depreciable asset, Property X, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Property X is increased by $5 million. On its tax return for taxable year 1, Partner A reports deductions for depreciation expense attributable to the $5 million increase in the basis of Property X resulting from the transaction under paragraph (c)(1)(ii) of this section. ABC Partnership and Partner A have the same taxable year.

(ii) *Analysis*. Partner A is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 1 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 1 in a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. Partner A must include the information described in paragraph (f) of this section, including the amount of the deductions attributable to the $5 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1, including the information described in paragraph (f) of this section. In addition, Partner A and ABC Partnership must send a copy of their respective Form 8886 (or successor form) to OTSA.

(2) *Example 2: Reporting of the Federal income tax consequences (cost recovery allowances) of the transaction in all taxable years*—(i) *Facts*. Under the same facts as in paragraph (g)(1)(i) of this section (*Example 1)*, on its tax returns for taxable years 2 through 5, Partner A reports deductions for depreciation expense attributable to the $5 million increase in the basis of Property X related to the transaction described in paragraph (c)(1)(ii) of this section, which occurred in taxable year 1.

(ii) *Analysis*. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), Partner A must disclose the deductions on Form 8886 (or successor form) for taxable years 2 through 5 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. As a result, for each taxable year 2 through 5, Partner A must file the form with its tax return for the taxable year with the information described in paragraph (f) of this section, including the amount of the deductions attributable to the $5 million increase in the basis of Property X resulting from the transaction described in paragraph (c)(1)(ii) of this section.

(3) *Example 3*: *Reporting by a participating partner, participating partnership, and related subsequent transferee in the taxable year of the transaction*—(i) *Facts*. The facts are the same as in paragraph (g)(1)(i) of this section (*Example 1)*, except that at the beginning of taxable year 1, ABC Partnership distributes a nondepreciable asset, Land with an adjusted basis of $1 million, to Partner A in liquidation of Partner A's interest in ABC Partnership. The distribution is a transaction described in paragraph (c)(1)(ii) of this section. As a result of the distribution, the basis of Land is increased to $6 million. Subsequently in taxable year 1, Partner A contributes Land to another partnership, AX Partnership, in a transfer that is treated as a contribution of property under section 721(a). Partner A and AX Partnership are related within the meaning of paragraph (b)(8) of this section. ABC Partnership, Partner A and AX Partnership have the same taxable year.

(ii) *Analysis*. Partner A is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partner within the meaning of paragraph (b)(3) of this section since it directly received a distribution of property during taxable year 1 in a transaction described in paragraph (c) of this section. ABC Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a participating partnership within the meaning of paragraph (b)(4) of this section since it made a distribution of property to a participating partner during taxable year 1 in a transaction described in paragraph (c) of this section. AX Partnership is a participant during taxable year 1 within the meaning of paragraph (e) of this section because it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section since it directly received in a nonrecognition transaction, a transfer of property during taxable year 1 that was subject to an increase in basis as a result of a transaction described in paragraph (c) of this section. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), Partner A must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. Partner A must include the information described in paragraph (f) of this section. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), ABC Partnership must disclose the distribution as a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1, including the information described in paragraph (f) of this section. Further, AX Partnership is subject to the disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e). AX Partnership must disclose that it is a related subsequent transferee within the meaning of paragraph (b)(10) of this section that received, in a nonrecognition transaction, a transfer of property that was distributed in a transaction of interest under this section on Form 8886 (or successor form) and file the form with its tax return for taxable year 1. In addition, Partner A, ABC Partnership and AX Partnership must send a copy of their respective Form 8886 (or successor form) to OTSA.

(4) *Example 4: Reporting of the Federal income tax consequences (reduced taxable gain) of the transaction in the taxable year of disposition of the property*—(i) *Facts*. Under the same facts as in paragraph (g)(3)(i) of this section (*Example 3)*, in taxable year 2, AX Partnership disposes of Land in a taxable sale for its fair market value of $6 million and recognizes gain of zero.

(ii) *Analysis*. As part of its disclosure requirements under paragraph (f) of this section and §1.6011-4(d) and (e), AX Partnership must disclose the taxable gain (zero) on the disposition of Land on Form 8886 (or successor form) for taxable year 2 as the Federal income tax consequences of the transaction described in paragraph (c)(1)(ii) of this section. AX must file the form with its tax return for taxable year 2 and send a copy of the form to OTSA.

(h) *Applicability date*. This section's identification of transactions that are the same as or substantially similar (within the meaning of §1.6011-4(c)(4)) to the transactions described in paragraph (c) of this section as transactions of interest for purposes of §1.6011-4(b)(6) and sections 6111 and 6112 of the Code is effective on the date the regulations are published as final regulations in the **Federal Register**.

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register June 17, 2024, 8:45 a.m., and published in the issue of the Federal Register for June 18, 2024, 89 FR 51476)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

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Announcements:

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 30, 2024.

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