INTERNAL REVENUE
BULLETIN

IRS

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HIGHLIGHTS OF THIS ISSUE

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

EMPLOYEE PLANS

Rev. Rul. 2026-22, page 957.

This revenue ruling provides that the payment of benefits from a pension plan's section 401(h) account to plan participants who are eligible to receive pension plan distributions under section 401(a)(36) does not violate section 401(h) or Treas. Reg. § 1.401-14, or adversely affect the plan's tax-qualified status under section 401(a).

INCOME TAX

REG-134016-15, page 962.

The Treasury Department and the IRS issued a notice of proposed rulemaking that would modify the regulations under section 355 with respect to the device prohibition and the active trade or business requirement. Among other proposed changes, those modifications would have included a "per se" device test and two sets of anti-abuse rules. This document withdraws the "per se" device test and the two sets of anti-abuse rules in the proposed regulations.

Rev. Rul. 2026-21, page 955.

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 November 2026.

T.D. 10059, page 958.

These regulations modify the consolidated return regulations to clarify that, in the case of certain transfers described in section 351 between members of a consolidated group, a transferee's assumption of certain deductible liabilities will not reduce the transferor's basis in the transferee's stock received in the transfer.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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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, 7702, 7872.)

Rev. Rul. 2026-21

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2026 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2026-21 TABLE 1
Applicable Federal Rates (AFR) for November 2026
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	4.67%	4.62%	4.59%	4.58%
110% AFR	5.14%	5.08%	5.05%	5.03%
120% AFR	5.62%	5.54%	5.50%	5.48%
130% AFR	6.10%	6.01%	5.97%	5.94%
		Mid-term		
AFR	5.08%	5.02%	4.99%	4.97%
110% AFR	5.60%	5.52%	5.48%	5.46%
120% AFR	6.11%	6.02%	5.98%	5.95%
130% AFR	6.64%	6.53%	6.48%	6.44%
150% AFR	7.67%	7.53%	7.46%	7.41%
175% AFR	8.98%	8.79%	8.70%	8.63%
		Long-term		
AFR	5.52%	5.45%	5.41%	5.39%
110% AFR	6.09%	6.00%	5.96%	5.93%
120% AFR	6.65%	6.54%	6.49%	6.45%
130% AFR	7.22%	7.09%	7.03%	6.99%

REV. RUL. 2026-21 TABLE 2
Adjusted AFR for November 2026
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.54%	3.51%	3.49%	3.48%
Mid-term adjusted AFR	3.85%	3.81%	3.79%	3.78%
Long-term adjusted AFR	4.18%	4.14%	4.12%	4.10%

REV. RUL. 2026-21 TABLE 3 Rates Under Section 382 for November 2026	
Adjusted federal long-term rate for the current month	4.18%
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.)	4.18%

REV. RUL. 2026-21 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for November 2026	
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	8.24%
Appropriate percentage for the 30% present value low-income housing credit	3.53%

REV. RUL. 2026-21 TABLE 5 Rate Under Section 7520 for November 2026	
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	6.20%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2026. See Rev. Rul. 2026-21, page 955.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of November 2026. See Rev. Rul. 2026-21, page 955.

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 November 2026. See Rev. Rul. 2026-21, page 955.

Section 401.— Qualified pension, profit-sharing, and stock bonus plans.

(Aso: 26 CFR § 1.401-14)

Rev. Rul. 2026-22

ISSUE

Does the use of a pension plan's section 401(h) account assets to pay for medical benefits described in section 401(h) of plan participants who, in accordance with section 401(a)(36) of the Internal Revenue Code (Code), have not separated from employment but are eligible to take in-service distributions upon attainment of age 59½, violate section 401(h) or § 1.401-14, or adversely affect the plan's tax-qualified status under section 401(a)?

FACTS

Company A sponsors Plan Z, a pension plan that is a qualified plan under section 401(a). Plan Z includes a section 401(h) retiree medical account (401(h) Account).

Company A maintains a retiree medical benefit plan covering eligible retired employees who have separated from employment and those retirees' spouses and dependents (Retiree Medical Plan). The 401(h) Account provides payment of retiree health benefits under the Retiree Medical Plan for eligible Plan Z participants (and their spouses and dependents). Although the Retiree Medical Plan provides health benefits to eligible participants who were key employees, as defined in section 416(i), the 401(h) Account does not fund benefits for participants who were key employees.

Plan Z, in accordance with section 401(a)(36), permits plan participants who have attained age 59½ and have not separated from employment with Company A (401(a)(36)-Eligible Participants) to elect to receive in-service distributions. All forms of benefit payment, including a lump-sum option, are available to 401(a)(36)-Eligible Participants.

Company A also maintains a medical benefit plan covering eligible active employees and their spouses and dependents (Active Medical Plan). The 401(a)(36)-Eligible Participants are covered by the Active Medical Plan.

No section 420 transfers have ever been made to the 401(h) Account.

Company A does not have a contractual obligation to fund medical benefits for retired employees receiving benefits under the Retiree Medical Plan or for active employees receiving medical benefits under the Active Medical Plan.

The 401(h) Account is substantially overfunded. In addition to using funds in the 401(h) Account to fund medical benefits under the Retiree Medical Plan, Company A wishes to use surplus funds in the 401(h) Account to fund medical benefits under the Active Medical Plan for 401(a)(36)-Eligible Participants (who are not key employees) and their spouses and dependents.

Company A amends Plan Z to allow the 401(h) Account to fund medical benefits for the 401(a)(36)-Eligible Participants, and their spouses and dependents, under the Active Medical Plan.

LAW

Section 401(a) describes the requirements for a qualified trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of the employer's employees or their beneficiaries.

Section 501(a) provides that an organization described in section 401(a) is generally exempt from federal income tax.

Section 401(a)(36) provides that a trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under section 401 solely because the plan provides that a distribution may be made from the trust to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution.

Section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan;
(2) a separate account is established and maintained for such benefits;
(3) the employer's contributions to such separate account are reasonable and ascertainable;
(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits;
(5) notwithstanding the provisions of section 401(a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer; and
(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and the employee's spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and the employee's spouse and dependents) from such separate account.

For the purposes of section 401(h)(6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of the employee, is or was a key employee as defined in section 416(i).

Section 1.401-14(a) provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness, accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term "medical benefits described in section 401(h)" is used in § 1.401-14 to describe such payments.

Section 1.401-14(b)(1) provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in

section 401(h) only for retired employees, their spouses, or their dependents. To be "retired" for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if the employee is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Section 1.401-14(c) sets forth requirements that must be met for a qualified pension or annuity plan to provide medical benefits described in section 401(h):

(1) The plan must specify the medical benefits described in section 401(h) that will be available and must contain provisions for determining the amount which will be paid. Such benefits, when added to any life insurance protection provided for under the plan, must be subordinate to the retirement benefits provided by such plan.

(2) A separate account must be maintained for recordkeeping purposes with respect to contributions to fund medical benefits described in section 401(h).

(3) Amounts contributed to fund medical benefits, as described in section 401(h), must be reasonable and ascertainable.

(4) It must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide for the payment of medical benefits described in section 401(h), for any part of the corpus or income of the medical benefits account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits.

(5) The plan must provide that any amounts which are contributed to fund medical benefits described in section 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the plan are to be returned to the employer.

(6) The plan must expressly provide that in the event an individual's interest in the medical benefits account is forfeited prior to termination of the plan an amount equal to the amount of the forfeiture must be applied as soon as possible to reduce employer contributions to fund the medical benefits described in section 401(h).

ANALYSIS

Section 401(h) provides for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents if certain conditions are met. The second sentence of § 1.401-14(b)(1) provides that, to be "retired" for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits under the pension plan. The third sentence of § 1.401-14(b)(1) provides that an employee is not considered to be eligible to receive retirement benefits under the plan if the employee is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Plan Z allows 401(a)(36)-Eligible Participants to elect to commence receipt of payment of retirement benefits from Plan Z. Because a separation from employment is not a condition to receiving the retirement benefits, the 401(a)(36)-Eligible Participants are eligible to receive retirement benefits under Plan Z, even though they are still current employees of Company A. Accordingly, the 401(a)(36)-Eligible Participants who are still active employees satisfy the definition of "retired" as described in the second sentence of § 1.401-14(b)(1) and are not excluded from being considered eligible to receive retirement benefits under § 1.401-14(b)(1). However, no implications are intended regarding whether the 401(a)(36)-Eligible Participants are treated as retired for any other purpose under the Code.

HOLDING

The use of assets from Plan Z's 401(h) Account to pay for medical benefits described in section 401(h) of 401(a)(36)-Eligible Participants who have not separated from employment but are eligible to take in-service distributions upon attainment of age 59½, does not violate section 401(h) or § 1.401-14, or adversely affect the plan's tax-qualified status under section 401(a).

DRAFTING INFORMATION

The principal author of this revenue ruling is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue ruling, contact the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-4102 (not a toll-free call).

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26 CFR 1.1502-80(d): Non-applicability of section 357(c)

T.D. 10059

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Non-Applicability of Section 357(c) to Consolidated Groups

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying that, in the case of certain transfers between members of a consolidated group, a transferee's assumption of certain liabilities will not reduce the transferor's basis in the transferee's stock received in the transfer. These final regulations affect consolidated groups and their members.

DATES: *Effective date*: These final regulations are effective on October 16, 2026.

Applicability date: For the date of applicability, *see* § 1.1502-80(d)(4).

FOR FURTHER INFORMATION CONTACT: William W. Burhop at (202) 317-5363 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

The final regulations contained in this Treasury decision are issued under the authority of section 1502 of the Internal Revenue Code (Code), which authorizes the Secretary of the Treasury or the Secretary's delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to clearly reflect, and to prevent the avoidance of, the Federal income tax liability of the consolidated group. For purposes of carrying out those objectives, section 1502 authorizes the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code (chapter 1) that would apply if the corporations composing the consolidated group filed separate returns.

Additionally, these regulations are issued pursuant to section 7805(a) of the Code, which authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Background

I. *Overview*

This Treasury decision contains final regulations that revise the Income Tax Regulations (26 CFR part 1) issued under the authority of section 1502 (consolidated return regulations) to clarify that, in the case of certain transfers between members of a consolidated group, a transferee member's assumption of liabilities to which section 357(c) of the Code applies will not reduce the transferor member's basis in the transferee member's stock received in the transfer. Terms used in the consolidated return regulations generally are defined in § 1.1502-1.

II. *Section 1.1502-80*

Section 1.1502-80, which was promulgated on March 18, 1992 (*see* TD 8402, 57 FR 9385), provides rules regarding the applicability of provisions of law other than the consolidated return regulations to a consolidated group. Section 1.1502-80(a)(1) generally provides that: (i) the Code, or other law, is applicable to a consolidated group to the extent the consolidated return regulations do not exclude its application; and (ii) to the extent not excluded, other rules operate in addition to, and may be modified by, the consolidated return regulations.

Section 1.1502-80(d)(1) provides that section 357(c) does not apply to any transaction to which § 1.1502-13 (or predecessor sections of the consolidated return regulations) applies, including intragroup section 351 exchanges (that is, exchanges between members of a consolidated group to which section 351 of the Code applies). Following the promulgation of § 1.1502-80(d)(1), a question arose regarding the timing of basis reductions under section 358 with respect to liabilities generally excluded from the application of section 357(c) under section 357(c)(3).

Accordingly, on November 14, 2001, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-137519-01) in the ***Federal Register*** (66 FR 57021) that would have modified the consolidated return regulations to clarify that, in intragroup section 351 exchanges, a transferee's assumption of certain liabilities described in section 357(c)(3) would not reduce the transferor's basis in the transferee's stock received in the transfer (2001 proposed regulations).

III. *2023 Proposed Regulations and 2024 Proposed Regulations*

On August 7, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-134420-10) in the ***Federal Register*** (88 FR 52057) that primarily proposed to revise the consolidated return regulations to (i) eliminate obsolete or otherwise outdated provisions, (ii) modernize the language and improve the clarity of the regulations, and (iii) facilitate taxpayer compliance (2023 proposed regulations). However, the 2023 proposed regulations also withdrew the 2001 proposed regulations.

On December 30, 2024, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-134420-10) in the ***Federal Register*** (89 FR 106884) that reproposed the approach under the 2001 proposed regulations to clarify the Treasury Department's and IRS's view regarding the appropriate timing for the single basis reduction for an assumed liability described in section 357(c)(3)(A) (2024 proposed regulations).

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS requested comments on the 2024 proposed regulations. No comments were received, and no public hearing was requested or held. Accordingly, the 2024 proposed regulations are adopted with non-substantive revisions to (i) clarify the applicability date, and (ii) remove an example that is no longer relevant after amendments made to section 357(c)(1)(B) by the American Jobs Creation Act of 2004, Public Law 108-357, § 898(b), 118 Stat. 1418, 1649 (2004).

Applicability Date

Pursuant to section 1503(a) of the Code, the amendments made by this Treasury decision to the regulations issued under the authority of section 1502 apply to consolidated return years for which the due date of the return (without regard to extensions) is after October 16, 2026.

Special Analyses

I. *Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and

benefits, reducing costs, harmonizing rules, and promoting flexibility.

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether that 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 it displays a valid control number assigned by the OMB.

These regulations amend the consolidated return regulations to clarify the timing of a single basis adjustment required by statute. Therefore, these final regulations do not impose additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. Any general recordkeeping requirements imposed by these regulations are considered general tax records under § 1.6001-1(e). For purposes of the PRA, these general tax records already are approved under OMB control number 1545-0123.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations only apply to corporations that join in filing consolidated Federal income tax returns and that such corporations tend to be larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (*U.S. Corporation Income Tax Return*). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts reported on all Forms 1120. Therefore, these final regulations would not create significant additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that these regulations will not have significant economic impact on a substantial number of small entities.

IV. *Submission to the Small Business Administration*

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

V. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 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 in 1995 dollars, updated annually for inflation. These regulations do 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.

VI. *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. These regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

VII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1502-80 is amended by:

1. Revising paragraph (d)(1);
2. Revising the heading of paragraph (d)(2); and
3. Adding paragraphs (d)(3) and (4).

The revisions and additions read as follows:

§1.1502-80 Applicability of other provisions of law.

* * * * *

(d) * * *

(1) *In general*—(i) *General rule.* Section 357(c) does not apply to any transaction to which § 1.1502-13 applies. Notwithstand-

ing the foregoing, for purposes of determining the transferor's basis in property under section 358(a) received in a transfer described in section 351, section 358(d)(2) operates to exclude liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), from the computation of the amount of liabilities assumed that is treated as money received under section 358(d)(1).

(ii) *Application*. This paragraph (d) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor.

(2) *Tax years beginning before January 1, 1995*. * * *

(3) *Example*—(i) *Facts*. P owns all the stock of S1. S1 has assets with a total fair market value equal to $100 and an aggregate basis of $30. S1 has $40 of liabilities, $5 of which are described in section 357(c)(3)(A) but not section 357(c)(3)(B), and $35 of which are not described in section 357(c)(3)(A). S1 transfers its assets to a newly formed subsidiary, S2, in exchange for stock of S2 and S2's assumption of the $40 of liabilities in a transaction to which section 351 applies. P, S1, and S2 are members of a consolidated group.

(ii) *Analysis*. Section 357(c) does not apply to cause S1 to recognize gain in connection with the transfer. For purposes of determining S1's basis in the S2 stock it received in the exchange, section 358(d)(2) operates to exclude $5 of the liabilities from the computation of the amount of liabilities assumed that are treated as money received under section 358(d)(1). S1's basis in the S2 stock received in the exchange is a $5 excess loss account (reflecting its $30 basis in the assets transferred reduced by $35, the amount of liabilities assumed that are not described in section 357(c)(3)(A)).

(4) *Applicability dates*. Paragraphs (d)(1) and (3) of this section apply to transactions occurring in consolidated return years for which the due date of the return (without regard to extensions) is after October 16, 2026. For rules that apply to transactions occurring in earlier taxable years, *see* § 1.1502-80(d) as contained in 26 CFR part 1, revised April 1, 2026.

* * * * *

Frank J. Bisignano,
Chief Executive Officer.

Approved: September 16, 2026.

Kevin Salinger,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register October 15, 2026, 8:45 a.m., and published in the issue of the Federal Register for October 16, 2026, 91 FR 65683)

Part IV

Notice of Proposed Rulemaking

Guidance Under Section 355 Concerning Device and Active Trade or Business; Partial Withdrawal

REG-134016-15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document partially withdraws a notice of proposed rulemaking containing proposed regulations regarding the application of the device prohibition and the active trade or business requirement for distributions of controlled corporation stock (or stock and securities) by a distributing corporation without income, gain, or loss. The proposed regulations would affect corporations and their shareholders and security holders.

DATES: The notice of proposed rulemaking published in the ***Federal Register*** on July 15, 2016 (81 FR 46004), is partially withdrawn as of October 21, 2026.

ADDRESSES: Commenters may submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* by searching the Docket ID number (IRS-2016-0030) or may send paper submissions to CC:PA:01:PR (REG-134016-15), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Aglaia Ovtchinnikova at (202) 317-6847 or Justin Du Mouchel at (202) 317-6975 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

If a distribution of stock (or stock and securities) of a controlled corporation (within the meaning of section 355(a)(1)(A) of the Internal Revenue Code (Code)) satisfies the numerous requirements of section 355 and other relevant provisions of the Code and the Income Tax Regulations (26 CFR part 1),[1] the distribution may occur without recognition of any gain or loss to the distributing corporation (within the meaning of section 355(a)(1)(A)) and without recognition of any gain or loss to, or the inclusion of any amount in the income of, the shareholders or security holders of the distributing corporation.

Among the numerous requirements to qualify for the Federal income tax treatment available under section 355, section 355(a)(1)(B) and § 1.355-2(b)(4) and (d) provide that a transaction must not be used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (device prohibition). Additionally, section 355(a)(1)(C) and (b) and §§ 1.355-2(h) and 1.355-3 require each of the distributing corporation and the controlled corporation to be engaged, immediately after the distribution, in the active conduct of a trade or business (active trade or business requirement).

On July 15, 2016, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-134016-15) in the ***Federal Register*** (81 FR 46004) that would modify the regulations under section 355 with respect to the device prohibition and the active trade or business requirement. Among other proposed changes, those modifications would have included a "per se" test in proposed § 1.355-2(d)(5) to determine whether a distribution violated the device prohibition and two sets of anti-abuse rules.

Under the proposed "per se" device rule, if the distributing corporation's or the controlled corporation's "Nonbusiness Asset Percentage" (as defined in proposed § 1.355-2(d)(2)(iv)(B)(*5*)) exceeded certain designated percentages (both individually and in comparison to the other corporation's Nonbusiness Asset Percentage), the transaction would have been considered a device notwithstanding the presence of any other nondevice factors (such as a corporate business purpose), with limited exceptions.

Under the first set of anti-abuse rules in proposed § 1.355-2(d)(2)(iv)(E) and (d)(5)(iv), a transaction or series of transactions (such as a change in the form of ownership of an asset; an issuance, assumption or repayment of indebtedness; or an issuance or redemption of stock) would not have been given effect if undertaken with a principal purpose of affecting the Nonbusiness Asset Percentage of any corporation to avoid a determination that a distribution was a device.

The second anti-abuse rule (minimum active trade or business anti-abuse rule) was set forth in proposed § 1.355-9(d) and related to the minimum active trade or business requirement in proposed § 1.355-9, under which the "Five-Year-Active-Business Asset Percentage" (as defined in proposed § 1.355-9(a)(6)) of each of the distributing corporation and the controlled corporation would be required to be at least five percent. Under the minimum active trade or business anti-abuse rule, a transaction or series of transactions would not have been given effect if undertaken with a principal purpose of affecting the Five-Year-Active-Business Asset Percentage of any corporation to avoid a determination that a distribution does not meet the minimum active trade or business requirement in proposed § 1.355-9.

The device anti-abuse rules and the minimum active trade or business anti-abuse rule generally would not have applied to (i)

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

non-transitory acquisitions or dispositions of assets, or (ii) non-transitory transfers of assets between the distributing corporation and the controlled corporation.

The Treasury Department and the IRS received feedback from stakeholders that generally was critical of the proposed "per se" device rule and the two anti-abuse rules. In response to the feedback received, the Treasury Department and the IRS are withdrawing proposed §§ 1.355-2(d)(2)(iv)(E) and (d)(5) and 1.355-9(d). The withdrawal of these proposed rules does not affect the potential application of other rules or judicial doctrines, such as the substance-over-form or step-transaction doctrines. The Treasury Department and the IRS continue to study the issues addressed in the 2016 proposed regulations.

Drafting Information

The principal author of this document is Aglaia Ovtchinnikova of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and record-keeping requirements.

Partial Withdrawal of Proposed Amendments to the Regulations

Under the authority of 26 U.S.C. 7805, proposed §§ 1.355-2(d)(2)(iv)(E) and (d)(5) and 1.355-9(d), contained in the notice of proposed rulemaking (REG-134016-15) that was published in the ***Federal Register*** on July 15, 2016 (81 FR 46004), are withdrawn.

Frank J. Bisignano,
Chief Executive Officer.

(Filed by the Office of the Federal Register October 20, 2026, 8:45 a.m., and published in the issue of the Federal Register for October 21, 2026, 91 FR 66540)

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.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2026–27 through 2026–52 is in Internal Revenue Bulletin 2025–52, dated December 21, 2025.

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