Internal Revenue
bulletin

Bulletin No. 2011-30
July 25, 2011

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.

INCOME TAX

Rev. Rul. 2011–15, page 57.

Life insurance gross income; original issue discount. This ruling concludes that the 1994 publication of regulations concerning original issue discount (OID) rendered obsolete Rev. Rul. 58–225, 1958–1 C.B. 258, which held that a life insurance company must include in taxable income the amount of interest collected in advance under policyholder loans. Rev. Rul. 58–225 obsoleted.

T.D. 9529, page 57.
REG–101352–11, page 75.

Temporary and proposed regulations under section 6038A of the Code remove the requirement that taxpayers required to file Form 5472 *(Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business)* must file a duplicate Form 5472 with the Philadelphia Service Center. Corresponding amendments are made to section 1.6038A–1(n)(2) with respect to the effective dates of sections 1.6038A–2(d) and 1.6038A–2(e).

Rev. Proc. 2011–38, page 66.

This procedure addresses the tax treatment under sections 1035 and 72 of the Code of the partial exchange of an annuity contract. Specifically, the procedure provides that the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract will be treated as a tax-free exchange under section 1035 if no amount other than an amount received as an annuity for a period of 10 years or more, or during one or more lives, is received during the 180 days beginning on the date of the transfer. A subsequent direct transfer of all or a portion of either contract involved in an exchange is not taken into account if the subsequent transfer qualifies (or is intended to qualify) as a tax-free exchange. Other transactions will be characterized consistent with their substance. Prior to this procedure's effective date, Rev. Proc. 2008–24 will be applied with the clarification that the conditions described in section 4.01(b) of Rev. Proc. 2008–24 will be treated as satisfied if the condition was satisfied on the date of the withdrawal or surrender. Rev. Proc. 2008–24 modified and superseded.

Rev. Proc. 2011–39, page 68.

Specifications are set forth for the private printing of paper and laser-printed substitutes for Form 941, *Employer's QUARTERLY Federal Tax Return*, Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*. This procedure will be reproduced as the next revision of Publication 4436, *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941)*. Rev. Proc. 2008–32 superseded.

EXEMPT ORGANIZATIONS

Notice 2011–52, page 60.

This notice provides information and solicits further comments regarding the community health needs assessment requirements applicable to charitable hospitals under the Patient Protection and Affordable Care Act of 2010. Comments are requested by September 23, 2011.

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Finding Lists begin on page ii.
Index for July begins on page iv.

Department of the Treasury
Internal Revenue Service

EMPLOYMENT TAX

Rev. Proc. 2011–39, page 68.
Specifications are set forth for the private printing of paper and laser-printed substitutes for Form 941, *Employer's QUARTERLY Federal Tax Return*, Schedule B (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*. This procedure will be reproduced as the next revision of Publication 4436, *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941).* Rev. Proc. 2008–32 superseded.

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 and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 72.—Annuities; Certain Proceeds of Endowment and Life Insurance Contracts

The revenue procedure modifies and supersedes the guidance provided in Rev. Proc. 2008–24, 2008–13 I.R.B. 684, concerning the treatment under sections 1035 and 72 of the partial exchange of an annuity contract. Specifically, the revenue procedure provides that the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract will be treated as a tax-free exchange under section 1035 if no amount, other than an amount received as an annuity for a period of 10 years or more or during one or more lives, is received during the 180 days beginning on the date of the transfer. A subsequent direct transfer of all or a portion of either contract involved in an exchange is not taken into account if the subsequent transfer qualifies (or is intended to qualify) as a tax-free exchange. Other transactions will be characterized consistent with their substance. Prior to this revenue procedure's effective date, Rev. Proc. 2008–24 will be applied with the clarification that the conditions described in section 4.01(b) or Rev. Proc. 2008–24 will be treated as satisfied if the condition was satisfied on the date of the withdrawal or surrender. See Rev. Proc. 2011-38, page 66.

Section 803.—Life Insurance Gross Income

Life insurance gross income; original issue discount. This ruling concludes that the 1994 publication of regulations concerning original issue discount (OID) rendered obsolete Rev. Rul. 58–225, 1958–1 C.B. 258, which held that a life insurance company must include in taxable income the amount of interest collected in advance under policyholder loans. Rev. Rul. 58–225 obsoleted.

Rev. Rul. 2011–15

Rev. Rul. 58–225, 1958–1 C.B. 258, concluded that interest collected in advance by a life insurance company on policyholder loans ("prepaid interest") constitutes taxable income in the year received. In general, under the final original issue discount ("OID") regulations that were published in 1994 (T.D. 8517, 1994–1 C.B. 38 [59 FR 4799]), a payment of an amount designated as "prepaid interest" is not includible in the holder's taxable income in the year received. For example, see § 1.1273–2(g)(2) of the Income Tax Regulations (certain payments made at the inception of a loan reduce the issue price of the loan and, in effect, are includible in taxable income over the term of the loan). Consequently, the final OID regulations have made Rev. Rul. 58–225 obsolete.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 58–225 is obsolete.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donald J. Drees, Jr. of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Mr. Drees at (202) 622–3970 (not a toll-free call).

Section 1035.—Certain Exchanges of Insurance Policies

The revenue procedure modifies and supersedes the guidance provided in Rev. Proc. 2008–24, 2008–13 I.R.B. 684, concerning the treatment under sections 1035 and 72 of the partial exchange of an annuity contract. Specifically, the revenue procedure provides that the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract will be treated as a tax-free exchange under section 1035 if no amount, other than an amount received as an annuity for a period of 10 years or more or during one or more lives, is received during the 180 days beginning on the date of the transfer. A subsequent direct transfer of all or a portion of either contract involved in an exchange is not taken into account if the subsequent transfer qualifies (or is intended to qualify) as a tax-free exchange. Other transactions will be characterized consistent with their substance. Prior to this revenue procedure's effective date, Rev. Proc. 2008–24 will be applied with the clarification that the conditions described in section 4.01(b) or Rev. Proc. 2008–24 will be treated as satisfied if the condition was satisfied on the date of the withdrawal or surrender. See Rev. Proc. 2011-38, page 66.

Section 6038A.—Information With Respect to Certain Foreign-Owned Corporations

26 CFR 1.6038A–1: General requirements and definitions.

T.D. 9529

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Requirements for Taxpayers Filing Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that remove the duplicate filing requirement for Form 5472, "*Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.*" The temporary regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. The text of the temporary regulations also serves as the text of the proposed regulations (REG-101352–11) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective June 10, 2011.

Applicability Date: For dates of applicability, see §§1.6038A–1T(n) and 1.6038A–2(h).

FOR FURTHER INFORMATION CONTACT: Gregory A. Spring, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6038A of the Internal Revenue Code (Code) generally requires

information reporting by a 25-percent foreign-owned domestic corporation with respect to certain transactions between such corporation and certain related parties. Similarly, section 6038C generally requires a foreign corporation engaged in a trade or business within the United States at any time during the taxable year to report the information described in section 6038A with respect to certain transactions between such corporation and certain related parties.

On June 19, 1991, the Treasury Department and the IRS published in the **Federal Register** (56 FR 28056) final regulations (T.D. 8353, 1991–2 C.B. 402) under section 6038A (1991 final regulations). A correction to T.D. 8353 was published in the **Federal Register** (56 FR 41792) on August 23, 1991. The 1991 final regulations contained guidance under a number of provisions including §§1.6038A–1 and 1.6038A–2 regarding information reporting requirements under sections 6038A and 6038C. Section 1.6038A–1(c)(1) defines a reporting corporation as: (i) a domestic corporation that is 25-percent foreign-owned; (ii) a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States; or (iii) (after November 4, 1990) a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A–2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472, "*Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*," with respect to each related party with which the reporting corporation has had any reportable transaction during the taxable year. Section 1.6038A–2(d) requires a reporting corporation to file Form 5472 with its income tax return for the taxable year by the due date of that return. Section 1.6038A–2(d) also requires a reporting corporation to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, PA (duplicate filing requirement). Section 1.6038A–2(e) provides that if a reporting corporation's income tax return is not timely filed, Form 5472 nonetheless is required to be filed (with a duplicate to the Internal Revenue Service Center in Philadelphia, PA) at the service center where the return is due (untimely filed return provision). When the income tax return is ultimately filed, a copy of Form 5472 must be attached to the return.

On February 9, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 5931) final regulations and temporary regulations (2004 temporary regulations) (T.D. 9113, 2004–1 C.B. 524) under section 6038A regarding the duplicate filing requirement. The text of the 2004 temporary regulations also served as the text of proposed regulations (REG–167217–03, 2004–1 C.B. 540) set forth in the proposed rules section of the same issue of the **Federal Register** (69 FR 5940–01) (2004 proposed regulations). The 2004 temporary regulations provided that the duplicate filing requirement of §1.6038A–2(d) is satisfied if Form 5472 is timely filed electronically (electronic filing provision). The 2004 temporary regulations did not add a conforming electronic filing provision to §1.6038A–2(e) (containing the untimely filed return provision) because the electronic filing of Form 5472 other than as an attachment to an electronically filed income tax return was not technically possible at the time the 2004 temporary regulations were published. However, the preamble to the 2004 temporary regulations states that the Treasury Department and the IRS intend that a Form 5472 that is timely and separately filed electronically, once technically possible, would be treated as satisfying the duplicate filing requirement of §1.6038A–2(e).

On September 15, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 55499–02) final regulations (T.D. 9161, 2004–2 C.B. 704) that adopted the 2004 proposed regulations without change (2004 final regulations). As part of the 2004 final regulations, §1.6038A–1(n)(2) (providing effective dates) was also amended to indicate that the electronic filing provision applies for taxable years ending on or after January 1, 2003. T.D. 9161 also removed the text of the 2004 temporary regulations.

Explanation of Provisions

As a result of advances in electronic processing and data collection in the IRS, the duplicate filing requirement contained in §1.6038A–2(d) is no longer necessary. Upon the effective date of these temporary regulations, the duplicate filing of Form 5472 will no longer be required regardless of whether the reporting corporation files a paper or an electronic income tax return. The temporary regulations implement this change by removing from §1.6038A–2(d), the duplicate filing requirement and the electronic filing provision.

As a conforming amendment, the temporary regulations also remove the duplicate filing requirement from the untimely filed return provision of §1.6038A–2(e). In addition, the temporary regulations remove the reference in §1.6038A–2(e) to "at the service center where the return is due" in order to avoid any implication that the untimely filed return provision can only be satisfied by filing a paper Form 5472. However, while the Treasury Department and the IRS intend that a timely filed electronic Form 5472 would be treated as satisfying the untimely filed return provision, there are currently no procedures for electronically filing Form 5472 independent of an electronically filed income tax return. Thus, a reporting corporation that does not timely file an income tax return must still timely file a paper Form 5472 in order to satisfy the untimely filed return provision. If the IRS institutes procedures for the separate electronic filing of Form 5472, reporting corporations will no longer be required to file a paper Form 5472 when filing the Form 5472 separate from an income tax return.

Lastly, the temporary regulations amend the effective date provisions of §1.6038A–1(n) to provide that the amendments to §1.6038A–2(d) and (e) apply for taxable years ending on or after June 10, 2011.

The text of the temporary regulations also serves as the text of the proposed regulations set forth in this issue of the Bulletin.

Special Analysis

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter

5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C chapter 6) refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Gregory A. Spring, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended 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 1.6038A–1 is amended by revising paragraph (n)(2) to read as follows:

§1.6038A–1 General requirements and definitions.

* * * * *

(n) * * *

(2) [Reserved]. For further guidance, see §1.6038A–1T(n)(2).

* * * * *

Par. 3. Section 1.6038A–1T is added to read as follows:

§1.6038A–1T General requirements and definitions.

(a) through (n)(1) [Reserved]. For further guidance, see §1.6038A–1(a) through (n)(1).

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5472) generally applies for taxable years beginning after July 10, 1989. However, §1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in §1.864–4(c)(5)(i) applies for taxable years beginning after December 10, 1990. Section 1.6038A–2(d) and (e) apply for taxable years ending on or after June 10, 2011. For taxable years ending prior to June 10, 2011, see §1.6038A–2(d) and (e) as contained in 26 CFR part 1 revised as of September 15, 2004.

(n)(3) through (n)(6) [Reserved]. For further guidance, see §1.6038A–1(n)(3) through (6).

(o) *Expiration date.* The applicability of this section expires on June 10, 2014.

Par. 4. Section 1.6038A–2 is amended by revising paragraphs (d) and (e) to read as follows:

§1.6038A–2 Requirement of return.

* * * * *

(d) [Reserved]. For further guidance, see §1.6038A–2T(d).

(e) [Reserved]. For further guidance, see §1.6038A–2T(e).

* * * * *

Par. 5. Section 1.6038A–2T is added to read as follows:

§1.6038A–2T Requirement of return.

(a) through (c) [Reserved]. For further guidance, see §1.6038A–2(a) through (c).

(d) *Time for filing returns.* A Form 5472 required under this section must be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return.

(e) *Untimely filed return.* If the reporting corporation's income tax return is untimely filed, Form 5472 nonetheless must be timely filed. When the reporting corporation's income tax return is ultimately filed, a copy of Form 5472 must be attached.

(f) through (h) [Reserved]. For further guidance, see §1.6038A–2(f) through (h).

(i) *Expiration date.* The applicability of this section expires on June 10, 2014.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved May 2, 2011.

Emily S. McMahon,
(Acting) Assistant Secretary for the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on June 9, 2011, 8:45 a.m., and published in the issue of the Federal Register for June 10, 2011, 76 F.R. 33997)

Part III. Administrative, Procedural, and Miscellaneous

Notice and Request for Comments Regarding the Community Health Needs Assessment Requirements for Tax-Exempt Hospitals

Notice 2011–52

SECTION 1. PURPOSE

This notice addresses the community health needs assessment ("CHNA") requirements described in section 501(r)(3) of the Internal Revenue Code ("Code") and related excise tax and reporting obligations, applicable to hospital organizations that are (or seek to be) recognized as described in section 501(c)(3) of the Code. The CHNA requirements are among several new requirements that apply to section 501(c)(3) hospital organizations under section 501(r), which was added to the Code by section 9007(a) of the Patient Protection and Affordable Care Act ("Affordable Care Act"), Pub. L. No. 111–148, 124 Stat. 119, enacted March 23, 2010.[1] This notice describes specific provisions related to the CHNA requirements that the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") anticipate will be included in regulations to be proposed under section 501(r). This notice also invites comments from the public regarding the CHNA requirements.

Although the CHNA requirements are not effective until taxable years beginning after March 23, 2012, Treasury and the IRS are publishing this notice regarding the CHNA requirements now because they understand that some hospital organizations may choose to start the process of conducting CHNAs and developing implementation strategies in advance of the effective date. A hospital organization may rely on the anticipated regulatory provisions described in this notice with respect to any CHNA made widely available to the public, and any implementation strategy adopted, on or before the date that is six months after the date further guidance regarding the CHNA requirements is issued.

SECTION 2. BACKGROUND

Section 9007 of the Affordable Care Act added sections 501(r) and 4959 to the Code and amended section 6033(b). These provisions are applicable to "hospital organizations" described in new section 501(r)(2). Section 501(r)(1) provides that hospital organizations described in section 501(r)(2) will not be treated as described in section 501(c)(3) unless they satisfy the requirements specified in section 501(r), including the CHNA requirements described in section 501(r)(3).

Section 501(r)(2)(A) defines a "hospital organization" as (i) an organization that operates a facility required by a State to be licensed, registered, or similarly recognized as a hospital ("State-licensed hospital facility"), and (ii) any other organization that the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under section 501(c)(3).

If a hospital organization operates more than one hospital facility, section 501(r)(2)(B)(i) requires the organization to meet all of the section 501(r)(1) requirements, including the CHNA requirements, separately with respect to each hospital facility. Section 501(r)(2)(B)(ii) provides that the organization will not be treated as described in section 501(c)(3) with respect to any hospital facility for which such requirements are not separately met.

Section 501(r)(3)(A) provides that a hospital organization meets the CHNA requirements with respect to any taxable year only if the organization (i) has conducted a CHNA that meets the requirements of section 501(r)(3)(B) in such taxable year or in either of the two taxable years immediately preceding such taxable year, and (ii) has adopted an implementation strategy to meet the community health needs identified through such CHNA. Section 501(r)(3)(B) requires that a CHNA (i) take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and (ii) be made widely available to the public. Although most of the requirements under section 501(r) are effective for taxable years beginning after March 23, 2010, the CHNA requirements are effective for taxable years beginning after March 23, 2012. *See* section 9007(f)(2) of the Affordable Care Act.

Section 501(r)(7) provides that the Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of section 501(r).

Section 4959 imposes a $50,000 excise tax on a hospital organization that fails to meet the CHNA requirements for any taxable year. A hospital organization must report the amount of any excise tax imposed on it under section 4959 on its annual information return (*i.e.,* Form 990, *Return of Organization Exempt From Income Tax*, and related schedules) pursuant to section 6033(b)(10)(D).

Section 6033(b)(15)(A) requires a hospital organization to report on its Form 990 a description of how the organization is addressing the needs identified in each CHNA and a description of any needs that are not being addressed together with the reasons why the needs are not being addressed.

On May 27, 2010, the IRS released Notice 2010–39, 2010–24 I.R.B. 756, which requested comments regarding the new requirements under section 501(r), including the need, if any, for guidance regarding such requirements. In response to Notice 2010–39, the IRS received numerous comments requesting guidance on the CHNA requirements. In issuing this notice, Treasury and the IRS have considered all of the comments regarding the CHNA requirements received in response to Notice 2010–39.

SECTION 3. ANTICIPATED REGULATORY PROVISIONS

This section describes anticipated regulatory provisions regarding hospital organizations required to meet the CHNA requirements (section 3.01); hospital organizations with multiple hospital facilities (section 3.02); the documentation of a CHNA (section 3.03); how and when a CHNA is conducted (section 3.04); the

[1] A related bill, the Health Care Education Affordability Reconciliation Act of 2010 (H.R. 4872) (Reconciliation Act), was signed into law on March 30, 2010 (Pub. L. No. 111–152). The Reconciliation Act amends the Affordable Care Act and related laws.

community served by a hospital facility (section 3.05); persons representing the broad interests of the community (section 3.06); making a CHNA widely available to the public (section 3.07); implementation strategy (section 3.08); how and when an implementation strategy is adopted (section 3.09); excise taxes on failures to meet the CHNA requirements (section 3.10); reporting requirements related to CHNAs (section 3.11); and effective dates (section 3.12).

.01 Hospital Organizations Required to Meet the CHNA Requirements

Section 501(r)(2)(A) defines a "hospital organization" as (i) an organization that operates a State-licensed hospital facility, and (ii) any other organization that the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under section 501(c)(3). A number of commenters asked that the Secretary not exercise its determination authority under section 501(r)(2)(A)(ii) until there is an opportunity to comment on a proposed rule.

(1) Organizations with the Principal Purpose of Providing Health Care

Treasury and the IRS have not yet exercised the authority described in section 501(r)(2)(A)(ii) to determine whether any categories of organizations have the provision of hospital care as their principal exempt function or purpose. Treasury and the IRS intend that any future guidance regarding any such categories of organizations will only apply prospectively, after an opportunity for notice and comment. Prior to the effective date of any such future guidance, only organizations operating State-licensed hospital facilities will be considered "hospital organizations" that must satisfy the CHNA requirements.

(2) Hospital Organizations Operating State-licensed Hospital Facilities

Several commenters asked for confirmation that section 501(r) applies to an organization described in section 501(c)(3) that operates a State-licensed hospital facility through a disregarded entity or a joint venture treated as a partnership for federal tax purposes. A number of commenters also asked whether section 501(r) will apply to an organization as a result of its operating a hospital facility located outside of the United States.

Section 501(r)(2)(A)(i) includes within the definition of a hospital organization any organization described in section 501(c)(3) that operates a State-licensed hospital facility. Rev. Rul. 2004–51, 2004–1 C.B. 974, provides that the activities of an entity that is treated as a partnership for federal tax purposes are treated as the activities of the tax-exempt partner for purposes of determining whether the tax-exempt partner is operated exclusively for exempt purposes and engages in an unrelated trade or business. *See also* Rev. Rul. 98–15, 1998–1 C.B. 718. In addition, when an entity is disregarded as separate from its owner, its operations are treated as a branch or division of the owner. *See, e.g.*, Ann. 99–102, 1999–2 C.B. 545. Accordingly, Treasury and the IRS intend to include within the definition of a hospital organization any organization described in section 501(c)(3) that operates a State-licensed hospital facility through a disregarded entity or a joint venture, limited liability company, or other entity treated as a partnership for federal income tax purposes. Treasury and the IRS request comments regarding whether (or under what circumstances) an organization should not be considered to "operate" a State-licensed hospital facility for purposes of section 501(r) as a result of its owning a small interest (other than a general partner or similar interest) in an entity treated as a partnership for federal income tax purposes that operates the hospital facility.

Treasury and the IRS also intend to provide that a hospital facility located outside of the United States will not be considered a State-licensed hospital facility for purposes of section 501(r)(2)(A)(i) because the term "State" includes only the 50 States and the District of Columbia and not any U.S. possession or territory or foreign country. *See* section 7701(a)(9), (10).

(3) Government Hospitals

A number of commenters requested that Treasury and the IRS provide an exception from the requirements imposed by section 501(r) for certain government hospitals. For example, some commenters suggested that the requirements of section 501(r) should not apply to a hospital the income of which is excluded from gross income under section 115 but which has nonetheless applied for and received recognition as an organization described in section 501(c)(3). Other commenters suggested that the section 501(r) requirements should not apply to any hospital that is "a governmental unit" or "an affiliate of a governmental unit" as described in Rev. Proc. 95–48, 1995–2 C.B. 418 (relieving such organizations from the annual filing requirement under section 6033).

The statutory language of section 501(r) applies to all hospital organizations that are (or seek to be) recognized as described in section 501(c)(3). Section 501(r) does not explicitly address government hospitals, nor does it include a specific exception for government hospitals. Accordingly, Treasury and the IRS intend to apply section 501(r) to every hospital organization that has been recognized (or seeks recognition) as an organization described in section 501(c)(3). However, in recognition of the unique position of government hospitals, Treasury and the IRS request comments regarding alternative methods a government hospital may use to satisfy the requirements of section 501(r)(3).

.02 Hospital Organizations with Multiple Hospital Facilities

Section 501(r)(2)(B) provides that if a hospital organization operates more than one hospital facility (i) the organization shall meet the requirements of section 501(r) separately with respect to each hospital facility, and (ii) the organization shall not be treated as described in section 501(c)(3) with respect to any hospital facility for which the requirements of section 501(r) are not separately met. Accordingly, Treasury and the IRS intend to require a hospital organization to conduct a CHNA and adopt an implementation strategy for each hospital facility it operates. Moreover, as described further in sections 3.04 and 3.08 of this notice, although hospital organizations will be able to collaborate with other organizations when conducting CHNAs and developing implementation strategies, Treasury and the IRS intend to require a hospital organization operating multiple hospital facilities to document separately the

CHNA and the implementation strategy for each of its hospital facilities.

A number of commenters requested guidance on the potential consequences of a failure to satisfy the requirements of 501(r) separately with respect to a particular hospital facility. Treasury and the IRS intend to address the potential consequences of a failure to satisfy the CHNA requirements (or other requirements under section 501(r)) with respect to one or more hospital facilities in proposed regulations or other future guidance.

.03 Documentation of a CHNA

Section 501(r)(3)(A)(i) requires a hospital organization to conduct a CHNA that meets the requirements of section 501(r)(3)(B) at least once every three taxable years.

Many commenters requested that Treasury and the IRS define a CHNA in a manner sufficiently flexible to allow hospitals to design a CHNA appropriate to their unique community and available resources. At the same time, a number of commenters asked that Treasury and the IRS provide clear guidance regarding the required contents of a CHNA. Several commenters asked the IRS to define a CHNA as a written document developed for a hospital facility that includes a description of the community served by the hospital facility; the process used to conduct the assessment, including how the hospital took into account input from community members and public health experts; identification of any persons with whom the hospital has worked on the assessment; and the health needs identified through the assessment process.

Treasury and the IRS intend to require a hospital organization to document a CHNA for a hospital facility in a written report that includes the following information:

(1) A description of the community served by the hospital facility (as defined in section 3.05 of this notice) and how it was determined.

(2) A description of the process and methods used to conduct the assessment, including a description of the sources and dates of the data and other information used in the assessment and the analytical methods applied to identify community health needs. The report should also describe information gaps that impact the hospital organization's ability to assess the health needs of the community served by the hospital facility. If a hospital organization collaborates with other organizations in conducting a CHNA (as described in paragraph (2) of section 3.04 of this notice), the report should identify all of the organizations with which the hospital organization collaborated. If a hospital organization contracts with one or more third parties to assist it in conducting a CHNA, the report should also disclose the identity and qualifications of such third parties.

(3) A description of how the hospital organization took into account input from persons who represent the broad interests of the community served by the hospital facility (as defined in section 3.06 of this notice), including a description of when and how the organization consulted with these persons (whether through meetings, focus groups, interviews, surveys, written correspondence, etc.). If the hospital organization takes into account input from an organization, the written report should identify the organization and provide the name and title of at least one individual in such organization with whom the hospital organization consulted. In addition, the report must identify any individual providing input who has special knowledge of or expertise in public health (as provided in paragraph (1) of section 3.06 of this notice) by name, title, and affiliation and provide a brief description of the individual's special knowledge or expertise. The report also must identify any individual providing input who is a "leader" or "representative" of populations described in paragraph (3) of section 3.06 of this notice by name and describe the nature of the individual's leadership or representative role.

(4) A prioritized description of all of the community health needs identified through the CHNA, as well as a description of the process and criteria used in prioritizing such health needs.

(5) A description of the existing health care facilities and other resources within the community available to meet the community health needs identified through the CHNA.

Some commenters suggested that a CHNA include a description of the needs identified in the CHNA that the hospital intends to address, the reasons those needs were selected, and the means by which the hospital will undertake to address the selected needs. Treasury and the IRS intend to require a hospital organization to specifically address each of the community health needs identified through a CHNA for a hospital facility in an implementation strategy, as described in section 3.08 of this notice, rather than in the written report documenting the hospital facility's CHNA.

.04 How and When a CHNA Is "Conducted"

Section 501(r)(3)(A) provides that a hospital organization meets the CHNA requirements with respect to any taxable year only if it has conducted a CHNA in such taxable year or in either of the two immediately preceding taxable years. Numerous commenters requested that Treasury and the IRS provide that a CHNA may be based on information collected by a public health agency or non-profit organization. Commenters also requested that hospital organizations be permitted to conduct CHNAs together with one or more other organizations, because collaboration will allow for more cost effective and efficient identification of a community's health care needs from a more fully-informed perspective.

(1) When a CHNA Is Considered Conducted

Treasury and the IRS intend to consider a CHNA as being "conducted" in the taxable year that the written report of its findings (containing all of the information described in section 3.03 of this notice) is made widely available to the public (as defined in section 3.07 of this notice).

Treasury and the IRS request comments on what, if any, guidance is needed regarding when a hospital organization must conduct a CHNA for a new hospital facility that the hospital organization acquires or places into service after March 23, 2010.

(2) How a CHNA is Conducted

Treasury and the IRS intend to provide that a CHNA will satisfy the CHNA requirements with respect to a hospital facility only if it identifies and assesses the health needs of, and takes into account input from persons who represent the broad interests of, the community served by that

specific hospital facility (as defined in section 3.05 of this notice). Treasury and the IRS intend to allow a hospital organization to base a CHNA on information collected by other organizations, such as a public health agency or non-profit organization. Treasury and the IRS also intend to allow a hospital organization to conduct a CHNA in collaboration with other organizations, including related organizations, other hospital organizations, for-profit and government hospitals, and state and local agencies, such as public health departments. However, in order to ensure that the hospital organization meets the CHNA requirements separately with respect to each hospital facility and that information for each hospital facility is clearly presented and easily accessible, Treasury and the IRS intend to require a hospital organization to document the CHNA for each of its hospital facilities in separate written reports that include the information described in section 3.03 for each hospital facility.

Treasury and the IRS request comments regarding whether, and under what circumstances, documenting CHNAs for multiple hospital facilities together in one written report might improve the quality of the CHNAs, while still ensuring that information for each hospital facility is clearly presented and easily accessible.

.05 Community Served by a Hospital Facility

Numerous commenters recommended that any definition of the "community served by the hospital facility" give hospitals the flexibility to define the scope of a CHNA so that it focuses on the communities actually served by hospital facilities, whether those communities are defined by geographic area or target populations (*e.g.*, women or children). On the other hand, some commenters recommended defining the community served by a hospital facility as a specific geographic area. For example, one commenter recommended defining the community served by a hospital facility as a geographic area, identified by the zip codes of discharged patients, from which at least 75 percent of the hospital's patients reside.

For purposes of section 501(r)(3), Treasury and the IRS intend to provide that a hospital organization may take into account all of the relevant facts and circumstances in defining the community a hospital facility serves. Generally, Treasury and the IRS expect that a hospital facility's community will be defined by geographic location (*e.g.*, a particular city, county, or metropolitan region). However, in some cases, the definition of a hospital facility's community may also take into account target populations served (*e.g.*, children, women, or the aged) and/or the hospital facility's principal functions (*e.g.*, focus on a particular specialty area or targeted disease). Notwithstanding the foregoing, a community may not be defined in a manner that circumvents the requirement to assess the health needs of (or consult with persons who represent the broad interests of) the community served by a hospital facility by excluding, for example, medically underserved populations, low-income persons, minority groups, or those with chronic disease needs.

Treasury and the IRS request comments regarding the relative merits of different geographically-based definitions of community. Treasury and the IRS specifically request comments regarding whether future regulations should define the geographic community of a hospital facility as the Metropolitan Statistical Area (MSA) or Micropolitan Statistical Area (μSA) in which the facility is located or, if the hospital facility is a rural facility not located in a MSA or μSA, as the county in which the facility is located.

.06 Persons Representing the Broad Interests of the Community

Section 501(r)(3)(B)(i) states that a CHNA must take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health. A number of commenters asked that a hospital be given discretion to determine the type of input and expertise that it needs in conducting a CHNA. Other commenters asked that Treasury and the IRS provide guidance on the qualifications necessary for a person to be considered as having special knowledge of or expertise in public health. In addition, numerous commenters requested that CHNAs should, at a minimum, be required to take into account input from state and/or local public health agencies or departments. A few commenters also recommended that hospital facilities be required to consult with representatives of underserved or disadvantaged communities.

In order to meet the requirement to take into account input from persons who represent the broad interests of the community served by a hospital facility, Treasury and the IRS intend to provide that a CHNA must, at a minimum, take into account input from—

(1) Persons with special knowledge of or expertise in public health;

(2) Federal, tribal, regional, State, or local health or other departments or agencies, with current data or other information relevant to the health needs of the community served by the hospital facility; and

(3) Leaders, representatives, or members of medically underserved, low-income, and minority populations, and populations with chronic disease needs, in the community served by the hospital facility.

Treasury and the IRS expect that certain persons may fall into more than one of the categories listed above in paragraphs (1) through (3). For example, taking into account input from certain government officials with special knowledge of or expertise in public health may allow a hospital organization to satisfy the requirements described in both paragraphs (1) and (2). Treasury and the IRS request comments regarding what specific qualifications (whether in terms of degrees, positions, experience, or affiliations) should be necessary for an individual or organization to be considered as having special knowledge of or expertise in public health.

In addition to persons described above in paragraphs (1), (2), and (3), a hospital organization or facility may also consult with and seek input from other persons located in and/or serving the hospital facility's community. For example, a hospital organization or facility may consult or seek input from healthcare consumer advocates; nonprofit organizations; academic experts; local government officials; community-based organizations, including organizations focused on one or more health issues; health care providers, including community health centers and other providers focusing on medically underserved populations, low-income persons, minority groups, or those with chronic disease needs; private businesses;

and health insurance and managed care organizations.

.07 Making a CHNA Widely Available to the Public

Section 501(r)(3)(B)(ii) provides that a CHNA must be made widely available to the public. Many commenters suggested patterning the rules for making the CHNA widely available to the public after the rules for making Forms 990 "widely available" under Treas. Reg. § 301.6104(d)–2(b).

In defining widely available to the public for purposes of section 501(r)(3)(B)(ii), Treasury and the IRS intend to adopt rules similar to those set forth in Treas. Reg. § 301.6104(d)–2(b). Thus, a hospital organization will be considered to have made a hospital facility's CHNA widely available to the public by posting the written report of the CHNA findings on the hospital facility's website or, if the hospital facility does not have its own website separate from the hospital organization that operates it, on the hospital organization's website. Alternatively, the written report may be posted on a website established and maintained by another entity as long as either —

(1) the hospital organization or facility's website provides a link to the website on which the report is posted, along with clear instructions for accessing the report on that website; or

(2) if neither the hospital organization nor the hospital facility has a website, the hospital organization or facility provides any individual requesting a copy of the written report with the direct website address, or url, where the document can be accessed.

In addition, Treasury and the IRS intend to provide that a CHNA will be considered widely available to the public by reason of posting on a website only if—

(1) The website through which the written report is available clearly informs readers that the document is available and provides instructions for downloading it;

(2) The document is posted in a format that, when accessed, downloaded, viewed, and printed in hard copy, exactly reproduces the image of the report;

(3) Any individual with access to the Internet can access, download, view, and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without payment of a fee to the hospital organization or facility or to another entity maintaining the website; and

(4) The hospital organization or facility provides any individual requesting a copy of the written report with the direct website address, or url, where the document can be accessed.

Finally, Treasury and the IRS intend to require a hospital organization to make a CHNA for a hospital facility widely available to the public until the date on which it makes a subsequent CHNA for that hospital facility widely available to the public.

Treasury and the IRS request comments regarding whether future guidance should provide additional methods that a hospital organization could or must use to make a CHNA widely available to the public.

.08 Implementation Strategy

Section 501(r)(3)(A)(ii) provides that a hospital organization meets the CHNA requirements with respect to any taxable year only if it has adopted an "implementation strategy" to meet the community health needs identified through the CHNA. Some commenters suggested that a hospital organization be allowed to coordinate with other organizations in developing an implementation strategy. A number of commenters also suggested that at least a summary of the implementation strategy should be included in the written report of the CHNA's findings. Several commenters requested that Treasury and the IRS not require the implementation strategy to set forth a specific plan to meet all of the health needs identified through a CHNA. One commenter recommended that the implementation strategy be a document that is available for IRS review.

As with any other requirement under section 501(r), a hospital organization must meet the requirement to adopt an implementation strategy separately with respect to each hospital facility it operates. Treasury and the IRS intend to define an "implementation strategy" for a hospital facility as a written plan that addresses each of the community health needs identified through a CHNA for such facility. For these purposes, Treasury and the IRS intend to provide that an implementation strategy will address a health need identified through a CHNA for a particular hospital facility if the written plan either—

(1) describes how the hospital facility plans to meet the health need; or

(2) identifies the health need as one the hospital facility does not intend to meet and explains why the hospital facility does not intend to meet the health need.

In describing how a hospital facility plans to meet a health need identified through a CHNA for purposes of paragraph (1), the implementation strategy must tailor the description to the particular hospital facility, taking into account its specific programs, resources, and priorities. For example, an implementation strategy could describe a hospital facility's plans to meet a health need by identifying the programs and resources that the hospital facility plans to commit to meeting the health need and the anticipated impact of those programs and resources on the health need. The implementation strategy could also describe any planned collaboration with governmental, non-profit, or other health care organizations, including related organizations, in meeting the health need.

As discussed in section 3.11 of this notice, Treasury and the IRS intend to require a hospital organization to attach to its annual Form 990 the most recently adopted implementation strategy for each of its hospital facilities.

Treasury and the IRS intend to allow hospital organizations to develop implementation strategies for their hospital facilities in collaboration with other organizations, including related organizations, other hospital organizations, for-profit and government hospitals, and State and local agencies, such as public health departments. If a hospital organization collaborates with other organizations in developing an implementation strategy, the implementation strategy should identify all of the organizations with which the hospital organization collaborated. In addition, to ensure that the hospital organization meets the CHNA requirements separately with respect to each hospital facility and that the implementation strategy for each hospital facility is clearly presented and easily accessible, Treasury and the IRS intend to require a hospital organization to document

separately the implementation strategy for each of its hospital facilities.

Treasury and the IRS request comments regarding whether, and under what circumstances, documenting implementation strategies for multiple hospital facilities together in one written document might improve the quality of the implementation strategies while still ensuring that information for each hospital facility is clearly presented and easily accessible.

.09 How and When an Implementation Strategy is Adopted

One commenter asked for clarification regarding when the implementation strategy must be adopted and recommended that a hospital organization be allowed to adopt an implementation strategy by the end of the taxable year following the year in which CHNA was conducted.

Treasury and the IRS intend to consider an implementation strategy as being adopted on the date the implementation strategy is approved by an authorized governing body of the hospital organization.

For these purposes, an authorized governing body means—

(1) The governing body (*i.e.*, the board of directors, board of trustees, or equivalent controlling body) of the hospital organization;

(2) A committee of the governing body, which may be composed of any individuals permitted under State law to serve on such committee, to the extent the committee is permitted by State law to act on behalf of the governing body; or

(3) To the extent permitted under State law, other parties authorized by the governing body of the hospital organization to act on its behalf by following procedures specified by the governing body in approving an implementation strategy.

Pursuant to section 501(r)(3)(A)(ii), in order to satisfy the CHNA requirements with respect to any taxable year, a hospital organization must have adopted an implementation strategy to meet the health needs identified through the CHNA described in section 501(r)(3)(A)(i). Accordingly, Treasury and the IRS intend to provide that a hospital organization must adopt an implementation strategy to meet the community health needs identified in a CHNA by the end of the same taxable year in which it conducts that CHNA. Treasury and the IRS request comments regarding the need, if any, for a transition rule, under which a hospital organization would be given additional time to adopt an implementation strategy for the first taxable year in which the hospital organization is subject to the CHNA requirements (*i.e.*, the first taxable year beginning after March 23, 2012).

.10 Excise Tax on Failures to Meet the CHNA Requirements

Section 4959 imposes a $50,000 excise tax on a hospital organization that fails to meet the CHNA requirements with respect to any taxable year.

Treasury and the IRS intend to impose the $50,000 excise tax under section 4959 on any hospital organization that fails to satisfy the CHNA requirements with respect to a hospital facility in any three-year period. For example, if a hospital organization reporting on a calendar-year basis that operates only one hospital facility fails to conduct a CHNA by the last day of 2013, and also did not conduct a CHNA in 2011 or 2012, it will be subject to a $50,000 excise tax under section 4959 for its 2013 taxable year. If it then fails to conduct a CHNA by the last day of 2014, it will again be subject to a $50,000 excise tax under section 4959 for its 2014 taxable year (having not conducted a CHNA in 2012, 2013, or 2014).

Because section 501(r)(2)(B)(i) requires a hospital organization to meet the CHNA requirements "separately with respect to each [hospital] facility," Treasury and the IRS intend to apply the section 4959 excise tax separately with respect to each hospital facility's failure to meet the CHNA requirements. Thus, if a hospital organization operates two hospital facilities and fails to meet the requirements of section 501(r)(3) for both of them for any taxable year, that hospital organization will be subject to a total excise tax of $100,000 ($50,000 for each hospital facility) in that taxable year.

.11 Reporting Requirements Related to CHNAs

Section 6033(a)(1) requires every organization exempt from taxation under section 501(a) and not excepted under section 6033(a)(3) to file an annual return stating such information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe. Section 6033(a)(3)(B) provides that the Secretary may relieve any organization (other than a supporting organization described in section 509(a)(3)) from this requirement to file an annual return when the Secretary determines that filing is not necessary to the efficient administration of the internal revenue laws. Section 6033(b) lists the information that organizations described in section 501(c)(3) must furnish on their annual information returns, including any "information for purposes of carrying out the internal revenue laws as the Secretary may require." *See* section 6033(b)(16).

As described above, the Affordable Care Act added two specific reporting requirements for hospital organizations to section 6033(b). Section 6033(b)(10)(D) requires a hospital organization to report on its annual information return (Form 990) the amount of the excise tax imposed on the organization under section 4959. Section 6033(b)(15)(A) requires a hospital organization to report on its annual Form 990 a description of how the organization is addressing the needs identified in each CHNA and a description of any such needs that are not being addressed together with the reasons why such needs are not being addressed.

The IRS has added new questions to Schedule H, *Hospitals*, of the Form 990 to reflect the new reporting requirements for hospital organizations under section 6033(b)(15)(A). The IRS also plans to add questions reflecting the new reporting requirements under section 6033(b)(10)(D) to the Form 990 in the future. As discussed in section 3.12 of this notice, responses to these questions are optional on Forms 990 for taxable years beginning on or before March 23, 2012.

As discussed above, section 501(r)(3)(A)(ii) requires a hospital organization to adopt an implementation strategy for each of its hospital facilities. Treasury and the IRS intend to require a hospital organization to attach to its annual Form 990 its most recently adopted implementation strategy for each of its hospital facilities. (See section 3.09 of this notice for when an implementation strategy must be adopted.) If a hospital organization only conducts one CHNA and adopts one implementation strategy

for a hospital facility in a given three-year period, Treasury and the IRS intend to allow it to attach the same implementation strategy for that hospital facility to the Form 990 for each of those three years.

In Rev. Proc. 95–48, the IRS exercised its discretionary authority under section 6033(a)(3)(B) to relieve certain governmental units and affiliates of governmental units from the requirement to file Form 990. The Affordable Care Act did not change the requirements regarding what organizations are required to file Form 990. Accordingly, a government hospital (other than one that is described in section 509(a)(3)) that has been excused from filing Form 990 under Rev. Proc. 95–48 or a successor revenue procedure is not required to file Form 990. Because government hospitals described in Rev. Proc. 95–48 (other than those described in section 509(a)(3)) are relieved from the annual filing requirements under section 6033, they are also relieved from any new reporting requirements imposed on hospital organizations under section 6033, including the requirements under sections 6033(b)(10)(D) and (b)(15)(A) and the anticipated requirement to attach one or more implementation strategies to a Form 990.

.12 Effective Dates

The CHNA requirements are effective for taxable years beginning after March 23, 2012. *See* section 9007(f)(2) of the Affordable Care Act. Accordingly, Treasury and the IRS intend to require a hospital organization to conduct a CHNA and adopt an implementation strategy for each of its hospital facilities by the last day of its first taxable year beginning after March 23, 2012.

Section 501(r)(3)(A) provides that an organization meets the CHNA requirements with respect to any taxable year only if the organization has conducted a CHNA in such taxable year or in either of the two taxable years immediately preceding such taxable year and has adopted an implementation strategy to meet the community health needs identified through the CHNA. Accordingly, a CHNA that is conducted and an implementation strategy that is adopted in either of the two taxable years immediately preceding the taxable year in which section 501(r)(3) becomes effective may apply toward satisfaction of the CHNA requirements for the taxable year in which section 501(r)(3) becomes effective (and the succeeding taxable year, if within the three-year period beginning with the year the CHNA was conducted).

The reporting requirement described in section 6033(b)(15)(A) is effective for taxable years beginning after March 23, 2010, but because the CHNA requirements are not effective until taxable years beginning after March 23, 2012, Treasury and the IRS do not intend to require hospital organizations to report the information described in section 6033(b)(15)(A) on, or attach implementation strategies to, Forms 990 for any taxable year beginning on or before March 23, 2012.

SECTION 4. RELIANCE

Treasury and the IRS expect to issue proposed regulations that will provide guidance regarding the requirements under section 501(r) in general and the CHNA requirements of section 501(r)(3) in particular. Hospital organizations may rely on the anticipated regulatory provisions described in this notice with respect to any CHNA made widely available to the public, and any implementation strategy adopted, on or before the date that is six months after the date further guidance regarding the CHNA requirements is issued.

SECTION 5. REQUEST FOR COMMENTS

Treasury and the IRS request comments regarding the CHNA requirements described in this notice. In addition to the comments specifically requested above, comments are also specifically requested regarding the definitions of a hospital organization, a hospital facility, a CHNA, a community served by a hospital facility, an implementation strategy, conducted (for purposes of the CHNA), and adopted (for purposes of the implementation strategy).

Comments should be submitted on or before September 23, 2011. Please include Notice 2011–52 on the cover page. Comments should be sent to the following address:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2011–52),
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Internal Revenue Service
Courier's Desk
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: CC:PA:LPD:PR
(Notice 2011–52)

Submissions may also be sent electronically to the following e-mail address:

Notice.Comments@irscounsel.treas.gov.

Please include "Notice 2011–52" in the subject line.

All comments will be available for public inspection and copying.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Preston Quesenberry of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Quesenberry at (202) 622–1124 (not a toll-free call).

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26 CFR 1.1035–1: Certain exchange of insurance policies.
(Also § 72.)

Rev. Proc. 2011–38

SECTION 1. PURPOSE

This revenue procedure addresses the tax treatment of certain tax-free exchanges of annuity contracts under § 72 and § 1035 of the Internal Revenue Code. Rev. Proc. 2008–24, 2008–1 C.B. 684, is modified and superseded.

SECTION 2. BACKGROUND

.01 Section 1035(a)(3) provides that no gain or loss shall be recognized on the exchange of an annuity contract for another

annuity contract. The legislative history of § 1035 states that exchange treatment is appropriate for "individuals who have merely exchanged one insurance policy for another better suited to their needs." H.R. Rep. No. 1337, 83d Cong., 2d Sess. 81 (1954). Section 1.1035–1 of the Income Tax Regulations provides that "the exchange, without recognition of gain or loss, of an annuity contract for another annuity contract under § 1035(a)(3) is limited to cases where the same person or persons are the obligee or obligees under the contract received in the exchange as under the original contract."

.02 If, in addition to an annuity contract, a taxpayer receives other property or money in exchange for a second annuity contract, then gain (if any) is recognized to the extent of the sum of money and the fair market value of other property received, but loss (if any) is not recognized to any extent. Section 1035(d)(1) (cross referencing § 1031(b) and (c)); § 1.1031(b)–1(a); § 1031(c)–1.

.03 Section 72(e) governs the federal tax treatment of any amount received under an annuity contract that is not received as an annuity if no other income tax provision applies with respect to such amount. Under § 72(e)(2), such amounts generally are taxed on an income-first basis. Section 72(e)(12) provides that all annuity contracts issued by the same company to the same policyholder during any calendar year are treated as a single annuity contract for purposes of § 72(e).

.04 In *Conway v. Commissioner*, 111 T.C. 350 (1998), *acq*., 1999–2 C.B. xvi, the Tax Court held that the direct exchange by an insurance company of a portion of an existing annuity contract to an unrelated insurance company for a new annuity contract was a tax-free exchange under § 1035. Such a transaction is sometimes referred to as a "partial exchange." *See also* Rev. Rul. 2007–24, 2007–1 C.B. 1282 (receipt of a check under a nonqualified annuity contract and endorsement of the check to a second company as consideration for a second annuity contract treated as a distribution under § 72(e), rather than as a tax-free exchange under § 1035); Rev. Rul. 2002–75, 2002–2 C.B. 812 (assignment of an entire annuity contract for deposit into a preexisting annuity contract treated as a tax-free exchange under § 1035).

.05 In Rev. Rul. 2003–76, 2003–2 C.B. 355, a taxpayer directly transferred a portion of the cash surrender value of an existing annuity contract (the original contract) for a new contract issued by a second insurance company. The ruling concludes that the transfer was a tax-free exchange under § 1035, and that the basis and investment in the contract for the original contract immediately before the exchange was required to be allocated ratably between the original contract and the new contract based on the percentage of the cash value transferred to purchase the new contract.

.06 Rev. Proc. 2008–24 set forth circumstances under which a direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract would be treated as a tax-free exchange under § 1035. Under the revenue procedure, a transfer was treated as a tax-free exchange if no amount was withdrawn from, or received in surrender of, either of the contracts involved in the exchange during the 12 months beginning on the date of the transfer, or if the taxpayer demonstrated that one of the conditions described by § 72(q)(2)(A), (B), (C), (E), (F), (G), (H), or (J) or any similar life event "occurred between" the date of the transfer and the date of the withdrawal or surrender. A transfer within the scope of Rev. Proc. 2008–24 that was not treated as a tax-free exchange under § 1035 was instead treated as a taxable distribution under § 72(e), followed by a payment for the second contract. Rev. Proc. 2008–24 superseded interim guidance provided by Notice 2003–51, 2003–2 C.B. 361.

.07 Section 2113 of the Small Business Jobs Act, P.L. 111–240, added § 72(a)(2) of the Internal Revenue Code to provide rules for the partial annuitization of a single annuity contract. Section 72(a)(2) provides that, if any amount is received as an annuity for 10 years or more or during one or more lives under any portion of an annuity, endowment or life insurance contract— (a) that portion is treated as a separate contract for purposes of § 72; (b) the investment in the contract generally is allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion from which amounts are not so received; and (c) a separate annuity starting date is determined with respect to each portion of the contract from which amounts are received as an annuity. The amendment applies to amounts received in taxable years beginning after December 31, 2010.

.08 Since 2008, Treasury and the Service have learned of several practical issues that diminish the effectiveness of Rev. Proc. 2008–24. For example, some taxpayers have commented that it is not clear how the "occurred between" standard should be applied with regard to several of the conditions that are enumerated in § 72(q)(2) or to similar life events. Other taxpayers have commented that the alternative characterization of a transfer that does not qualify as a tax-free exchange is unclear, and that a 12-month waiting period produces administrative difficulties in some situations where an income tax return already was filed for the year in which the transfer took place. Still others have argued that Treasury and the Service should provide relief for payments received as an annuity under an annuity contract involved in a partial exchange. As a result of the recent amendment of § 72(a), a taxpayer may partially annuitize a single annuity contract and apply an exclusion ratio, rather than the income-first rule of § 72(e), to amounts received as an annuity under the annuitized portion of the contract.

.09 Treasury and the Service have determined that it is in the interest of sound tax administration to modify the guidance provided by Rev. Proc. 2008–24 to address these issues. Accordingly, this revenue procedure makes the following changes to Rev. Proc. 2008–24: First, the 12-month period referred to in section 4.01(a) of Rev. Proc. 2008–24 is reduced to 180 days. Second, the rule requiring that one of the enumerated § 72(q) conditions be met (or that a similar life event occur) is eliminated. Third, the limitations on amounts withdrawn from or received under an annuity contract involved in a partial exchange do not apply to amounts received as an annuity for a period of 10 years or more or during one or more lives. Fourth, the automatic characterization of a transfer as either a tax-free exchange under § 1035 or a distribution taxable under § 72(e) followed by a payment for a second contract is eliminated. Under this approach, if a direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract does not meet the 180-day test described above, the

Service will apply general tax principles to determine the substance, and hence the treatment, of the transfer. Thus, for example, an amount described by § 72(e)(1)(A) that is received under either the original contract or the new contract within 180 days of the exchange may be characterized as either boot in a tax free exchange (see § 1035(d)(1) and 1031(c)) or a distribution under § 72(e).

SECTION 3. SCOPE

.01 This revenue procedure applies to the direct transfer of a portion of the cash surrender value of an existing annuity contract for a second annuity contract, regardless of whether the two annuity contracts are issued by the same or different companies.

.02 This revenue procedure does not apply to transactions to which § 72(a)(2) applies.

SECTION 4. PROCEDURE

.01 A transfer that is within the scope of this revenue procedure will be treated as a tax-free exchange under § 1035 if no amount, other than an amount received as an annuity for a period of 10 years or more or during one or more lives, is received under either the original contract or the new contract during the 180 days beginning on the date of the transfer (in the case of a new contract, the date the contract is placed in-force). A subsequent direct transfer of all or a portion of either contract involved in an exchange described in this section 4.01 is not taken into account for purposes of applying this section if the subsequent transfer qualifies (or is intended to qualify) as a tax-free exchange under § 1035.

.02 A transfer that is within the scope of this revenue procedure but not described in section 4.01 will be characterized in a manner consistent with its substance, based on general tax principles and all the facts and circumstances.

.03 The Service will not require aggregation pursuant to the authority of § 72(e)(12), or otherwise, of an original, pre-existing contract with a second contract that is the subject of a tax-free exchange under § 1035 and section 4.01 of this revenue procedure, even if both contracts are issued by the same insurance company, but will instead treat the contracts as separate annuity contracts. *See* Rev. Rul. 2003–76; Rev. Rul. 2007–38, 2007–1 C.B. 1420.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for transfers described in section 3 of this revenue procedure that are completed on or after October 24, 2011. Rev. Proc. 2008–24 will continue to apply to transfers that are completed before that date, with the clarification of the requirement of section 4.01(b) that one of the prescribed conditions of § 72(q)(2) have "occurred between" the date of the transfer and the date of the withdrawal or surrender will be treated as satisfied if the condition was satisfied as of the date of the withdrawal or surrender. Thus, for example, an individual who attained the age of 59 1/2 before both the date of the transfer and the date of the withdrawal or surrender has satisfied the condition of § 72(q)(2)(A) and will be treated as satisfying section 4.01(b) of Rev. Proc. 2008–24.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2008–24 is modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is John E. Glover of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Glover at (202) 622–3970 (not a toll-free call).

Note. This revenue procedure will be reproduced as the next revision of IRS Publication 4436, General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), and Schedule R (Form 941).

Rev. Proc. 2011–39

TABLE OF CONTENTS

Section 1 – Purpose

.01 The purpose of this publication is to provide general rules and specifications from the Internal Revenue Service (IRS) for paper and computer-generated substitutes for Form 941, Employer's QUARTERLY Federal Tax Return, Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors (referred to in this publication as "Schedule B"), and Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers (referred to in this publication as "Schedule R").

Note. Substitute territorial forms (941-PR, 941-SS, and Anexo B (Formulario 941-PR)) should also conform to the specifications outlined in this revenue procedure.

.02 This publication provides printing information for substitute Form 941, Schedule B, and Schedule R. If you need more in-depth information on who must complete the forms and how to complete them, see the Instructions for Form 941, Instructions for Schedule B (Form 941), the instructions included in Schedule R, and Publication 15 (Circular E), Employer's Tax Guide, or visit IRS.gov.

Note. Failure to produce acceptable substitutes of the forms and schedules listed in this publication may result in delays in processing and penalties.

.03 Forms that completely follow the guidelines in this publication and are exact replicas of the official IRS forms do not need to be submitted to the IRS for specific approval. Substitute forms and schedules need to be scanned using IRS scanning equipment.

If you are uncertain of any specification and want clarification, do the following.

(1) Submit a letter or email citing the specification.

(2) State your understanding of the specification.

(3) Enclose an example (if appropriate) of how the form would appear if produced using your understanding.

(4) Email to *SCRIPS@irs.gov* or *Substituteforms@irs.gov* or use the following address. Be sure to include your name, complete address, phone number, and, if applicable, your email address with your correspondence.

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR-6526
1111 Constitution Avenue, NW
Washington, DC 20224

Note. Allow at least 30 days for the IRS to respond.

.04 However, software developers and form producers should send a blank copy of their substitute Form 941, Schedule B, or Schedule R in pdf format to *SCRIPS@irs.gov*. The purpose is not specifically for approval but to assist the IRS in preparing to scan these forms. Submitters will only receive comments if a significant problem is discovered through this process. Submitters are not expected to delay marketing their forms in order to receive feedback. In no case should submitters include "live" taxpayer data.

.05 The six-digit form ID code (beginning 95XXXX) on Form 941, Schedule B, and Schedule R identifies the official substitute **paper** form. The six-digit form ID code (beginning 97XXXX) identifies substitute "**6x10 grid**" Form 941, Schedule B, and Schedule R. The last two digits of the code identify the calender year of the form layout and not necessarily the tax year the form is filed. For example, the last two digits of ID code 950111 identify calender year and form layout year 2011.

Section 2 – What's New

.01 Publication 4436 now includes information for Form 941 (Schedule R). The schedule is now included in the title of Publication 4436.

.02 Schedule B (Form 941) and Schedule R (Form 941) are referred to simply as Schedule B and Schedule R throughout this publication.

.03 We added NEW Section 5 to this publication to provide guidelines for producing Schedule R.

.04 Publication 4436 now includes more generic, less revision-specific information to allow for the publication to remain more current.

.05 Software and forms developers should now send blank paper copies of their 941 substitute forms and schedules B and R to *SCRIPS@irs.gov* to ensure that their substitute 941 forms conform to IRS scanning specifications.

.06 The IRS website is now referred to as IRS.gov rather than *www.irs.gov* .

.07 Software and forms developers are now referred to IRS.gov links to find the most current Forms 941 and Schedules B and R.
.08 We deleted the exhibits in an effort to eliminate revision-specific information.
.09 We made editorial changes as necessary.

Section 3 – General Requirements for Reproducing IRS Official Form 941, Schedule B, and Schedule R

.01 Submit substitute Form 941, Schedule B, and Schedule R to the IRS for specifications review. Substitute Form 941, Schedule B, and Schedule R that **completely conform** to the specifications contained in this revenue procedure do not require prior approval from the IRS, but should be submitted to *SCRIPS@irs.gov* to ensure that they conform to IRS format and scanning specifications.
.02 Print the form on standard 8.5 by 11-inch paper.
.03 Use white paper that meets generally-accepted weight, color, and quality standards (minimum 20 lb. white bond paper).

Note. Reclaimed fiber in any percentage is permitted provided that the requirements of this standard are met.

.04 The IRS prefers printing Form 941 on both sides of a single sheet of paper, but it is acceptable to print on one side of each of two separate sheets of paper.
.05 Make the substitute paper forms as identical as possible to the official IRS-printed forms.
.06 Print the substitute forms using nonreflective black (not blue or other-colored) ink. Printing in an ink color other than black may reduce readability in the scanning process. This may result in figures being too faint to be recognizable.
.07 Use typefaces that are substantially identical in size and shape to the official forms and use rules and shading (if used) that are substantially identical to those on the official forms. Use font size as large as possible within the fields.
.08 Print the six-digit form ID codes in the upper right-hand corner of each form using nonreflective black, carbon-based, 12-point OCR-A font. Using a font smaller than 12-point or non-OCR-A font may reduce readability for scanning. Use the official paper over-the-counter IRS forms to develop your substitute paper forms.

Note. Maintain as much white space as possible around the form ID code. Do not allow character strings to print adjacent to the code.

The year digits represent the year of the form layout and not the tax year filed. For tax year 2011, print "950111" on page 1 of Form 941, "950211" on page 2 of Form 941; "950311" on Schedule B; and "950411, 950511, and 950611" on the first page containing 19 horizontal entry lines ("first page"), the continuation page containing 26 horizontal entry lines ("continuation page"), and the "instructions page" of Schedule R of the substitute paper forms. See Section 4 for information on form ID codes for software-generated forms.

Note. If subsequent revisions for quarters 2 through 4 of Form 941 are made within a particular year, the ID code for the pages would read "9X11XX" instead of "9X01XX" . This configuration occurred in 2010 with "950110" for page 1 of the 1st quarter form and "951110" for page 1 of the form used for the 2nd through 4th quarters.

.09 Print the OMB number in the same location as on the official forms.
.10 Print all entry boxes and checkboxes exactly as shown **(location and size)** on the official forms.

Note. Instead of a four-sided checkbox for the entry, just the bottom line of the box can be used as long as the location and size remain the same.

.11 Print your IRS-issued three-letter substitute form printer source code in place of the Cat. No. in the middle at the bottom of the first page of Form 941, Schedule B, or Schedule R.

Note. You can obtain a three-letter substitute form source code by requesting it by email at *Substituteforms@irs.gov*. Please enter "Substitute Forms" on the subject line.

.12 Print "For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher" at the bottom of page 1 of Form 941.
.13 Print "For Paperwork Reduction Act Notice, see separate instructions" at the bottom of Schedule B. Print "For Paperwork Reduction Act Notice, see the instructions" at the bottom of Schedule R.
.14 Do NOT print the form catalog number ("Cat. No.") at the bottom of the forms or instructions.
.15 Do not print the Government Printing Office (GPO) symbol at the bottom of the forms or instructions.
.16 Be sure to include the OMB number on Form 941 and Schedules B and R.

Section 4 – Reproducing Form 941, Schedule B, and Schedule R for Software-Generated Paper Forms

.01 You can use the pdf files found on IRS.gov to develop the layout for your forms. Draft forms found at *http://www.irs.gov/app/picklist/list/draftTaxForms.html* can be used to develop interim formats until the forms are finalized. When forms become finalized, they are posted and can be found at *http://www.irs.gov/app/picklist/list/formsPublications.html*. You may use 6x10 grid formats to develop software versions of Form 941 and Schedules B and R. Please follow the specifications exactly to develop the fields.

.02 If you are developing software using a 6x10 grid, you may make the following modifications.

- With "11", for instance, representing the digits for the year 2011, use "970111" for page 1 of Form 941, "970211" for page 2 of Form 941; "970311" for Schedule B; and "970411, 970511, and 970611" for the first page, continuation page, and instructions page of Schedule R as the form ID codes.

  Note. Maintain as much white space as possible around the form ID code. Do not allow character strings to print adjacent to the code.

- Place all 6x10 grid boxes and entry spaces in the same field locations as indicated on the official forms.

- Use single lines for "Employer Identification Number" (EIN) and other entry areas in the entity section of page 1 of Form 941 and Schedule B, and the first page and continuation page of Schedule R.

- Do not use reverse type as shown on the IRS official form.

- Do not pre-print decimal points in the data boxes. However, where the amounts are required, the amounts should be printed with decimal points and place holders for cents.

- Use a single line for "state abbreviation" in line 16 of Form 941.

- Delete the pre-printed formatting in any "date" boxes.

- Use a single line for "Personal Identification Number (PIN)" on Form 941.

- You may delete all shading when using the 6x10 grid format.

.03 If producing both the form and the data or the form only, print your three-letter IRS-issued form printer source code at the bottom of page 1 of Form 941 and Schedule B, or the first page of Schedule R. See Section 3.11.

.04 If producing only the data on the form, print your four-digit software industry form code on Form 941. The four-digit vendor code preceded by four zeros and a slash (0000/9876) must be preprinted. If you have a valid vendor code provided to you through the National Association of Computerized Tax Processors (NACTP), you should use that code. If you do not have a valid vendor code, contact the NACTP via email at *president@nactp.org* for information on these codes.

.05 Print "For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher" at the bottom of page 1 of Form 941.

.06 Print "For Paperwork Reduction Act Notice, see separate instructions" at the bottom of Schedule B. Print "For Paperwork Reduction Act Notice, see the instructions" at the bottom of the first page of Schedule R.

.07 Be sure to print the OMB number in the same location as on the official forms on substitute Form 941 and Schedules B and R.

.08 Do not print the form catalog number ("Cat. No.") at the bottom of the forms or instructions.

.09 Do not print the Government Printing Office (GPO) symbol at the bottom of the forms or instructions.

.10 To ensure accurate scanning and processing, enter data on Form 941, Schedule B, and Schedule R as follows:

- Display/print the name and EIN on all pages and attachments in the proper associated fields.

- Use 12-point (minimum 10-point) Courier font (where possible).

- Omit dollar signs, but use commas when showing amounts.

- Except for lines 1 and 2 on Form 941, leave blank any data field with a value of zero.

- Enter negative amounts with a minus sign. For example, report "-10.59" instead of "(10.59)."

  Note. The IRS prefers that you use a minus sign for negative amounts instead of parentheses or some other means. However, if your software only allows for parentheses in reporting negative amounts, you may use them.

Section 5 – Specific Instructions for Schedule R

.01 To properly file and to reduce delays and contact from the Service, new Schedule R must be produced as closely as possible to the official IRS form.

Note. Do not present the information in spreadsheet or similar format. We may not be able to properly process nonconforming documents with an excessive number of entries. Complete as many Continuation Sheets for Schedule R (Form 941) as necessary. If continuation sheets are not used or they vary in form from the official form, processing may be delayed and you may be subject to penalties.

.02 Use Schedule R (Form 941) to allocate the aggregate information reported on Form 941 to each client. If you have more than 15 clients, complete as many Continuation Sheets for Schedule R (page 2) as necessary. Attach Schedule R, including any continuation sheets, to your aggregate Form 941 and file it with your return. Enter your business information carefully.

Make sure all information exactly matches the information shown on the aggregate Form 941. Compare the total of each column on line 19 (including your information on line 18) of Schedule R to the amounts reported on the aggregate Form 941. For each column total of Schedule R, the relevant line from Form 941 is noted in the column heading. If the totals on line 19 of the Schedule R do not match the totals on Form 941, there is an error that must be corrected before submitting Form 941 and Schedule R.

.03 DO:

- Develop and submit only conforming Schedules R.
- Follow the format and fields exactly as on the official IRS Schedule R.
- Maintain the same number of entry lines on the substitute Schedule R as on the official IRS form.

.04 DO NOT:

- Add or delete entry lines.
- Submit spreadsheets, database printouts, or similar formatted documents instead of using the Schedule R format to report data.
- Reduce or expand font size to add or delete extra data or lines.

.05 If substitute Schedules R and Continuation Sheets for Schedule R are not submitted in similar format to the official IRS schedule, the substitutes may be returned, you may be contacted by the IRS, delays in processing may occur, and you may be subject to penalties.

Section 6 – OMB Requirements for Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires the following.

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS-printed forms.)
- Each IRS form (or its instructions) states:

  (1) Why the IRS needs the information,

  (2) How it will be used, and

  (3) Whether or not the information is required to be furnished to the IRS.

.02 This information must be provided to any users of official or substitute IRS forms or instructions.

.03 The OMB requirements for substitute IRS forms are the following.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Form 941, Schedule B, and Schedule R, the OMB number (1545-0029) must appear exactly as shown on the official IRS form.
- For Form 941, Schedule B, and Schedule R, the OMB number must use one of the following formats.

(1) OMB No. 1545-0029 (preferred) or

(2) OMB # 1545-0029 (acceptable).

.04 If no instructions are provided to users of your forms, you must furnish to them the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 7 – Reproducible Copies of Forms

.01 You can order official IRS forms and information copies of federal tax materials at local IRS offices or by calling the IRS National Distribution Center at 1-800-829-3676. Other ways to get federal tax material include the following.

- Accessing *IRS.gov.*
- Ordering IRS tax products on DVD (IRS Publication 1796).

.02 The DVD contains approximately 2,500 tax forms and publications for small businesses, return preparers, and others who frequently need current or prior year tax products. Most current tax forms on the DVD may be filled in electronically, then printed out for submission and saved for recordkeeping. Other products on the DVD include the Internal Revenue Bulletins, Tax Supplements, and Internet resources and links for the tax professional. For system requirements, contact the National Technical Information Service (NTIS) at *http://www.ntis.gov*.

Note. Some forms on the DVD are intended as information only and may not be submitted as an official IRS form (e.g., Forms 1099, W-2, and W-3). Additionally, Publication 1796 does not permit electronic filing.

Prices are subject to change. The cost of the DVD if purchased from NTIS at *www.irs.gov/formspubs/article/0,,id=108660,00.html* is $30 (with no handling fee). If purchased using the following methods, the cost for each DVD is $30 (plus a $6 handling fee). These methods are:

- By phone – 1-877-CDFORMS (1-877-233-6767) (For IRS DVD purchase only),
- By fax – 703-605-6900 (For IRS DVD purchase only),
- By mail – to: National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312

Section 8 – Effect on Other Documents

.01 Revenue Procedure 2008-32, 2008-28 I.R.B. 82 (reproduced as Publication 4436, Rev. 7-2008) is superseded.

Section 9 – Helpful Information

.01 Please follow the specifications and guidelines to produce substitute Form 941 and Schedules B and R.

.02 These forms are subject to review and possible change as required. Therefore, employers are cautioned against overstocking supplies of privately-printed substitutes.

.03 Here is a review of references that were listed throughout this document.

- Form 941, Employer's QUARTERLY Federal Tax Return
- Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors (referred to in this publication as "Schedule B").
- Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers (referred to in this publication as "Schedule R").
- Substitute territorial forms (941-PR, 941-SS, and Anexo B (Formulario 941-PR)).
- Instructions for Form 941.
- Instructions for Schedule B (Form 941).
- Publication 15 (Circular E), Employer's Tax Guide.
- *SCRIPS@irs.gov* for submissions.

- *Substituteforms@irs.gov* for questions.
- For questions:
  Internal Revenue Service
  Attn: Substitute Forms Program
  SE:W:CAR:MP:T:T:SP, IR-6526
  1111 Constitution Avenue, NW
  Washington, DC 20224
- *http://www.irs.gov/app/picklist/list/draftTaxForms.html* for draft forms.
- *http://www.irs.gov/app/picklist/list/formsPublications.html* for final forms.
- IRS tax products on DVD (IRS Publication 1796).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Requirements for Taxpayers Filing Form 5472

REG–101352–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the Treasury Department and the IRS are issuing temporary regulations that remove the duplicate filing requirement for Form 5472, *"Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business."* Under this requirement, certain corporations that must file Form 5472 must also file a duplicate Form 5472 (including attachments and schedules) with the Internal Revenue Service Center in Philadelphia, PA. Because the IRS has determined that duplicate filing is no longer necessary, the requirement is being removed by the temporary regulations. The text of those temporary regulations (T.D. 9529) also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101352–11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101352–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS — REG–101352–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Gregory A. Spring, (202) 435–5265; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) P. Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin (76 CFR 34019) amend 26 CFR Part 1. The temporary regulations remove the requirement contained in §1.6038A–2(d) and §1.6038A–2(e) that a duplicate Form 5472 must be filed with the Internal Revenue Service Center in Philadelphia, PA. The text of the temporary regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments on Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Gregory A. Spring of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6038A–1 is amended by revising paragraph (n)(2) to read as follows:

§1.6038A–1 General requirements and definitions.

* * * * *

(n) * * *

(2) [The text of the proposed amendment to §1.6038A–1(n)(2) is the same as the text of §1.6038A–1T(n)(2) published elsewhere in this same issue of the Bulletin.

* * * * *

Par. 3. Section 1.6038A–2 is amended by revising paragraphs (d) and (e) to read as follows:

§1.6038A–2 Requirements of return.

* * * * *

(d) [The text of the proposed amendment to §1.6038A–2(d) is the same as the text of §1.6038A–2T(d) published elsewhere in this issue of the Bulletin.]

(e) [The text of the proposed amendment to §1.6038A–2(e) is the same as the text of §1.6038A–2T(e) published elsewhere in this issue of the Bulletin.]

* * * * *

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on June 9, 2011, 8:45 a.m., and published in the issue of the Federal Register for June 10, 2011, 76 F.R. 34019)

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.
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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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