Internal Revenue
bulletin

Bulletin No. 2012-47
November 19, 2012

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.

SPECIAL ANNOUNCEMENT

Announcement 2012–42, page 561.

This announcement modifies the rules set forth in the proposed regulations under sections 1471 through 1474. The proposed regulations under sections 1471 through 1474 were published in the Federal Register (REG–121647–10, 77 Fed. Reg. 9022) on February 15, 2012. This announcement outlines the timelines for withholding agents and foreign financial institutions to complete due diligence and other requirements. This announcement also provides guidance concerning certain grandfathered obligations and withholding on gross proceeds. The final regulations under sections 1471 through 1474 will incorporate the modified rules described in this announcement.

INCOME TAX

T.D. 9600, page 548.

New markets tax credit. Final regulations under section 45D of the Code modifying the new markets tax credit program to facilitate and encourage investments in non-real estate businesses in low-income communities by amending the reinvestment rules for qualified equity investments in non-real estate businesses.

Announcement 2012–42, page 561.

This announcement modifies the rules set forth in the proposed regulations under sections 1471 through 1474. The proposed regulations under sections 1471 through 1474 were published in the Federal Register (REG–121647–10, 77 Fed. Reg. 9022) on February 15, 2012. This announcement outlines the timelines for withholding agents and foreign financial institutions to complete due diligence and other requirements. This announcement also provides guidance concerning certain grandfathered obligations and withholding on gross proceeds. The final regulations under sections 1471 through 1474 will incorporate the modified rules described in this announcement.

EXEMPT ORGANIZATIONS

REG–134974–12, page 553.

Proposed regulations under section 4942 of the Code provide guidance for private foundations regarding the standards for making a good faith determination that a foreign organization is a charitable organization, grants to which may be qualifying distributions and not taxable expenditures. The regulations will affect private foundations seeking to make such good faith determinations.

Announcements of Disbarments and Suspensions begin on page 556.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

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.

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

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 45D.—New Market Tax Credit

26 CFR 1.45D–0: Table of contents.

T.D. 9600

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

New Markets Tax Credit Non-Real Estate Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations modifying the new markets tax credit program to facilitate and encourage investments in non-real estate businesses in low-income communities. The final regulations affect taxpayers claiming the new markets tax credit and businesses in low-income communities relying on the program.

DATES: *Effective Date:* These regulations are effective September 28, 2012.

Applicability Date: For date of applicability see §1.45D–1(h)(4)

FOR FURTHER INFORMATION CONTACT: Julie Hanlon-Bolton, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide additional rules relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). On June 7, 2011, a notice of proposed rulemaking and notice of public hearing (REG–101826–11) was published in the **Federal Register** (76 FR 32882). The IRS received comments responding to the notice of proposed rulemaking and held a public hearing on September 29, 2011. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments are discussed in the preamble.

General Overview

Under section 45D(a)(1), a taxpayer may claim a new markets tax credit on certain credit allowance dates described in section 45D(a)(3) over a 7-year credit period with respect to a qualified equity investment in a qualified community development entity (CDE) described in section 45D(c).

Under section 45D(b)(1), an equity investment in a CDE is a *qualified equity investment* if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash, (B) substantially all of the cash is used by the CDE to make qualified low-income community investments, and (C) the investment is designated for purposes of section 45D by the CDE.

Under section 45D(b)(2), the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in section 45D(f)(1) that is allocated to the CDE by the Secretary under section 45D(f)(2).

Section 45D(c)(1) provides that a domestic corporation or partnership is a CDE if (A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons, (B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and (C) the entity is certified by the Secretary as a CDE.

Section 45D(d)(1) defines *qualified low-income community investment* to mean: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in section 45D(d)(2)), (B) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment, (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and (D) any equity investment in, or loan to, any CDE.

Under section 45D(d)(2)(A), a *qualified active low-income community business* is any corporation (including a nonprofit corporation) or partnership if for such year, among other requirements, (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

Under section 45D(d)(3), with certain exceptions, a *qualified business* is any trade or business. The rental to others of real property located in any low-income community is a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)(A)) and there are substantial improvements located on the real property.

Section 1.45D–1(d)(2)(i) requires that a CDE receiving returns on investments (including principal repayments from amortizing loans) must reinvest those proceeds into other qualified low-income community investments during the 7-year credit period. If the proceeds are not reinvested, then the credit may be subject to recapture under section 45D(g)(3)(B).

Many commentators consider the new markets tax credit under section 45D to be a successful tool for encouraging private sector investments in low-income communities. To date, the majority of new markets tax credit investments relate to real estate projects. Real estate projects are well suited to the new markets tax credit program because real estate remains in the low-income community and loans for real estate can extend through the end of the 7-year period in which investors may take the credit on their investment. The 7-year credit period and the reinvestment requirements make it difficult for CDEs to provide working capital and equipment loans to non-real estate businesses because these loans are ordinarily amortizing loans with a term of five years or less. To facilitate investment in non-real estate businesses, the proposed regulations modify the reinvestment requirements for non-real estate projects.

Overview of Proposed Regulations and Summary of Comments

To encourage investments in non-real estate businesses for working capital and equipment, the proposed regulations modify the reinvestment requirements under §1.45D–1(d)(2)(i). The proposed regulations allow a CDE that makes a qualified low-income community investment in a non-real estate business to invest certain returns of capital from those investments in unrelated certified community development financial institutions that are CDEs under section 45D(c)(2)(B) (certified CDFIs) at various points during the 7-year credit period. The proposed regulations also allow an increasing aggregate amount to be invested in certified CDFIs and treated as continuously invested in a qualified low-income community investment in the later years of the 7-year credit period.

Many commentators welcomed new options for meeting the reinvestment requirements. After considering the comments received, the final regulations adopt the provisions of the proposed regulations with two minor changes based on these comments. In addition to reinvestments in certified CDFIs, the final regulations provide that the Secretary may designate other qualifying entities in the Internal Revenue Bulletin. These final regulations also clarify that investments in non-real estate qualified active low-income community businesses may be made through one or more CDEs. As discussed below, the IRS and the Treasury Department are considering other options for future guidance.

Definition of Non-Real Estate Qualified Active Low-Income Community Business

The proposed regulations define a non-real estate qualified active low-income community business as any business whose predominant business activity (measured by more than 50 percent of the business' gross income) does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. The purpose of the investment or loan must not be connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

Commentators requested that the definition of a non-real estate qualified active low-income community business be expanded to include investments connected to the development of owner occupied facilities as long as the facility is used in an operating business. The final regulations do not incorporate this comment because under current regulations, a substantial number of new markets tax credits investments are already being made in owner-occupied facilities. The purpose of these final regulations is to encourage more new markets tax credits investments not related to real estate.

Commentators also requested that if a non-real estate qualified active low-income community business is allowed to use investments for construction or improvements to real estate facilities primarily used in its business, then the definition of *working capital* under §1.45D–1(d)(4)(i)(E)(*2*) should include the proceeds of an equity investment or a loan that the non-real estate qualified active low-income community business will expend for the construction of real property within 18 months (as opposed to 12 months) after the date of the investment or loan. The final regulations do not incorporate this comment because the final rules for non-real estate qualified active low-income community businesses do not pertain to investments for construction or improvements to real estate facilities.

In response to comments, the final regulations clarify that an investment in a non-real estate qualified active low-income community business may be made through one or more CDEs. Thus, for example, a CDE that designates an equity investment as a non-real estate qualified equity investment may invest the proceeds in another CDE if that investment is directly traceable to a non-real estate qualified active low-income community business.

Payments of Capital, Equity, or Principal with Respect to a Non-Real Estate Qualified Active Low-Income Community Business

The proposed regulations require that any portion that the CDE chooses to reinvest in a certified CDFI must be reinvested by the CDE no later than 30 days from the date of receipt to be treated as continuously invested in a qualified low-income community investment. Commentators requested that instead of 30 days, CDEs invested in a non-real estate qualified active low-income community business should have 12 months to decide whether to reinvest capital, equity, or principal in another non-real estate qualified active low-income community business or a certified CDFI under §1.45D–1(d)(9)(ii) (similar to the 12-month reinvestment requirement in §1.45D–1(d)(2)(i)). The final regulations do not incorporate this comment because a CDE that has not found a new non-real estate qualified active low-income community business to invest in at the expiration of the 30 day period can invest the capital, equity, or principal in a certified CDFI until it finds a suitable non-real estate qualified active low-income community business. It can then withdraw its investment in the certified CDFI and invest that capital, equity, or principal in the suitable non-real estate qualified active low-income community business.

Commentators also requested that the final regulations allow a CDE that makes an equity investment in a non-real estate qualified active low-income community business to reinvest up to 100 percent of its equity investment in a certified CDFI under §1.45D–1(d)(9)(ii) after the first year of the 7-year credit period. The commentators explained that this would encourage venture capital investments in a non-real estate qualified active low-income community business because liquidity events (cashing out some or all of an investment) occurring early in the 7-year credit period, which often happen with venture capital investments, would not automatically cause recapture. The final regulations do not incorporate this comment because the proposal could create a situation in which the proceeds of the new markets tax credit investment may only be invested in a qualified active low-income community business for a brief period without any new markets tax credit restrictions on how a certified CDFI may use the proceeds. Such a result would be inconsistent with encouraging investments in qualified active low-income community businesses during the 7-year credit period.

Commentators also requested that the final regulations allow a CDE to invest returns of capital, equity, or principal into entities other than certified CDFIs under §1.45D–1(d)(9)(ii). Such entities would include non-profit and for-profit entities focused on economic and community development, funds that provide equity and loans to small and medium businesses, and funds that provide equity or loans to minority and women owned businesses. The final regulations do not incorporate this comment because it would make administering the final regulations unworkable given the breadth of potential reinvestment vehicles. The final regulations allow investments in certified CDFIs because there are rules that ensure that a certified CDFI serves low-income communities. Such rules do not currently exist for other potential reinvestment entities. However, the final regulations provide that in the future the Secretary may designate other qualifying entities in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(*b*).

Section 1.45D–1(d)(9) of the proposed regulations is renumbered as §1.45D–1(d)(10) in the final regulations due to the amendments made by T.D. 9560, 2012–4 I.R.B. 299, involving targeted populations.

Lines of Credit

A commentator requested that the final regulations consider the entire amount of a line of credit as outstanding loan principal for purposes of the substantially-all requirement under §1.45D–1(c)(5)(i). Lines of credit often serve the capital needs of non-real estate businesses better than fully disbursed loans with fixed terms, which may be more appropriate for real estate investments. The IRS and the Treasury Department are studying these issues and may address them in future guidance.

Other Comments

Other comments were received on issues unrelated to the proposed regulations. The final regulations do not incorporate comments that are outside the scope of the proposed regulations, although they may be relevant to future guidance under the new markets tax credit.

Effective Date/Applicability

The IRS and the Treasury Department received a few comments regarding whether the final regulations should allow a qualified equity investment made before the effective date of the final regulations to be eligible for designation as a non-real estate qualified equity investment. The majority of commentators recommended not adopting a look-back rule because it would be confusing and complicate compliance. After further examination, the IRS and the Treasury Department agree with these commentators. Further, allowing CDEs to designate investments as non-real estate after the investments are made does not serve the purpose of incentivizing new investments in non-real estate projects. Section 1.45D–1(c)(1)(iii) requires that an investment in a non-real estate qualified equity investment must be designated as such for a CDE to qualify for benefits allowed under the final regulations. Accordingly, the final regulations apply to equity investments made on or after the date the final regulations are published in the **Federal Register**.

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Julie Hanlon Bolton with the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of 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 1.45D–0 is amended by:

1. Adding entries for paragraphs (c)(8), (d)(10), (d)(10)(i), (d)(10)(ii), (d)(10)(ii)(A), (d)(10)(ii)(B), (d)(10)(ii)(C), (d)(10)(ii)(D), and (h)(4).

2. Revising the entry for paragraph (d)(1)(i).

The additions and revisions read as follows:

§1.45D–0 Table of contents.

* * * * *

(c) * * *

(8) Non-real estate qualified equity investment.

(d) * * *

(1) * * *

(i) Investment in a qualified active low-income community business or a non-real estate qualified active low-income community business.

* * * * *

(10) Non-real estate qualified active low-income community business.

(i) Definition.

(ii) Payments of, or for, capital, equity or principal with respect to a non-real estate qualified active low-income community business.

(A) In general.

(B) Seventh year of the 7-year credit period.

(C) Amounts received from a qualifying entity.

(D) Definition of qualifying entity.

* * * * *

(h) * * *

(4) Investments in non-real estate businesses.

* * * * *

Par. 3. Section 1.45D–1 is amended by:

1. Revising paragraphs (c)(1)(iii), (c)(3)(ii) introductory text, and (d)(1)(i).

2. Amending paragraph (h)(1) by removing the language "paragraph (h)(2)" and adding "paragraphs (h)(2), (h)(3), and (h)(4)" in its place.

3. Adding new paragraphs (c)(8), (d)(10), and (h)(4).

The additions and revisions read as follows:

§1.45D–1 New markets tax credit.

* * * * *

(c) * * *

(1) * * *

(iii) The investment is designated for purposes of section 45D and this section as a qualified equity investment or a non-real estate qualified equity investment (as defined in paragraph (c)(8) of this section) by the CDE on its books and records using any reasonable method.

* * * * *

(3) * * *

(ii) *Exceptions*. Notwithstanding paragraph (c)(3)(i) of this section, an equity investment in an entity is eligible to be designated as a qualified equity investment or a non-real estate qualified equity investment under paragraph (c)(1)(iii) of this section if—

* * * * *

(8) *Non-real estate qualified equity investment*. If a qualified equity investment is designated as a non-real estate qualified equity investment under paragraph (c)(1)(iii) of this section, then the qualified equity investment may only satisfy the *substantially-all* requirement under paragraph (c)(5) of this section if the CDE makes qualified low-income community investments that are directly traceable (including investments made through one or more CDEs) to non-real estate qualified active low-income community businesses (as defined in paragraph (d)(10) of this section). The proceeds of a non-real estate qualified equity investment cannot be used for transactions involving a qualified active low-income community business that is not a non-real estate qualified active low-income community business.

(d) * * *

(1) * * *

(i) *Investment in a qualified active low-income community business or a non-real estate qualified active low-income community business*. Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in paragraph (d)(4) of this section) or any non-real estate qualified active low-income community business (as defined in paragraph (d)(10) of this section).

* * * * *

(10) *Non-real estate qualified active low-income community business*—(i) *Definition*. The term *non-real estate qualified active low-income community business* means any qualified active low-income community business (as defined in paragraph (d)(4) of this section) whose predominant business activity does not include the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate. For purposes of the preceding sentence, predominant business activity means a business activity that generates more than 50 percent of the business' gross income. The purpose of the capital or equity investment in, or loan to, the non-real estate qualified active low-income community business must not be connected to the development (including construction of new facilities and rehabilitation/enhancement of existing facilities), management, or leasing of real estate.

(ii) *Payments of, or for, capital, equity or principal with respect to a non-real estate qualified active low-income community business*—(A) *In general*. For purposes of paragraph (d)(2)(i) of this section, a portion of the amounts received by a CDE in payment of, or for, capital, equity, or principal with respect to a non-real estate qualified active low-income community business after year one of the 7-year credit period (as defined by paragraph (c)(5)(i) of this section) may be reinvested by the CDE in a qualifying entity (as defined in paragraph (d)(10)(ii)(D)). Any portion that the CDE chooses to reinvest in a qualifying entity must be reinvested by the CDE no later than 30 days from the date of receipt to be treated as continuously invested in a qualified low-income community investment for purposes of paragraph (d)(2)(i) of this section. If the amount reinvested in a qualifying entity exceeds the maximum aggregate portion of the non-real estate qualified equity investment, then the excess will not be treated as invested in a qualified low-income community investment. The maximum aggregate portion of the non-real estate qualified equity investment that may be reinvested into a qualifying entity, which will be treated as continuously invested in a qualified low-income community investment, may not exceed the following percentages of the non-real estate qualified equity investment in the following years:

(*1*) 15 percent in Year 2 of the 7-year credit period.

(*2*) 30 percent in Year 3 of the 7-year credit period.

(*3*) 50 percent in Year 4 of the 7-year credit period.

(*4*) 85 percent in Year 5 and Year 6 of the 7-year credit period.

(B) *Seventh year of the 7-year credit period*. Amounts received by a CDE in payment of, or for, capital, equity, or principal with respect to a non-real estate qualified active low-income community business (as defined in paragraph (d)(10)(i) of this section) during the seventh year of the 7-year credit period do not have to be reinvested by the CDE in a qualified low-income community investment to be treated as continuously invested in a qualified low-income community investment.

(C) *Amounts received from qualifying entity*. Except for the seventh year of the 7-year credit period under paragraph (d)(10)(ii)(B) of this section, amounts received from a qualifying entity must be reinvested by the CDE no later than 30 days from the date of receipt to be treated as continuously invested in a qualified low-income community investment.

(D) *Definition of qualifying entity*. For purposes of paragraphs (d)(10)(ii) and (d)(10)(iii) of this section, a *qualifying entity* is—

(*1*) A certified community development financial institution (certified CDFI) that is a CDE under section 45D(c)(2)(B) (as defined by 12 CFR 1805.201), which is unrelated to the CDE making the investment in the certified CDFI within the meaning of section 267(b) or section 707(b)(1); or

(*2*) An entity designated by the Secretary by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter).

* * * * *

(h) * * *

* * * * *

(4) *Investments in non-real estate businesses*. Paragraphs (c)(8) and (d)(10) of this section apply to equity investments in CDEs made on or after September 28, 2012.

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

Approved September 21, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 26, 2012, 11:15 a.m., and published in the issue of the Federal Register for September 28, 2012, 77 F.R. 59544)

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Reliance Standards for Making Good Faith Determinations

REG–134974–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the standards for making a good faith determination that a foreign organization is a charitable organization, grants to which may be qualifying distributions and not taxable expenditures. The regulations will affect private foundations seeking to make such good faith determinations.

DATES: Comments and requests for a public hearing must be received by December 24, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134974–12), room 5205, 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–134974–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–134974–12).

FOR FURTHER INFORMATION CONTACT:
Concerning the proposed regulations, Courtney D. Jones at (202) 622–6070; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

To avoid certain excise taxes under chapter 42, private foundations must make a minimum level of qualifying distributions (as defined in section 4942 of the Internal Revenue Code) each year and must avoid making taxable expenditures (as defined in section 4945). Grants for charitable purposes to certain foreign organizations generally may be treated as qualifying distributions under section 4942 if the private foundation makes a good faith determination that the foreign organization is an organization described in sections 501(c)(3) and 509(a)(1), (a)(2), or (a)(3) ("public charity") that is not a supporting organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii) ("disqualified supporting organization") or is an organization described in sections 501(c)(3) and 4942(j)(3) ("private operating foundation"). Similarly, grants for charitable purposes to certain foreign organizations may be treated as other than taxable expenditures under section 4945 if the private foundation makes a good faith determination that the foreign organization is a public charity (other than a disqualified supporting organization) or an organization described in sections 501(c)(3) and 4940(d)(2) ("exempt operating foundation").

Qualifying Distributions under Section 4942

Section 4942 generally requires a private foundation (other than a private operating foundation) to make "qualifying distributions" equal to or exceeding a minimum "distributable amount" for each taxable year. If a private foundation has not distributed the full distributable amount by the end of the succeeding taxable year, section 4942 imposes an excise tax on the undistributed portion. A private foundation's distributable amount for any taxable year generally equals five percent of the aggregate fair market value of its non-exempt-use assets, increased by any repayments of amounts treated as qualifying distributions in prior years, and reduced by any taxes imposed under subtitle A and section 4940. Section 4942(g) generally defines a "qualifying distribution" as any expenditure or grant, including program-related investments and certain set-asides of income, paid to accomplish one or more purposes described in section 170(c)(2)(B) ("charitable purposes"). Under section 4942(g)(1)(A), however, grants to organizations controlled, directly or indirectly, by the foundation or one or more of its disqualified persons are not qualifying distributions unless the grant is redistributed for charitable purposes within the period specified in section 4942(g)(3). Similarly, grants to other private foundations (except private operating foundations), are not qualifying distributions. In addition, in 2006, the Pension Protection Act of 2006, Public Law No. 109–208, 120 Stat. 780 (2006) ("PPA"), added section 4942(g)(4), which provides that a qualifying distribution does not include any amount paid to a disqualified supporting organization. Section 53.4942(a)–3(a)(6), however, has not been amended to reflect this statutory change.

For purposes of section 4942, a grant for charitable purposes to a foreign organization that does not have a determination letter from the IRS may be treated as a qualifying distribution if the grantor private foundation makes a "good faith determination" that the foreign organization is a private operating foundation or a public charity that is not a disqualified supporting organization, provided that the foreign organization is not controlled by the foundation or its disqualified persons. See §53.4942(a)–3(a)(6). Under §53.4942(a)–3(a)(6), a private foundation will ordinarily be considered to have made a "good faith determination" if the determination is based on an affidavit of the grantee or on an opinion of counsel of either the grantor or the grantee. The affidavit or opinion must set forth sufficient facts concerning the operations and support of the grantee for the IRS to determine that the grantee would be likely to qualify as a public charity or a private operating foundation.

Taxable Expenditures under Section 4945

Section 4945 imposes an excise tax on a private foundation's "taxable expenditures" as defined in section 4945(d), including expenditures for other than charitable purposes. Under section 4945(d)(4), a taxable expenditure includes any grant to an organization unless: (1) the grantee is a public charity (other than a disqualified supporting organization) or an exempt operating foundation; or (2) the private foundation exercises expenditure responsibility with respect to the grant in accordance with section 4945(h). The Deficit Reduction Act of 1984, Public Law No. 98–369, 98 Stat. 494 (1984), amended section 4945(d)(4) to provide that expenditure responsibility is not required for a grant to an exempt operating foundation. The PPA amended section 4945(d)(4) to require the exercise of expenditure responsibility with respect to a grant to a disqualified supporting organization. Section 53.4945–5(a)(5), however, has not been amended to reflect these statutory changes.

Section 53.4945–5(a)(5) provides that a grant to a foreign organization that does not have a determination letter from the IRS will be treated as a grant to a public charity (for which the grantor is not required to exercise expenditure responsibility) if the grantor has made a "good faith determination" that the grantee is a public charity. Under §53.4945–5(a)(5), a private foundation will ordinarily be considered to have made a "good faith determination" if the determination is based on an affidavit of the grantee or on an opinion of counsel of either the grantor or the grantee. The affidavit or opinion must set forth sufficient facts concerning the operations and support of the grantee for the IRS to determine that the grantee would be likely to qualify as a public charity.

Standards Relating to Written Advice and Taxpayer Reliance

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate practice before the Treasury Department. The Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 ("Circular 230"). Circular 230 provides minimum standards of conduct that tax practitioners are required to meet with respect to written advice concerning Federal tax issues. Many of these standards (including, among others, §10.37 and §10.51(a)(13)) reflect principles a qualified and competent practitioner uses when considering and rendering any written tax advice.

Section 6664 of the Internal Revenue Code provides a defense to taxpayers for certain penalties imposed on an underpayment of tax if the taxpayer shows that there was reasonable cause for the underpayment and the taxpayer acted in good faith with respect to the underpayment. A taxpayer may demonstrate reasonable cause and good faith with respect to the underpayment by reasonably relying on written advice from a professional tax advisor. Section 1.6664–4(c)(1) provides that all pertinent facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on written advice, including written advice from a professional tax advisor. A taxpayer's education, sophistication, and business experience are factors taken into account in determining whether the taxpayer's reliance on written advice was reasonable and made in good faith. A taxpayer will not be considered to have reasonably relied in good faith on written advice unless the requirements of §1.6664–4(c)(1) are satisfied. For example, a private foundation's reliance on written advice is not reasonable and in good faith if the private foundation knows, or reasonably should have known, that a professional tax advisor lacks knowledge of the relevant aspects of Federal tax law or that the professional tax advisor is otherwise not qualified or competent to render the written advice. Moreover, a private foundation may not rely on written advice if it knows, or has reason to know, that relevant facts were not disclosed to the professional tax advisor or the written advice is based on a representation or assumption that the private foundation knows, or has reason to know, is unlikely to be true.

Explanation of Provisions

The current regulations under sections 4942 and 4945 state that a determination is ordinarily considered as made in good faith if it is based on an affidavit of the foreign organization or an opinion of counsel of the grantor or the grantee. The proposed regulations modify this rule to identify a broader class of tax practitioners upon whose written advice a private foundation may base a "good faith determination." The proposed regulations also make certain conforming changes consistent with statutory amendments that have been made to sections 4942 and 4945.

Under the proposed regulations, a private foundation's good faith determination ordinarily may be based on written advice given by a "qualified tax practitioner" who is subject to the requirements in Circular 230, including the requirements in current §§10.37 and 10.51(a)(13) (or successor provisions). A qualified tax practitioner means an attorney, a certified public accountant ("CPA"), or an enrolled agent, as those practitioners are defined in §§10.2 and 10.3 of Circular 230. The proposed regulations limit the definition of a qualified tax practitioner to attorneys, CPAs, and enrolled agents because these practitioners generally provide advice to clients with respect to taking positions on tax returns, and these practitioners are generally authorized to represent their clients before the IRS without limitations applicable to other types of practitioners (such as enrolled actuaries). The Treasury Department and the IRS believe that expanding the class of practitioners on whose written advice a private foundation may base a good faith determination will decrease the cost of seeking professional advice regarding these determinations, enabling foundations to engage in international philanthropy in a more cost-effective manner. At the same time, expressly allowing reliance on a broader spectrum of professional tax advisors may encourage more private foundations to obtain written tax advice, thus promoting the quality of the determinations being made.

Although the proposed regulations generally expand the class of practitioners on whose written advice a private foundation may ordinarily base a good faith determination, unlike the current rule, the expanded class would not include foreign counsel unless the foreign counsel is a qualified tax practitioner (as defined in the proposed regulations). The proposed rule is consistent with the general requirements of Circular 230 that an attorney or CPA be licensed in a state, territory, or possession of the United States, and an enrolled agent be enrolled by the IRS, in order to practice before the IRS.

The proposed regulations provide that a private foundation's determination that is based on the written advice of a qualified tax practitioner will be considered as made in good faith if the private foundation's reliance on the written advice meets the requirements of §1.6664–4(c)(1), which are the standards that must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice for purposes of section 6664. Additionally, as is the case under the present regulations under sections 4942 and 4945, the written advice must provide sufficient facts about the operations and financial support of the foreign organization for the IRS to determine that the grantee would be likely to qualify as a public charity (other than a disqualified supporting organization) or as a private operating foundation or an exempt operating foundation, as applicable.

The Treasury Department and the IRS are considering whether it is appropriate to limit the timeframe during which a private foundation will be permitted to rely upon a qualified tax practitioner's written advice solely for purposes of these regulations. For example, the final regulations or future guidance published in the Internal Revenue Bulletin may provide that a private foundation may base a good faith determination on written advice of a qualified tax practitioner for distributions that occur within a particular timeframe (such as 12 months) from the date of the written advice, provided the private foundation does not know nor have reason to know that the facts underlying the written advice have changed. The Treasury Department and the IRS request comments regarding the appropriateness of a time limit and, if appropriate, the length of the time limit.

The Treasury Department and the IRS are also considering whether the current standards in Rev. Proc. 92–94, 1992–2 C.B. 507, should be modified to take into account changes to the public support test for public charity status under sections 170 and 509 and whether additional guidelines regarding appropriate timeframes for gathering information upon which written advice is based should be provided in final regulations or in guidance published in the Internal Revenue Bulletin. Comments on this issue are requested.

Because the proposed rule is expected to make it easier and less costly to obtain professional tax advice that can be used as a basis to make a good faith determination, the Treasury Department and the IRS also are considering whether it is appropriate to further amend the current regulations to remove the ability of a private foundation to base a good faith determination on an affidavit of a foreign grantee, which may be a less reliable basis for making a good faith determination than advice from a qualified tax practitioner. The Treasury Department and the IRS are concerned, however, that eliminating the ability to base a good faith determination on an affidavit of a foreign grantee may inappropriately discourage foreign grantmaking by smaller private foundations, or inhibit smaller foreign grants generally. While Rev. Proc. 92–94 continues to provide a simplified procedure that private foundations may follow in making good faith determinations based on affidavits, the Treasury Department and the IRS request comments on whether a foundation's ability to base a good faith determination on affidavits should be retained, and if so, whether the use of affidavits should be restricted. For example, future guidance could prohibit the use of affidavits for grants above a certain dollar threshold, or could require supporting factual information that might serve to corroborate the content of affidavits.

Proposed Effective/Applicability Date

The proposed regulations will apply for grants made after the date of publication of the Treasury decision adopting these paragraphs as final regulations in the **Federal Register**. However, a private foundation may rely on these proposed regulations for grants made on or after September 24, 2012.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 this notice of proposed rulemaking, and because this notice of proposed rulemaking does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does 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 businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Courtney D. Jones, Office of the Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

Part 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.4942(a)–3 is amended by revising paragraph (a)(6) to read as follows:

§53.4942(a)–3 Qualifying distributions defined.

(a) * * *

(6) *Certain foreign organizations*—(i) *In general*. A distribution for purposes described in section 170(c)(2)(B) to a foreign

organization, which has not received a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or section 4942(j)(3), will be treated as a distribution made to an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4942(j)(3) if the distributing foundation has made a good faith determination that the donee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4942(j)(3). A "good faith determination" ordinarily will be considered as made if the determination is based on an affidavit of the donee organization or written advice from a qualified tax practitioner that the donee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4942(j)(3). In the case of a determination based on written advice, the determination will be considered as made in good faith if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of §1.6664–4(c)(1). Furthermore, the affidavit or written advice must set forth sufficient facts concerning the operations and support of the donee organization for the Internal Revenue Service to determine that the donee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4942(j)(3).

(ii) *Definitions*. For purposes of this paragraph (a)(6)—

(*a*) The term "foreign organization" means any organization that is not described in section 170(c)(2)(A).

(*b*) The term "qualified tax practitioner" means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

(iii) *Effective/applicability date*. Paragraph (a)(6) of this section will apply with respect to grants made after the date of publication of the Treasury decision adopting this paragraph as a final regulation in the **Federal Register**. However, a private foundation may rely on these proposed regulations with respect to grants made on or after September 24, 2012.

* * * * *

Par. 3. Section 53.4945–5 is amended by revising paragraph (a)(5) to read as follows:

§53.4945–5 Grants to organizations.

(a) * * *

(5) *Certain foreign organizations*—(i) *In general*. If a private foundation makes a grant to a foreign organization, which does not have a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or section 4940(d)(2), the grant will nonetheless be treated as a grant made to an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4940(d)(2) if the grantor private foundation has made a good faith determination that the grantee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4940(d)(2). A "good faith determination" ordinarily will be considered as made if the determination is based on an affidavit of the grantee organization or written advice from a qualified tax practitioner that the grantee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4940(d)(2). In the case of a determination based on written advice, the determination will be considered as made in good faith if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of §1.6664–4(c)(1). Furthermore, the affidavit or written advice must set forth sufficient facts concerning the operations and support of the grantee organization for the Internal Revenue Service to determine that the grantee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (g)(4)(A)(ii)) or section 4940(d)(2). See paragraphs (b)(5) and (b)(6) of this section for additional rules relating to foreign organizations.

(ii) *Definitions*. For purposes of this paragraph (a)(5)—

(*a*) The term "foreign organization" means any organization that is not described in section 170(c)(2)(A).

(*b*) The term "qualified tax practitioner" means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

(iii) *Effective/applicability date*. Paragraph (a)(5) of this section will apply with respect to grants made after the date of publication of the Treasury decision adopting this paragraph as a final regulation in the **Federal Register**. However, a private foundation may rely on these proposed regulations with respect to grants made on or after September 24, 2012.

* * * * *

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

(Filed by the Office of the Federal Register on September 21, 2011, 8:45 a.m., and published in the issue of the Federal Register for September 24, 2011, 77 F.R. 58796)

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2012-40

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, §10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
Palm Desert	Bonnheim, William S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 28, 2012
Florida				
Gulf Breeze	Hanley, Jane B.	Enrolled Agent	Suspended by consent for admitted violation of §10.51 (failure to timely file Federal individual income tax returns for tax years 2003, 2004, 2005, and 2006)	Indefinite from July 25, 2012
Kentucky				
Paducah	Christian, Charles E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from September 18, 2012
Massachusetts				
Southborough	Uhl, Christopher M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from July 31, 2012
Michigan				
Charlotte	Carter Jr., David B.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7203, willful failure to file U.S. Income Tax Returns)	Indefinite from September 13, 2012
Minnesota				
Mendota Heights	Fairbairn, Jo M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 24, 2012

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Missouri				
Leasburg	Basham, Angela D.	Enrolled Agent	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7206(2), aiding and assisting in the preparation and filing of a false income tax return)	Indefinite from August 14, 2012
St. Louis	Lowery, Martha L.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 9, 2011
New York				
Katonah	Fecci, Eric J.	CPA	Suspended by default decision in expedited proceeding under §10.82 (convicted of failure to file a New York state personal income tax return)	Indefinite from September 24, 2012
New Jersey				
Morris Plains	Lewis, David A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7206(1), filing fraudulent income tax return)	Indefinite from August 15, 2012
Chester	Williamson, Kevin P.	CPA	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7206, tax fraud)	Indefinite from August 15, 2012
North Carolina				
Highlands	Sossomon, Creighton W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 9, 2011

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Ohio				
Aurora	Crow, Alan B.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from September 24, 2012
Ripley	Welti, Robert C.	CPA	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7212(a), attempting to obstruct or impede the due administration of the Internal Revenue Code)	Indefinite from August 14, 2012
Oregon				
Saint Helens	Bunn, Barbara	Enrolled Agent	Censured by consent for admitted violation of §10.51(a)(6) (failed to timely file Federal income tax return for tax years 2007, 2008, 2009, and 2010)	Indefinite from July 13, 2012
Pennsylvania				
Minersville	Troese Sr., Stephen J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 18 U.S.C. §1343, wire fraud)	Indefinite from September 10, 2012
South Carolina				
Bamberg	Smith, Flint P.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from July 30, 2012
South Dakota				
Box Elder	Fitch, Nakata S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from July 30, 2012

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Virginia				
Richmond	Smith, William O.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from July 27, 2012

Timelines for Due Diligence and Other Requirements under FATCA

Announcement 2012–42

I. PURPOSE

This announcement outlines (i) certain timelines for withholding agents and foreign financial institutions (FFIs) to complete due diligence and other requirements and (ii) certain additional guidance concerning gross proceeds withholding and the status of certain instruments as grandfathered obligations under sections 1471 through 1474 of the Internal Revenue Code (Code). The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to incorporate the rules described in this announcement in final regulations under sections 1471 through 1474.

II. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147 (H.R. 2847), added sections 1471 through 1474 (chapter 4) to Subtitle A of the Code. These provisions are commonly referred to as the Foreign Account Tax Compliance Act, or FATCA. Chapter 4 requires withholding agents to withhold 30 percent of certain payments to an FFI unless the FFI has entered into an agreement (FFI agreement) with the IRS to, among other things, report certain information with respect to U.S. accounts. Chapter 4 also imposes on withholding agents certain withholding, documentation, and reporting requirements with respect to certain payments made to certain other foreign entities.

On February 15, 2012, the Treasury Department and the IRS published proposed regulations under chapter 4 in the Federal Register (REG–121647–10, 77 Fed. Reg. 9022) (proposed regulations). On May 15, 2012, the IRS held a public hearing on the proposed regulations. On July 26, 2012, the Treasury Department released a model for bilateral agreements with other jurisdictions (in both reciprocal and nonreciprocal versions) under which FFIs would satisfy their chapter 4 requirements by reporting information about U.S. accounts to their respective tax authorities, followed by the automatic exchange of that information on a government-to-government basis with the United States. The model agreement outlines time frames for FFIs in partner jurisdictions to complete the necessary due diligence to identify U.S. accounts. On June 21, 2012, the Treasury Department announced its intent to develop a second model agreement, under which financial institutions in the partner jurisdiction would report specified information directly to the IRS in a manner consistent with the FATCA regulations, supplemented by government-to-government exchange of information on request. The Treasury Department intends to conclude bilateral agreements ("Intergovernmental Agreements") based on the model agreements.

The Treasury Department and the IRS have received comments identifying certain practical issues in implementing the chapter 4 rules within the time frames prescribed in the proposed regulations. In particular, comments have noted that the chapter 4 status of entity account holders may change during 2013 as FFIs enter into FFI agreements with the IRS, with the result that withholding agents that put in place new account opening procedures by January 1, 2013, could be required to undertake duplicative efforts to verify an FFI's status as a participating, deemed-compliant, or nonparticipating FFI. Furthermore, comments have indicated that global financial institutions intend to implement uniform due diligence procedures for all affiliates. Accordingly, these comments have suggested aligning the timelines for due diligence for U.S. withholding agents, FFIs in countries with Intergovernmental Agreements, and FFIs in countries without Intergovernmental Agreements in order to significantly reduce administrative burden.

In addition, the Treasury Department and the IRS have received comments requesting that obligations that may give rise to foreign passthru payments, but not to withholdable payments, be treated as grandfathered obligations if such obligations are executed prior to the issuance of final regulations that define foreign passthru payments. Comments also have requested that an obligation to make payments with respect to collateral posted in connection with a grandfathered derivative transaction be treated as a grandfathered obligation. Finally, comments have expressed concern over the treatment of existing financial transactions that may begin to give rise to withholdable payments for purposes of chapter 4 due to the promulgation of regulations under section 871(m) (treating certain payments on notional principal contracts and certain other financial instruments as U.S. source dividends).

In consideration of these comments, the Treasury Department and the IRS intend to issue regulations that modify the rules set forth in the proposed regulations as follows. Unless otherwise defined, terms used in this announcement have the meanings set forth in the proposed regulations.

III. DUE DILIGENCE TIMELINES

A. Timeline for Implementing New Account Opening Procedures and the Definition of Preexisting Obligations

Withholding agents, including participating FFIs and registered deemed-compliant FFIs, generally will be required to implement new account opening procedures by January 1, 2014. Accordingly, the definition of the term "preexisting obligation" (currently set forth in Prop. Reg. §1.1471–1(b)(48)) will be modified in the final regulations to include:

- **With respect to a withholding agent other than a participating FFI or a registered deemed-compliant FFI:** any account, instrument, or contract maintained or executed by the withholding agent prior to January 1, 2014;
- **With respect to a participating FFI:** any account, instrument, or contract maintained or executed by the participating FFI prior to the later of January 1, 2014, or the date that the participating FFI's FFI agreement becomes effective (the final regulations will provide that an FFI agreement entered into prior to January 1, 2014, will have an effective date of January 1, 2014); and
- **With respect to a registered deemed-compliant FFI:** any account, instrument, or contract maintained or executed by the FFI prior to the date on which the FFI implements its required account opening procedures. A registered deemed-compliant FFI must implement any required account opening procedures by the later of January 1, 2014, or the date on which the FFI registers as a deemed-compliant FFI.

B. Transition Rules for Completing Due Diligence on Preexisting Obligations

1. Withholding and Documentation for Prima Facie FFIs

Withholding Agents other than Participating FFIs. With respect to preexisting obligations, the final regulations will provide that withholding agents, other than participating FFIs, will be required to document payees that are *prima facie* FFIs by June 30, 2014. Accordingly, the rule set forth in Prop. Reg. §1.1471–2(a)(4)(ii) will be modified in the final regulations to provide that a withholding agent will not be required to withhold on payments made to a *prima facie* FFI with respect to a preexisting obligation prior to July 1, 2014, unless the withholding agent has documentation establishing the payee's status as a nonparticipating FFI. Beginning on July 1, 2014, a withholding agent will be required to treat a payee that is a *prima facie* FFI as a nonparticipating FFI until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee.

Participating FFIs. With respect to a preexisting obligation, the final regulations will provide that a participating FFI will be required to perform the requisite identification procedures and obtain the appropriate documentation to determine whether a *prima facie* FFI payee is itself a participating FFI, deemed-compliant FFI, or nonparticipating FFI within six months after the effective date of its FFI agreement (that is, by June 30, 2014, for any FFI that enters into an FFI agreement on or before December 31, 2013). The rule set forth in Prop. Reg. §1.1471–4(c)(3) will be modified accordingly. In addition, the final regulations will provide that the presumption rules set forth in Prop. Reg. §1.1471–3(f) will begin to apply to a *prima facie* FFI payee with respect to a preexisting obligation six months after the effective date of the payor FFI's FFI agreement.

2. Withholding and Documentation for other Preexisting Entity Obligations

Withholding Agents other than Participating FFIs. With respect to preexisting obligations, the final regulations will provide that withholding agents, other than participating FFIs, will be required to document payees that are entities other than *prima facie* FFIs by December 31, 2015. Accordingly, the rules set forth in Prop. Reg. §§1.1471–2(a)(4)(ii) and 1.1472–1(b) will be modified to reflect this change. Beginning on January 1, 2016, a withholding agent will be required to treat any undocumented payee that is treated as a foreign entity but that is not a *prima facie* FFI as a nonparticipating FFI until the date the withholding agent obtains documentation sufficient to establish a different chapter 4 status of the payee.

Participating FFIs. The final regulations will modify the rule set forth in Prop. Reg. §1.1471–4(c)(3) to provide that a participating FFI will be required to perform the requisite identification procedures and obtain the appropriate documentation to determine whether an entity, other than a *prima facie* FFI, is itself a participating FFI by the later of December 31, 2015, or the date that is two years after the effective date of its FFI agreement. In addition, the final regulations will provide that a participating FFI will not be required to apply the presumption rules (currently set forth in Prop. Reg. §1.1471–3(f)) to such accounts until the day after the date (described above) by which the participating FFI is required to perform the identification procedures and obtain the appropriate documentation.

3. Withholding and Documentation Requirements of Participating FFIs for Preexisting Individual Accounts

Preexisting High-Value Accounts. A participating FFI must perform the requisite identification procedures and obtain the appropriate documentation to identify preexisting individual accounts that are high-value accounts (as described in Prop. Reg. §1.1471–4(c)(8)(i)) by the later of December 31, 2014, or the date that is one year after the effective date of the FFI's FFI agreement. Accordingly, the final regulations will modify the rule set forth in Prop. Reg. §1.1471–5(g)(3)(i)(B) to provide that after the date described above, a participating FFI must treat any preexisting account that is a high-value account as held by a recalcitrant account holder unless the participating FFI has performed the requisite identification procedures and obtained the appropriate documentation.

Preexisting Accounts other than High Value Accounts. A participating FFI must perform the requisite identification procedures and obtain the appropriate documentation to identify preexisting individual accounts (other than high-value accounts) prior to the later of December 31, 2015, or the date that is two years after the effective date of the FFI's FFI agreement. Accordingly, the final regulations will modify the rule set forth in Prop. Reg. §1.1471–5(g)(3)(i)(A) to provide that after the date described above, a participating FFI must treat any preexisting individual account, other than a high-value account, as held by a recalcitrant account holder unless the participating FFI has performed the requisite identification procedures and obtained the appropriate documentation.

IV. DUE DATE FOR FIRST REPORT OF A PARTICIPATING FFI WITH RESPECT TO U.S. ACCOUNTS

The final regulations will modify the rule set forth in Prop. Reg. §1.1471–4(d)(7)(v)(B) to provide that a participating FFI will be required to file the information reports with respect to the 2013 and 2014 calendar years not later than March 31, 2015.

V. GROSS PROCEEDS WITHHOLDING

The final regulations will modify the rule set forth in Prop. Reg. §1.1473–1(a)(1)(ii) to provide that the term "withholdable payment" includes gross proceeds from any sale or other disposition occurring after December 31, 2016, of any property of a type that can produce interest or dividends that are U.S. source FDAP income.

VI. CLARIFICATION OF THE SCOPE OF GRANDFATHERED OBLIGATIONS

The final regulations will modify the grandfathered obligation rules to cover the following additional categories of obligations. First, the rule set forth in Prop. Reg. §1.1471–2(b)(2) will be amended to provide that the term "grandfathered obligation" includes any obligation that produces or could produce a foreign passthru payment and that cannot produce a withholdable payment, provided that the obligation is outstanding as of the date that is six months after the date on which final regulations defining the term "foreign passthru payment" are filed with the Federal Register. Second, the term "grandfathered obligation" will include any instrument that gives rise to a withholdable payment solely because the instrument is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the instrument is outstanding on the date that is six months after the date on which instruments of its type first become subject to such treatment. Finally, the term "grandfathered obligation" will include any obligation to make a payment with respect to, or to repay, collateral posted to secure obligations under a notional principal contract that is a grandfathered obligation.

DRAFTING INFORMATION

The principal author of this announcement is Tara Ferris of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact John Sweeney at (202) 622–3840 (not a toll-free call).

Summary of Timing for Performing Due Diligence Procedures to Identify and Document Accounts

The following table summarizes the dates by which withholding agents and financial institutions must fully implement new account opening procedures to identify account holders and the dates by which withholding agents and financial institutions must complete the review and documentation of all preexisting accounts for purposes of applying the relevant Treasury regulations. The table is intended only as an illustrative tool and therefore should be interpreted consistently with the accompanying announcement. It is important to emphasize that although the final regulations will provide a reasonable period of time to allow withholding agents to review and document all preexisting accounts, the final regulations will make clear that once a particular account has been documented, for example as a U.S. Account or as a nonparticipating FFI, withholding or reporting, as appropriate, must begin with respect to that account even though the time period for completing the identification and documentation of preexisting accounts may not have expired.

	New Individual and Entity Accounts **(Implementation of new account opening procedures)**	**Preexisting Accounts of *Prima Facie* FFIs (Date by which due diligence must be completed for all accounts)**	**Preexisting Accounts of Entities other than *Prima Facie* FFIs**	**Preexisting High Value Accounts of Individuals**	**Preexisting Accounts of Individuals other than High Value Accounts**
Withholding Agents other than Participating FFIs and Deemed-Compliant FFIs	By January 1, 2014	By June 30, 2014	By December 31, 2015	N/A	N/A
Withholding Agents that are Participating FFIs	By later of January 1, 2014, or effective date of FFI agreement	By the later of June 30, 2014, or 6 months after the effective date of the FFI Agreement	By the later of December 31, 2015, or two years after the effective date of the FFI Agreement	By the later of December 31, 2014, or one year after the effective date of the FFI Agreement	By the later of December 31, 2015, or two years after the effective date of the FFI Agreement
Withholding Agents that are Registered Deemed-Compliant FFIs	By later of January 1, 2014, or date of registration	N/A	N/A	N/A	N/A

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2012–27 through 2012–47

Announcements:

2012-26, 2012-27 I.R.B. *8*
2012-27, 2012-27 I.R.B. *10*
2012-28, 2012-27 I.R.B. *10*
2012-29, 2012-42 I.R.B. *500*
2012-30, 2012-34 I.R.B. *314*
2012-31, 2012-34 I.R.B. *315*
2012-32, 2012-35 I.R.B. *325*
2012-33, 2012-35 I.R.B. *325*
2012-34, 2012-36 I.R.B. *334*
2012-35, 2012-38 I.R.B. *356*
2012-36, 2012-46 I.R.B. *547*
2012-37, 2012-45 I.R.B. *543*
2012-38, 2012-43 I.R.B. *527*
2012-41, 2012-44 I.R.B. *532*
2012-40, 2012-47 I.R.B. *556*
2012-42, 2012-47 I.R.B. *561*

Notices:

2012-2, 2012-45 I.R.B. *538*
2012-39, 2012-31 I.R.B. *95*
2012-44, 2012-28 I.R.B. *45*
2012-45, 2012-29 I.R.B. *59*
2012-46, 2012-30 I.R.B. *86*
2012-47, 2012-31 I.R.B. *98*
2012-48, 2012-31 I.R.B. *102*
2012-49, 2012-31 I.R.B. *119*
2012-50, 2012-31 I.R.B. *121*
2012-51, 2012-33 I.R.B. *150*
2012-52, 2012-35 I.R.B. *317*
2012-53, 2012-35 I.R.B. *317*
2012-55, 2012-36 I.R.B. *332*
2012-56, 2012-39 I.R.B. *370*
2012-57, 2012-40 I.R.B. *424*
2012-58, 2012-41 I.R.B. *436*
2012-59, 2012-41 I.R.B. *443*
2012-60, 2012-41 I.R.B. *445*
2012-61, 2012-42 I.R.B. *479*
2012-62, 2012-42 I.R.B. *489*
2012-63, 2012-42 I.R.B. *496*
2012-64, 2012-44 I.R.B. *528*

Proposed Regulations:

REG-126770-06, 2012-38 I.R.B. *347*
REG-138367-06, 2012-40 I.R.B. *426*
REG-101812-07, 2012-34 I.R.B. *311*
REG-134042-07, 2012-27 I.R.B. *5*
REG-140668-07, 2012-43 I.R.B. *501*
REG-153627-08, 2012-29 I.R.B. *60*
REG-136491-09, 2012-35 I.R.B. *321*
REG-138489-09, 2012-38 I.R.B. *355*
REG-125570-11, 2012-30 I.R.B. *93*

Proposed Regulations— Continued:

REG-130266-11, 2012-32 I.R.B. *126*
REG-134935-11, 2012-29 I.R.B. *64*
REG-141832-11, 2012-28 I.R.B. *54*
REG-107889-12, 2012-28 I.R.B. *53*
REG-113738-12, 2012-29 I.R.B. *66*
REG-134974-12, 2012-47 I.R.B. *553*

Revenue Procedures:

2012-28, 2012-27 I.R.B. *4*
2012-29, 2012-28 I.R.B. *49*
2012-30, 2012-33 I.R.B. *165*
2012-31, 2012-33 I.R.B. *256*
2012-32, 2012-34 I.R.B. *267*
2012-33, 2012-34 I.R.B. *272*
2012-34, 2012-34 I.R.B. *280*
2012-35, 2012-37 I.R.B. *341*
2012-36, 2012-39 I.R.B. *374*
2012-37, 2012-41 I.R.B. *449*
2012-39, 2012-41 I.R.B. *470*
2012-40, 2012-40 I.R.B. *424*
2012-41, 2012-45 I.R.B. *539*
2012-42, 2012-46 I.R.B. *545*

Revenue Rulings:

2012-19, 2012-28 I.R.B. *16*
2012-20, 2012-27 I.R.B. *1*
2012-21, 2012-32 I.R.B. *123*
2012-23, 2012-39 I.R.B. *359*
2012-24, 2012-36 I.R.B. *329*
2012-25, 2012-37 I.R.B. *337*
2012-26, 2012-39 I.R.B. *358*
2012-27, 2012-41 I.R.B. *435*
2012-28, 2012-42 I.R.B. *476*
2012-29, 2012-42 I.R.B. *475*
2012-30, 2012-45 I.R.B. *534*

Treasury Decisions:

9591, 2012-28 I.R.B. *32*
9592, 2012-28 I.R.B. *41*
9593, 2012-28 I.R.B. *17*
9594, 2012-29 I.R.B. *57*
9595, 2012-30 I.R.B. *71*
9596, 2012-30 I.R.B. *84*
9597, 2012-34 I.R.B. *258*
9598, 2012-38 I.R.B. *343*
9599, 2012-40 I.R.B. *417*
9600, 2012-47 I.R.B. *548*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2012–27 through 2012–47

Announcements:

83-196
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

85-141
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

2008-105
Modified and superseded by
Ann. 2012-34, 2012-36 I.R.B. *334*

2012-29
Corrected by
Ann. 2012-41, 2012-44 I.R.B. *532*

2012-38
Corrected by
Ann. 2012-41, 2012-44 I.R.B. *532*

Notices:

2009-24
Amplified by
Notice 2012-51, 2012-33 I.R.B. *150*

2011-81
Superseded by
Notice 2012-63, 2012-42 I.R.B. *496*

2012-51
Amplified by
Notice 2012-51, 2012-33 I.R.B. *150*

Proposed Regulations:

REG-100276-97
Withdrawn by
Ann. 2012-27, 2012-27 I.R.B. *10*

REG-130266-11
Hearing scheduled by
Ann. 2012-29, 2012-42 I.R.B. *500*
Ann. 2012-38, 2012-43 I.R.B. *527*
Hearing rescheduled by
Ann. 2012-41, 2012-44 I.R.B. *532*

Revenue Procedures:

94-22
Modified and superseded by
Rev. Proc. 2012-35, 2012-37 I.R.B. *341*

95-15
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

97-27
Modified by
Rev. Proc. 2012-39, 2012-41 I.R.B. *470*

Revenue Procedures— Continued:

98-32
Modified and superseded by
Rev. Proc. 2012-33, 2012-34 I.R.B. *272*

2007-38
Modified and superseded by
Rev. Proc. 2012-32, 2012-34 I.R.B. *267*

2011-14
Clarified and modified by
Rev. Proc. 2012-39, 2012-41 I.R.B. *470*

2011-40
Superseded by
Rev. Proc. 2012-30, 2012-33 I.R.B. *165*

2011-50
Superseded by
Rev. Proc. 2012-36, 2012-39 I.R.B. *374*

2012-30
Corrected and clarified by
Ann. 2012-36, 2012-46 I.R.B. *547*

Treasury Decisions:

9752
Corrected by
Ann. 2012-35, 2012-38 I.R.B. *356*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. For the foreseeable future, the IRS will not create Cumulative Bulletins after the 2008–2 edition. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197–9000. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:M:S, Washington, DC 20224.