Internal Revenue
bulletin

Bulletin No. 2013-7
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

REG–148873–09, page 494.

Proposed regulations under section 6109 of the Code create a new taxpayer identifying number known as an IRS truncated taxpayer identification number, a TTIN. Notice 2011–38 obsoleted. A public hearing is scheduled for March 12, 2013.

Rev. Proc. 2013–16, page 488.

This procedure provides guidance to mortgage loan holders, loan servicers, and borrowers who are participating in the Department of the Treasury's (Treasury) and Department of Housing and Urban Development's (HUD) Home Affordable Modification Program (HAMP).

EMPLOYMENT TAX

Notice 2013–8, page 486.

This notice provides a special administrative procedure that allows employers that treated transit benefits in excess of $125 per month per employee as wages in 2012 and have not yet filed their fourth quarter Form 941 for 2012 to make the necessary corrections on their fourth quarter Form 941.

ADMINISTRATIVE

REG–148873–09, page 494.

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Notice 2013–3, page 484.

This notice sets forth the maximum face amount of Qualified Zone Academy Bonds ("Bond" or "Bonds") that may be issued for each State for the calendar years 2012 and 2013. For this purpose, "State" includes the District of Columbia and the possessions of the United States.

Rev. Proc. 2013–16, page 488.

This procedure provides guidance to mortgage loan holders, loan servicers, and borrowers who are participating in the Department of the Treasury's (Treasury) and Department of Housing and Urban Development's (HUD) Home Affordable Modification Program (HAMP).

Actions Relating to Court Decisions is on the page following the Introduction.
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.

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

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does NOT ACQUIESCE in the following decision:

Patel v. Commissioner[1]
138 T.C. No. 23 (June 27, 2012)
Docket No. 11694–09

[1] Nonacquiescence relating to whether a finding that the state of the law is uncertain at the time of the filing of a return, without a finding regarding whether the taxpayer made reasonable inquiry as to the state of the law, is an appropriate factor in determining whether the taxpayer acted with reasonable cause and in good faith for purposes of avoiding an accuracy-related penalty.

Part III. Administrative, Procedural, and Miscellaneous

Qualified Zone Academy Bond Allocations for 2012 and 2013

Notice 2013–3

SECTION 1. PURPOSE

This notice sets forth the maximum face amount of Qualified Zone Academy Bonds ("QZABs") that may be issued for each State for the calendar years 2012 and 2013 under § 54E(c)(2) of the Internal Revenue Code. Under § 54A(e)(3), the term State includes the District of Columbia and any possession of the United States.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 313 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Pub. L. No. 110–343, 122 Stat. 3765 (2008) ("Act") added new § 54E, which provides revised program provisions for QZABs in lieu of the existing provisions under §1397E, effective for obligations issued after October 3, 2008. The Act amended § 54A(d)(1) to provide that the term qualified tax credit bond ("QTCB") means, in part, a qualified zone academy bond which is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest. The Act also amended § 54A(d)(2)(C) to provide that, for purposes of § 54A(d)(2), the term "qualified purpose" for a QZAB means a purpose specified in § 54E(a)(1), described below.

The Act added § 54E(c)(1) to provide a national zone academy bond limitation authorization for QZABs of $400 million for each of calendar years 2008 and 2009. Section 1522 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) ("2009 Act") amended § 54E(c)(1) to provide an increased national zone academy bond limitation authorization for QZABs of $1.4 billion for each of calendar years 2009 and 2010. Section 758 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public L. No. 111–312, 124 Stat. 3296 (2010) ("2010 Act") amended § 54E(c)(1) to provide an authorization for QZABs of $400 million for calendar year 2011. Section 310 of the American Taxpayer Relief Act of 2012, Public L. No. 112–240, 126 Stat. 2313 (2012) ("2012 Act") further amended § 54E(c)(1) to provide authorization for QZABs of $400 million for each of calendar years 2012 and 2013. The amendments made by § 310 of the 2012 Act apply to obligations issued after December 31, 2011.

.02 QUALIFIED ZONE ACADEMY BOND UNDER § 54E

Section 54E(d) defines "qualified zone academy" as any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level provided: (A) the public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates and prepare students for college and the workforce; (B) students will be subject to the same academic standards and assessments as other students educated by the eligible local education agency; (C) the comprehensive education plan is approved by the eligible local education agency; and (D)(i) such public school is located in an empowerment zone or enterprise community including such designated after October 3, 2008; or (ii) there is a reasonable expectation (as of the date of bond issuance) that at least 35 percent of the students will be eligible for free or reduced cost lunches under the school lunch program established under the National School Lunch Act.

Section 54E(a) provides that a "qualified zone academy bond" or QZAB means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency; (2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and (3) the issuer: (A) designates such bond for purposes of this section; (B) certifies that it has written assurances that the private business contribution requirement of § 54E(b) will be met; and, (C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

Section 54E(d)(3) provides that a qualified purpose with respect to each academy means: (A) rehabilitating or repairing the public school facility; (B) providing equipment; (C) developing course materials; and, (D) training teachers and other school personnel. The private business contribution requirement of § 54E(b) is met if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue. Section 54E(d)(4) defines "qualified contributions" as any contribution (of a type and quality acceptable to the eligible local education agency) of: (A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment); (B) technical assistance in developing curriculum or in training teachers to promote appropriate market driven technology in the classroom; (C) employees' services as volunteer mentors; (D) internships, field trips, or other educational opportunities outside the academy; or (E) any other property or service specified by the eligible education agency. Section 54E(d)(2) defines "eligible local education agency" as any local educational agency as defined in § 9101 of the Elementary and Secondary Education Act of 1965.

Section 54E(c)(2) provides that the Department of the Treasury shall allocate the national zone academy bond limitation among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

Under § 54E(c)(3), the maximum aggregate face amount of bonds issued during any calendar year which may be designated as QZABs with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy for such calendar year. However, under § 54E(c)(4)(A), if for any calendar year the limitation amount for any State exceeds the amount of bonds issued during such year which are designated QZABs with respect to qualified zone academies within such State, the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Under § 54E(c)(4)(B), however, any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For these purposes, the limitation amount shall be treated as used on a first-in first-out basis.

Sections 1.1397E–1 (the "Final Regulations") sets forth regulations that were issued under § 1397E. For other guidance concerning the applicability of the regulations issued under § 1397E, the credit rate, and the sinking fund yield see § 1.397E–1(m), and Notice 2009–15, 2009–6 I.R.B. 449, Notice 2009–30, 2009–16 I.R.B. 852, Notice 2010–22, 2010–10 I.R.B. 435, and Rev. Proc. 2011–19, 2011–6 I.R.B. 465.

SECTION 3. QUALIFIED ZONE ACADEMY BOND ALLOCATIONS (in dollars) BY STATE OR TERRITORY, 2012 AND 2013

The national limitation for QZABs issued under § 54E for each of calendar years 2012 and 2013 is $400 million. These amounts are allocated among the States as follows:

Qualified Zone Academy Bond Allocations by State or Territory, 2012 and 2013

State or Territory	2012	2013
Alabama	$7,131,000	$7,131,000
Alaska	$605,000	$605,000
Arizona	$9,560,000	$9,560,000
Arkansas	$4,377,000	$4,377,000
California	$48,715,000	$48,715,000
Colorado	$5,326,000	$5,326,000
Connecticut	$2,970,500	$2,970,500
Delaware	$885,000	$885,000
DC	$891,000	$891,000
Florida	$25,291,000	$25,291,000
Georgia	$14,616,000	$14,616,000
Hawaii	$1,286,000	$1,286,000
Idaho	$2,039,000	$2,039,000
Illinois	$14,893,000	$14,893,000
Indiana	$7,966,000	$7,966,000
Iowa	$2,994,500	$2,994,500
Kansas	$3,055,000	$3,055,000
Kentucky	$6,444,000	$6,444,000
Louisiana	$7,244,000	$7,244,000
Maine	$1,462,000	$1,462,000
Maryland	$4,625,000	$4,625,000
Massachusetts	$5,893,000	$5,893,000
Michigan	$13,430,000	$13,430,000
Minnesota	$4,911,000	$4,911,000
Mississippi	$5,238,000	$5,238,000
Missouri	$7,338,000	$7,338,000
Montana	$1,179,000	$1,179,000
Nebraska	$1,830,000	$1,830,000
Nevada	$3,368,000	$3,368,000
New Hampshire	$914,000	$914,000
New Jersey	$7,145,000	$7,145,000
New Mexico	$3,401,000	$3,401,000
New York	$24,219,000	$24,219,000
North Carolina	$13,318,000	$13,318,000
North Dakota	$630,000	$630,000
Ohio	$14,611,000	$14,611,000
Oklahoma	$5,062,000	$5,062,000
Oregon	$5,214,000	$5,214,000
Pennsylvania	$13,449,000	$13,449,000
Rhode Island	$1,178,000	$1,178,000
South Carolina	$6,788,000	$6,788,000
South Dakota	$893,000	$893,000

Qualified Zone Academy Bond Allocations by State or Territory, 2012 and 2013

State or Territory	2012	2013
Tennessee	$9,137,000	$9,137,000
Texas	$36,825,000	$36,825,000
Utah	$3,003,000	$3,003,000
Vermont	$568,000	$568,000
Virginia	$7,264,000	$7,264,000
Washington	$7,413,000	$7,413,000
West Virginia	$2,679,000	$2,679,000
Wisconsin	$5,794,000	$5,794,000
Wyoming	$500,000	$500,000
American Samoa	$323,000	$323,000
Guam	$330,000	$330,000
Northern Mariana Islands	$177,000	$177,000
Puerto Rico	$13,318,000	$13,318,000
Virgin Islands	$284,000	$284,000
Total Allocation	$400,000,000	$400,000,000

SECTION 4. EFFECTIVE DATE OF NATIONAL ZONE ACADEMY BOND LIMITATIONS

The national limitation allocated in section 3 for calendar year 2012 is effective for QZABs issued on or after January 1, 2012, and the national limitation allocated in section 3 for calendar year 2013 is effective for QZABs issued on or after January 1, 2013.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Timothy L. Jones and David E. White of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact David E. White or Timothy L. Jones at (202) 622–3980 (not a toll-free call).

Application of Retroactive Increase in Excludible Transit Benefits

Notice 2013–8

PURPOSE

This notice provides guidance with respect to issues related to the enactment of section 203 of the American Taxpayer Relief Act (ATRA), Pub. L. 112–240, 126 STAT. 2313, which increased the monthly transit benefit exclusion under section 132(f)(2)(A) of the Internal Revenue Code from $125 per participating employee to $240 per participating employee for the period of January 1, 2012 through December 31, 2012. To address employers' questions regarding the retroactive application of the increased exclusion for 2012 and to reduce filing and reporting burdens, the Internal Revenue Service (Service) is clarifying how the increase applies for 2012 and providing a special administrative procedure for employers to use in filing Form 941, *Employer's QUARTERLY Federal Tax Return*, for the fourth quarter of 2012 to reflect changes in the excludable amount for transit benefits provided in all quarters of 2012, and in filing Forms W–2, *Wage and Tax Statement*.

BACKGROUND

Section 132(a)(5) provides that any fringe benefit that is a qualified transportation fringe is excluded from gross income. Section 132(f)(1) provides in relevant part that the term "qualified transportation fringe" includes (when provided by an employer to an employee): (1) transportation in a commuter highway vehicle between home and work, (2) any transit pass, or (3) qualified parking.

Section 132(f)(2) provides that the amount of fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under section 132(a)(5) shall not exceed $100 per month in the case of the aggregate of transportation in a commuter highway vehicle and any transit pass, and $175 in the case of qualified parking. These amounts are adjusted annually for inflation under section 132(f)(6). Prior to enactment of ATRA, the adjusted maximum monthly excludable amount for 2012 for the aggregate of transportation in a commuter highway vehicle and any transit pass was $125 and the adjusted maximum monthly excludable amount for qualified parking was $240. Section 3.12 of Rev. Proc. 2011–52, 2011–45 I.R.B. 701, prior to amendment by section 3 of Rev. Proc. 2013–15 (released January 11, 2013).

ATRA amended section 132(f)(2) to increase the maximum monthly excludable amount for employer-provided commuter highway vehicle transportation and transit pass benefits to an amount equal to the maximum monthly excludable amount for qualified parking. The amendment is effective retroactively beginning on January 1, 2012, and extending through December 31, 2013. Rev. Proc. 2013–15 clarifies that the maximum monthly excludable amount for employer-provided commuter highway vehicle transportation and transit pass benefits for 2012 is $240. (Rev. Proc. 2013–15 also specifies that the maximum monthly excludable amount for 2013 is $245.)

Amounts which are excluded from gross income under section 132 are also excluded from Federal Insurance Contributions Act (FICA) taxes (both social security and Medicare) and Federal income

tax withholding. Sections 3121(a)(20) and 3401(a)(19).

Generally, corrections of overpayments of FICA tax are made after an error has been ascertained using the adjustment process under section 6413 or using the refund claim process under section 6402. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

Under section 31.6413(a)–1(a) and section 31.6413(a)–2(b) of the Employment Tax Regulations, before making an adjustment of an overpayment of FICA tax, an employer generally must repay or reimburse its employee in the amount of the overcollection prior to the expiration of the period of limitations on credit or refund, and, for FICA tax overcollected in a prior year, must also secure the employee's written statement confirming that the employee has not made any previous claims (or the claims were rejected) and will not make any future claims for refund or credit of the amount of the overcollected FICA tax. An employer repays the employee by direct payment to the employee; an employer reimburses an employee by applying the amount of the overcollection against the employee FICA tax which attaches to wages paid by the employer to the employee. Section 31.6413(a)–1(b) provides that employers cannot adjust overpayments of withheld income tax after the end of the calendar year.

Section 31.6402(a)–2 provides rules under which a refund claim for an overpayment of FICA tax may be made. Pursuant to § 31.6402(a)–2(a), an employer has a duty to assure that its employee's rights to recover overcollected taxes are protected by repaying or reimbursing overcollected amounts. Alternatively, an employer may obtain the employee's consent to the filing of the refund claim. Under section 6414 and § 31.6414–1, no refund to the employer is allowed for the overpayment of withheld income tax which the employer deducted or withheld from an employee.

To make employment tax corrections for overpayments (that is, to make adjustments or to claim refunds), an employer uses the "X" form that corresponds to the return being corrected. Thus, an employer corrects overreported taxes on a previously filed Form 941 by filing Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*. A separate "X" form must be filed for each taxable period.

EMPLOYERS WHO PROVIDED TRANSIT BENEFITS IN EXCESS OF $125 PER MONTH AND LESS THAN OR EQUAL TO $240 PER MONTH IN 2012

For purposes of the remaining discussion, "transit benefits" refers to the aggregate benefit of transportation in a commuter highway vehicle and transit passes. Pursuant to the change made by ATRA, which was retroactive to January 1, 2012, any transit benefits provided by an employer to an employee in excess of $125 (the former maximum monthly excludable amount) up to $240 (the amended maximum monthly excludable amount) is excluded from the employee's gross income and wages. These excess amounts are referred to as "excess transit benefits" in this notice. The exclusion applies whether the employer provided the transit benefits out of its own funds or whether the transit benefits were provided through salary reduction arrangements as permitted by section 132(f)(4) and § 1.132–9, Q/A 11 of the Income Tax Regulations.

SPECIAL ADMINISTRATIVE PROCEDURE FOR EMPLOYERS WHO DESIRE TO MAKE ADJUSTMENTS FOR 2012 ON THE FORM 941 FILED FOR THE FOURTH QUARTER OF 2012

Employers, who originally reported excess transit benefits as includible in gross income and wages, and withheld income taxes and FICA taxes, would normally be required to file Form 941-X for each quarter to correct the error.

Due to the timing of the statutory change and the due dates for Forms 941 for the fourth quarter of 2012 and Forms W–2, and in order to reduce administrative burden, the Service is providing a special administrative procedure for employers that treated excess transit benefits as wages and that have not yet filed their fourth quarter Form 941 for 2012. Employers who desire to use this special administrative procedure must repay or reimburse their employees the overcollected FICA tax on the excess transit benefits for all four quarters of 2012 on or before filing the fourth quarter Form 941. The employer, in reporting amounts on its fourth quarter Form 941, may reduce the fourth quarter Wages, tips and compensation reported on line 2, Taxable social security wages reported on line 5a, and Medicare wages and tips reported on line 5c, by the excess transit benefits for all four quarters of 2012. By taking advantage of this special administrative procedure, employers will avoid having to file Forms 941-X, and will also avoid having to file Forms W–2c as discussed below.

This procedure can only be used to the extent that employers have repaid or reimbursed their employees for the employee share of FICA tax attributable to the excess transit benefits. Under this special administrative procedure, employers may only correct the employer share of FICA tax that corresponds to the employees' share of FICA tax that has been repaid or reimbursed to the employees. Employers using this special procedure do not need to obtain written statements from their employees confirming, for each employee, that the employee did not make a claim (or if the employee did make a claim, the claim was rejected) and will not make a claim for refund of FICA tax overcollected in a prior year.

The repayment or reimbursement of overwithheld social security tax and the corresponding reduction for wages reported on Form 941, line 5a, Taxable social security wages, must take into account that refunds or credits of social security tax are limited to the amount paid on that portion of the excess transit benefits that, when added to other wages for the year, did not exceed the social security wage base for 2012 ($110,100).

The same procedures are available to filers of other employment tax returns reporting FICA taxes (*e.g.*, the related Spanish-language return or return for U.S. possessions) and to filers of employment tax returns reporting taxes under the Railroad Retirement Tax Act.

EMPLOYER INSTRUCTIONS — FOURTH QUARTER FORM 941 HAS BEEN FILED OR THE EMPLOYER HAS NOT REPAID OR REIMBURSED ALL EMPLOYEES

Employers that have filed the fourth quarter Form 941 must use Form 941-X to make an adjustment or claim a refund for any quarter in 2012 with regard to the

overpayment of tax on the excess transit benefits after repaying or reimbursing the employees or, for refund claims, securing consents from its employees. Similarly, employers that, on or before filing the fourth quarter Form 941, have not repaid or reimbursed some or all employees who received excess transit benefits in 2012 must use Form 941-X to make an adjustment or claim for refund with respect to the excess transit benefits provided to those employees and must follow the normal procedures.

EMPLOYER INSTRUCTIONS — FORM W–2

Employers that have not furnished 2012 Forms W–2 to their employees should take into account the increased exclusion for transit benefits in calculating the amount of wages reported in box 1, Wages, tips, other compensation; box 3, Social security wages; and box 5, Medicare wages and tips. Employers that have repaid or reimbursed their employees for the overcollected FICA taxes prior to furnishing Form W–2 should reduce the amounts of withheld tax reported in box 4, Social security tax withheld, and box 6, Medicare tax withheld, by the amounts of the repayments or reimbursements. In all cases, however, employers must report in box 2, Federal income tax withheld, the amount of income tax actually withheld during 2012. The additional income tax withholding will be applied against the taxes shown on the employee's individual income tax return (Form 1040, *U.S. Individual Income Tax Return*).

Employers that repaid or reimbursed their employees for the overcollected FICA taxes after furnishing Forms W–2 to their employees but before filing Forms W–2 with the Social Security Administration (SSA), should check the "Void" box at the top of each incorrect Form W–2 (Copy A). The employer should prepare new Forms W–2 with the correct information, and send these new Forms W–2 (Copy A) to the SSA. The employers should write "CORRECTED" on the employees' new copies (B, C, and 2), and furnish them to the employees. *See* the 2012 Instructions for Forms W–2 and W–3.

Employers that have already filed 2012 Forms W–2 with SSA will need to file Forms W–2c, *Corrected Wage and Tax Statement*, to take into account the increased exclusion for transit benefits.

DRAFTING INFORMATION

The principal author of this notice is Jean Casey of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Ms. Casey at (202) 622–6040 (not a toll-free call).

CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 61, 108, 451, 6041, 6050P; 1.1001–3.)

Rev. Proc. 2013–16

SECTION 1. PURPOSE

This revenue procedure provides guidance to mortgage loan holders, loan servicers, and borrowers who are participating in the Department of the Treasury's (Treasury) and Department of Housing and Urban Development's (HUD) Home Affordable Modification Program® (HAMP®). Under HAMP, a borrower may be eligible for principal reduction of the outstanding balance of a qualifying mortgage pursuant to the program's Principal Reduction Alternative℠ (PRA). In appropriate cases, HAMP has been offering the PRA as part of a HAMP loan modification since the last quarter of 2010. Current plans call for HAMP to continue accepting new borrowers through the end of 2013. The Internal Revenue Service (Service) is providing this guidance to address the tax consequences for borrowers (HAMP-PRA borrowers) who are participating in the PRA and the reporting obligations for participating mortgage loan holders and servicers.

SECTION 2. BACKGROUND—HAMP AND THE HAMP PRINCIPAL REDUCTION ALTERNATIVE

.01 To help distressed borrowers lower their monthly mortgage payments, Treasury and HUD established HAMP for mortgage loans that are not owned or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). A description of the program can be found at *www.makinghomeaffordable.gov*.

.02 Under HAMP, a participating loan servicer, acting on behalf of the mortgage loan holder, must consider a sequence of modification steps for each eligible borrower's mortgage loan until the borrower's monthly payment is reduced to a monthly payment amount determined under the HAMP guidelines. These steps include a reduction in the mortgage loan's interest rate, an extension of the mortgage loan's term, and a reduction in the mortgage loan's principal balance.

.03 In some cases, the unpaid principal balance of the modified mortgage loan is divided into (1) an amount that bears stated interest and that is used to calculate the borrower's new monthly mortgage payment (the "Non-forbearance Portion"), and (2) a forbearance amount, which does not bear stated interest and on which periodic payments of stated principal are not required. The stated principal of the forbearance amount is due upon the earliest of the borrower's transfer of the property, payoff of the balance on the Non-forbearance Portion of the mortgage loan, or maturity of the mortgage loan. However, as noted in section 2.06 of this revenue procedure, a HAMP-PRA borrower sometimes may not have to pay all or a portion of the forbearance amount. (The forbearance amount associated with a HAMP-PRA principal reduction is called the "PRA Forbearance Amount.")

.04 If a mortgage loan is being considered for a HAMP modification and the amount owed on the mortgage loan is greater than 115 percent of the value of the property, then the servicer must consider whether principal reduction under PRA should be used as part of the HAMP modification.

.05 The first step toward a HAMP modification is a trial period plan, in which the borrower's monthly mortgage payment is set at a monthly payment amount determined under the HAMP guidelines. The trial period plan effective date is the due date for the first of the reduced payments that are to be made under the trial period plan. (It is the first day of either the first or the second month after the servicer transmits the trial period notice to the borrower.) In general, the trial period is three

months, and, during this period, the borrower must satisfy certain conditions before the changes to the terms of the mortgage loan become permanent (the "Trial Period Conditions"). Specifically, depending on the borrower's trial period payment history, the borrower's compliance with HAMP and servicer guidelines, and his or her satisfaction of all other Trial Period Conditions, the borrower will be offered a permanent modification of the terms of the mortgage loan, including monthly mortgage payments that are lower than those under the old mortgage loan. Until the effective date of a permanent modification, the terms of the existing mortgage loan continue to apply.

.06 After the mortgage loan is permanently modified under HAMP, if the modified mortgage loan is in good standing on the first, second, or third annual anniversary of the trial period plan effective date (the "Three-year Period"), the servicer must reduce the unpaid principal balance of the mortgage loan on the respective anniversary date by one-third of the initial PRA Forbearance Amount. (The servicer allocates the entire reduction to the remaining PRA Forbearance Amount.) In general, if a HAMP-PRA borrower's mortgage loan is in good standing and if the HAMP-PRA borrower pays in full the Non-forbearance Portion of the mortgage loan prior to the reduction of the entire PRA Forbearance Amount, the servicer must reduce the remaining outstanding principal balance of the mortgage loan by the remaining PRA Forbearance Amount.

.07 In connection with every HAMP loan modification, the HAMP program administrator (acting on behalf of the federal government) provides incentives to the borrower, the servicer, and the investor (that is, the holder of the mortgage loan). If a HAMP loan modification includes a PRA principal reduction, the HAMP program administrator makes additional incentive payments to the investor. These additional incentives are called "PRA Investor Incentive Payments" and are generally spread over three years. The size of the PRA Investor Incentive Payments depends on the amount of principal reduced, the loan-to-value ratio at the time of the HAMP modification, and the loan's payment history before the modification. The PRA Investor Incentive Payments range from 18 to 63 percent of the principal amounts reduced. For purposes of this revenue procedure, the excess of the initial PRA Forbearance Amount of a mortgage loan over the aggregate PRA Investor Incentive Payments scheduled to be paid with respect to that loan is called the "PRA Adjusted Forbearance Amount."

.08 A PRA Investor Incentive Payment is earned by the investor on each date on which the servicer reduces the unpaid principal balance of the mortgage loan by a portion of the PRA Forbearance Amount (generally, on the first three annual anniversaries of the trial period plan effective date).

.09 If a HAMP-PRA borrower's early payment in full of the Non-forbearance Portion of the mortgage loan accelerates the reduction of the remaining PRA Forbearance Amount (described above in section 2.06 of this revenue procedure), the remaining PRA Investor Incentive Payments from the HAMP program administrator are also accelerated.

.10 If, prior to completion of the Three-year Period, a mortgage loan ceases to be in good standing because of the HAMP-PRA borrower's payment history, then the remaining PRA Forbearance Amount is not further reduced and is due when the HAMP-PRA borrower transfers the property, the HAMP-PRA borrower refinances, or otherwise pays off the Non-forbearance Portion of the mortgage loan, or the mortgage loan matures.

SECTION 3. BACKGROUND—APPLICABLE PROVISIONS OF LAW

.01 Under § 61 of the Internal Revenue Code, except as otherwise provided in subtitle A, gross income means all income from whatever source derived, including income from discharge of indebtedness. *See* § 61(a)(12).

.02 Under § 1.1001–3 of the Income Tax Regulations, if a debt instrument undergoes a significant modification, then the modification results in an exchange of the original debt instrument for the modified debt instrument. In general, an agreement to change a term of a debt instrument is a modification at the time the borrower and holder enter into the agreement, even if the change in term is not immediately effective. However, if the change is conditioned on reasonable closing conditions, a modification occurs on the closing date of the agreement. *See* § 1.1001–3(c)(6).

.03 Under § 108(e)(10), in the case of a debt-for-debt exchange (including a deemed exchange under § 1.1001–3), the borrower is treated as having satisfied the original debt instrument with an amount of money equal to the issue price of the new debt instrument. If the amount of debt satisfied in this manner exceeds that issue price, the borrower realizes discharge of indebtedness income on the exchange. *See also* § 1.61–12(c).

.04 The issue price of a non-publicly traded debt instrument issued for non-publicly traded property generally reflects the amount of principal that the borrower is required to pay to the holder of the instrument. If a borrower has the ability to avoid paying certain amounts (including principal) without violating the terms of the instrument, the payment schedule for the instrument is generally determined based on an assumption that the borrower will avoid any requirement to make those payments. *See, e.g.,* §§ 1.1272–1(c)(5) and 1.1274–2(d).

.05 Under § 108(a), gross income does not include any amount that but for § 108(a) would be includible in gross income by reason of the discharge (in whole or in part) of a taxpayer's indebtedness if (1) the indebtedness discharged is qualified principal residence indebtedness that is discharged before January 1, 2014, or (2) the discharge occurs when the taxpayer is insolvent. Section 108(a)(1)(E) and 108(a)(1)(B). (Although § 108 contains other exclusions as well, this revenue procedure focuses on these two exclusions because they are the most likely to apply to the greatest number of HAMP-PRA borrowers.)

.06 Under §§ 108(h) and 163(h)(3)(B), qualified principal residence indebtedness is any indebtedness that is incurred by a borrower to buy, build, or substantially improve the borrower's principal residence and is secured by that residence.

.07 Qualified principal residence indebtedness also includes a loan secured by the borrower's principal residence that refinances qualified principal residence indebtedness, but only to the extent of the amount of the refinanced indebtedness. *See* §§ 108(h) and 163(h)(3)(B)(i).

.08 The maximum amount of discharged indebtedness that a borrower may exclude from gross income under the qualified principal residence indebtedness exclusion is $2,000,000 ($1,000,000 for a married individual filing a separate return). Under § 108(h)(4), if only part of the discharged indebtedness is qualified principal residence indebtedness, then the exclusion applies only to the amount of the discharged indebtedness that exceeds the amount of the loan (determined immediately before the discharge) that is *not* qualified principal residence indebtedness.

.09 Under § 108(a)(3), the insolvency exclusion applies to the lesser of the amount of the debt discharged or the amount by which the taxpayer is insolvent immediately before the discharge.

.10 Section 108(d)(3) provides that, for purposes of the insolvency exclusion, a taxpayer is insolvent to the extent that the taxpayer's total liabilities exceed the fair market value of all of the taxpayer's assets immediately before the discharge of indebtedness. Under § 108(a)(2)(C), the qualified principal residence indebtedness exclusion takes precedence over the insolvency exclusion when both exclusions apply to discharged indebtedness, unless the taxpayer elects to apply the insolvency exclusion.

.11 If an amount is excluded from gross income as a discharge of qualified principal residence indebtedness, the taxpayer must reduce the basis of the taxpayer's principal residence. *See* § 108(h)(1). If a discharged amount is excluded from gross income because the taxpayer was insolvent when the discharge occurred, the taxpayer must reduce certain tax attributes (possibly including basis). *See* § 108(b). For further discussion of income from the discharge of indebtedness, the qualified principal residence indebtedness exclusion, the insolvency exclusion, and other exclusions from gross income that may apply, see Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals).*

.12 Taxpayers who exclude any discharged amounts from gross income report both the exclusion and the resulting reduction in basis or other tax attributes on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment). See* Form 982 instructions and Publication 4681. This form is to be filed with the tax return for the taxable year in which the amount is discharged but is excluded from gross income.

.13 Governmental payments made to or on behalf of individuals or other persons are included within the broad definition of gross income under § 61 unless an exception applies. *See* Notice 2003–18, 2003–1 C.B. 699, and Rev. Rul. 79–356, 1979–2 C.B. 28. However, if disbursements are made by a governmental unit to individuals in the interest of the general welfare (that is, are generally based on individual or family need) and the disbursements do not represent compensation for services, then the amounts disbursed are excluded from the income of the recipient (general welfare exclusion). *See* Rev. Rul. 2005–46, 2005–2 C.B. 120, and Rev. Rul. 75–246, 1975–1 C.B. 24.

.14 Under § 451 and § 1.451–1(a), a taxpayer that uses the cash receipts and disbursements method of accounting includes income in gross income when the taxpayer actually or constructively receives the income.

.15 Section 6041 requires every person engaged in a trade or business (including the United States and its agencies) to (1) file an information return (Form 1099-MISC, *Miscellaneous Income*, is used for this purpose) for each calendar year in which the person makes, in the course of its trade or business, payments to another person of fixed or determinable income aggregating $600 or more, and (2) furnish a copy of the information return to that other person. *See* § 6041(a) and (d) and § 1.6041–1(a)(1) and (b).

.16 Section 6050P requires applicable entities (including the United States and its agencies, financial entities, and any organization a significant trade or business of which is the lending of money) to (1) file an information return (Form 1099-C, *Cancellation of Debt*, is used for this purpose) for each calendar year in which it discharges indebtedness of another person of $600 or more, and (2) furnish a copy of the information return to that other person. *See* § 6050P(a)-(c) and §§ 1.6050P–1(a) and 1.6050P–2(a) and (d).

.17 Section 6721 imposes penalties with respect to information returns required to be filed with the Service. These penalties apply in the case of a failure to timely file an information return, a failure to include all required information on the return, or the inclusion of incorrect information on the return. Section 6724(d)(1) includes Forms 1099-MISC and 1099-C in the term "information return."

.18 Section 6722 imposes penalties with respect to payee statements required to be furnished to payees. These penalties apply in the case of a failure to timely furnish a payee statement, a failure to include all required information on the statement, or the inclusion of incorrect information on the payee statement. Section 6724(d)(2) includes in the term "payee statement" copies of Forms 1099-MISC and 1099-C that are required to be furnished to taxpayers.

SECTION 4. FEDERAL INCOME TAX TREATMENT

.01 Because a HAMP modification with a PRA principal reduction is a significant modification, it results in a deemed debt-for-debt exchange in which the HAMP-PRA borrower satisfies the old mortgage loan by issuing a new one. *See* § 1.1001–3. At the time of the modification, therefore, under § 108 and this revenue procedure, the HAMP-PRA borrower realizes discharge of indebtedness income equal to any excess of the adjusted issue price of the old mortgage loan (which was satisfied in the deemed exchange) over the issue price of the new (post-modification) mortgage loan. *See also* § 61(a)(12) and § 1.61–12(c).

.02 A HAMP-PRA borrower has the ability to avoid payment of the PRA Adjusted Forbearance Amount. Because the HAMP-PRA borrower has this ability, that amount should not be taken into account in determining the issue price of the new mortgage loan. Because the issue price of the new mortgage loan does not include the PRA Adjusted Forbearance Amount, the PRA Adjusted Forbearance Amount contributes to the excess of the adjusted issue price of the old mortgage loan (which was satisfied in the deemed exchange) over the issue price of the new mortgage loan.

.03 On the other hand, the investor has not given up its right to receive the remainder of the PRA Forbearance Amount, because the HAMP program administrator is expected to make those payments on the HAMP-PRA borrower's behalf by making the PRA Investor Incentive Payments. Be-

cause the remainder of the PRA Forbearance Amount is payable in this manner, that remainder is included in the issue price of the new mortgage loan.

.04 The Trial Period Conditions are reasonable closing conditions that must be satisfied before the changes to the terms of the mortgage loan become permanent. Therefore, for purposes of § 1.1001–3, the date of the modification is the date of the permanent modification.

.05 Unless an exclusion applies, the HAMP-PRA borrower includes in gross income the discharge of indebtedness income described in section 4.01 of this revenue procedure for the taxable year in which the permanent modification occurs. Under certain conditions, however, section 6 of this revenue procedure permits a borrower to report the discharge of indebtedness under HAMP-PRA over the Three-year Period. The qualified principal residence indebtedness exclusion under § 108(a)(1)(E) and the insolvency exclusion under § 108(a)(1)(B) are two exclusions that may apply to the discharge.

.06 The PRA Investor Incentive Payment is treated as a payment on the mortgage loan by the HAMP program administrator on behalf of the HAMP-PRA borrower.

.07 To the extent that the HAMP-PRA borrower uses the property as the HAMP-PRA borrower's principal residence or the property is occupied by the HAMP-PRA borrower's legal dependent, parent, or grandparent without rent being charged or collected, the HAMP-PRA borrower excludes from his or her gross income under the general welfare exclusion the PRA Investor Incentive Payments that the HAMP program administrator makes to the investor in the mortgage loan. This is consistent with Rev. Rul. 2009–19, 2009–28 I.R.B. 111, which addressed the treatment of Pay-for-Performance Success Payments.

.08 To the extent that the HAMP-PRA borrower uses the property as a rental property or holds the property vacant and available for rent, the HAMP-PRA borrower includes PRA Investor Incentive Payments in gross income. If the HAMP-PRA borrower uses the cash receipts and disbursements method of accounting, then the HAMP-PRA borrower includes a PRA Investor Incentive Payment in gross income in the taxable year in which it is applied as a payment on the HAMP-PRA borrower's mortgage loan.

.09 As described in section 2.09 of this revenue procedure, if a HAMP-PRA borrower pays in full the Non-forbearance Portion of the mortgage loan while the loan is in good standing and prior to completion of the Three-year Period, that payment accelerates both the reduction in the remaining PRA Forbearance Amount and the PRA Investor Incentive Payments from the HAMP program administrator. To the extent that the HAMP-PRA borrower is described in section 4.07 of this revenue procedure, the HAMP-PRA borrower excludes from his or her gross income under the general welfare exclusion the accelerated PRA Investor Incentive Payments. To the extent that the HAMP-PRA borrower is described in section 4.08 of this revenue procedure, the HAMP-PRA borrower includes in income in the year of the acceleration the remaining amount of the PRA Investor Incentive Payment.

SECTION 5. INFORMATION-REPORTING OBLIGATIONS

.01 Under § 6050P, the investor is required to file a Form 1099-C with respect to a borrower who realizes discharge of indebtedness of $600 or more. A copy of this form is required to be furnished to the borrower.

.02 As stated in sections 4.01 and 4.04 of this revenue procedure, the HAMP-PRA discharge of indebtedness is realized at the time of the permanent modification of the mortgage loan.

.03 An investor is an applicable entity that is required under § 1.6050P–1 and this revenue procedure to issue a Form 1099-C for discharge of indebtedness. Under § 1.6050P–1(b)(2)(F), the permanent modification of a mortgage loan is an identifiable event. Identifiable events determine when Forms 1099-C have to be issued. Thus, the Form 1099-C is issued for the calendar year in which the permanent mortgage loan modification occurs. This rule under § 1.6050P–1(b)(2)(F) applies even if, under section 6 of this revenue procedure, the HAMP-PRA borrower chooses to treat the HAMP-PRA discharge as being realized at the times when the unpaid principal balance of the new mortgage loan is reduced.

.04 The investor (or the loan servicer acting on behalf of the investor) reports the full amount of the discharge on the Form 1099-C regardless of whether some or all of the amount is excludible from income under the qualified principal residence indebtedness exclusion, the insolvency exclusion, or any other exclusion that may apply. That discharged amount will generally be the PRA Adjusted Forbearance Amount (which does not include the amounts expected to be satisfied by PRA Investor Incentive Payments).

.05 To the extent that PRA Investor Incentive Payments are made on behalf of a HAMP-PRA borrower who is described in section 4.07 of this revenue procedure, the PRA Investor Incentive Payments are excluded from the gross income of the HAMP-PRA borrower, and thus they are not fixed or determinable income to the HAMP-PRA borrower. Under § 6041, these payments are not subject to information reporting. *See* Notice 2011–14, 2011–11 I.R.B. 544, 546.

.06 To the extent that PRA Investor Incentive Payments are made on behalf of a HAMP-PRA borrower who is described in section 4.08 of this revenue procedure, the PRA Investor Incentive Payments are includible in gross income as fixed or determinable income in the taxable year required by the HAMP-PRA borrower's method of accounting. The payment is subject to the information reporting requirements of § 6041, as described in section 3.15 of this revenue procedure. Accordingly, the HAMP program administrator is required to issue a Form 1099-MISC reporting the PRA Investor Incentive Payment.

SECTION 6. HAMP-PRA BORROWERS' REPORTING OF DISCHARGES OF INDEBTEDNESS UNDER HAMP-PRA

.01 *In general*. The HAMP-PRA program began in the last quarter of 2010, and since that time there has been uncertainty about whether the amount of the discharge of indebtedness should be reported in the year of the permanent modification or over the Three-year Period (when the unpaid principal balance on the new mortgage loan is reduced). As a result, some HAMP-PRA borrowers have been reporting the discharge of indebtedness under

HAMP-PRA over the Three-year Period. Given the temporary nature of the program and the issuance of this guidance after participation in the program has begun, in the interests of equitable and sound tax administration, HAMP-PRA borrowers may report discharges of indebtedness under HAMP-PRA under the rules in this section 6. A HAMP-PRA borrower may choose to report discharges of indebtedness under HAMP-PRA pursuant to the rules in this section 6 only if the borrower applies the same borrower option under section 6.02 of this revenue procedure consistently to the taxable year of the permanent modification and to all subsequent taxable years. Thus, a HAMP-PRA borrower may not choose a borrower option under section 6.02 of this revenue procedure if a statute of limitations has expired for any of the taxable years that are necessary for consistent application of that option.

.02 *HAMP-PRA borrower options*. A HAMP-PRA borrower may treat the HAMP-PRA discharge as being realized in either of the following ways—

(1) One hundred percent of the PRA Adjusted Forbearance Amount at the time of the permanent modification; or

(2) One third of the PRA Adjusted Forbearance Amount on each of the first three annual anniversaries of the trial period plan effective date (described in section 2.06 of this revenue procedure), when, as required by the terms of the new mortgage loan, the servicer reduces the unpaid principal balance of the new mortgage loan. If some or all of the reduction in the unpaid principal balance is accelerated (as described in section 2.06 of this revenue procedure) because the HAMP-PRA borrower prepays the Non-forbearance Portion of the mortgage loan, then the HAMP-PRA discharge represented by the amount of the reduction that was accelerated is treated as being realized at the time of the accelerated reduction.

.03 *HAMP-PRA borrowers who choose to realize the HAMP-PRA discharge at the time of the permanent modification*.

(1) If a HAMP-PRA borrower chooses to treat the HAMP-PRA discharge as being realized at the time of the permanent modification, then for the taxable year in which the permanent modification occurs, the HAMP-PRA borrower reports on Form 982 the amount, if any, of the discharge that is excluded from gross income and includes in gross income any remaining discharge.

(2) If a HAMP-PRA borrower's mortgage loan was permanently modified under HAMP in 2010 or 2011, and if the borrower was reporting the discharge of indebtedness using the method described in section 6.02(2) of this revenue procedure, then the borrower may change to reporting the discharge of indebtedness using the method described in section 6.02(1) of this revenue procedure by filing a 2012 Form 982 with the borrower's timely filed (with extensions) 2012 income tax return. This section 6.03(2) applies only if the change to reporting the discharge using the method described in section 6.02(1) of this revenue procedure does not change the borrower's federal income tax liability (including any change in federal income tax liability due to a change in basis or tax attributes (under § 108(h)(1) or § 108(b))) for any taxable year prior to the borrower's 2012 taxable year. To make this change, the borrower must—

(i) Compute the amount of discharge of indebtedness that would be included in income under § 61(a)(12) or excluded from gross income under § 108, basing the computation of the discharge on the facts as of the year of the permanent modification; and

(ii) Report on a 2012 Form 982 the reduction in basis or tax attributes (under § 108(h)(1) or § 108(b)) due to the permanent modification that the borrower would have reported on the Form 982 for the taxable year of the permanent modification, minus any reductions due to the permanent modification that the borrower actually reported on Forms 982 for taxable years prior to 2012.

(3) *Example*. The following example illustrates the application of section 6.03(2) of this revenue procedure.

In 2010, B's basis in B's principal residence was $330,000. In 2010, B's mortgage loan on the principal residence is permanently modified under HAMP-PRA. B realized $30,000 of cancellation of indebtedness from the permanent modification, all of which qualifies for the exclusion from income for qualified principal residence indebtedness under § 108(a)(1)(E). The trial period plan effective date also fell in 2010.

B's federal income tax return for 2010 was consistent with B's reporting this discharge of indebtedness using the method described in section 6.02(2) of this revenue procedure. That is, B's 2010 return did not include income from discharge of indebtedness under HAMP-PRA, nor did the return contain a Form 982 reporting exclusion of any such discharge of indebtedness. The next year, B reported on line 10(b) of the 2011 Form 982 that B filed with B's 2011 federal income tax return a $10,000 reduction in basis in the principal residence.

For 2012, B chooses to change to reporting the discharge of indebtedness using the method described in section 6.02(1) of this revenue procedure. Thus, B files a 2012 Form 982 with B's timely filed (including extensions) 2012 federal income tax return, and on line 10(b) of that form, B reports a $20,000 basis reduction in the principal residence ($30,000 basis reduction that B would have excluded from income in 2010 using the method described in section 6.02(1) of this revenue procedure, minus the $10,000 basis reduction that B reported on B's 2011 Form 982).

(4) If a HAMP-PRA borrower reports the entire HAMP-PRA discharge using the method described in section 6.02(1) of this revenue procedure, and if that HAMP-PRA borrower's mortgage loan ceases to be in good standing during the Three-year Period as described in section 2.10 of this revenue procedure, then some or all of the anticipated reductions in the PRA Adjusted Forbearance Amount will not take place. Because the amount of these anticipated reductions was not included in determining the issue price of the new mortgage loan that, pursuant to § 1.1001–3, the HAMP-PRA borrower is deemed to issue in satisfaction of the old mortgage loan, the issue price of the new mortgage loan was understated. Under these circumstances, the discharge of indebtedness income determined as of the date of the permanent modification will have been overstated.

(5) The Service will not challenge a HAMP-PRA borrower who is described in section 6.03(4) of this revenue procedure and who takes the following corrective measures:

(i) If a HAMP-PRA borrower included any of the discharge of indebtedness in gross income, the HAMP-PRA borrower may file an amended return that does not include the amount of the discharge of indebtedness that was previously reported as gross income but that, because of the HAMP-PRA borrower's failure to keep the new mortgage loan in good standing, was not ultimately discharged. The amended return should be for the taxable year in which the income was included (that is, the year of the permanent modification), provided the applicable statute of limitations remains open for that taxable year.

(ii) If the HAMP-PRA borrower did not include any of the discharge of in-

debtedness in gross income (that is, if the HAMP-PRA borrower excluded all of it), the HAMP-PRA borrower may file a new Form 982 that the Service will treat as superseding the earlier Form 982. The new Form 982 will reflect the revised reduction in basis or in tax attributes (under § 108(h)(1) or § 108(b)). The new Form 982 should be the Form 982 for the year of the permanent modification and should be filed with the return for the taxable year in which the HAMP-PRA borrower's mortgage loan ceased to be in good standing.

.04 *HAMP-PRA borrowers who choose to treat the HAMP-PRA discharge as being realized on the dates on which the unpaid principal balance of the mortgage loan is reduced*.

(1) If a HAMP-PRA borrower chooses to realize the HAMP-PRA discharge at the times that the unpaid principal balance on the new mortgage loan is reduced, instead of at the time of the permanent modification, then the HAMP-PRA borrower's federal income tax returns for the taxable year that contains the permanent modification and for the subsequent taxable years must not treat any of the discharge as being realized at the time of the permanent modification and must treat the entire HAMP-PRA discharge as being realized in the amounts—and at the times—of the reductions in the unpaid principal balance. Except as described in the last sentence of this paragraph, therefore, the income tax return for the year of the permanent modification must include no gross income from—nor report on Form 982 an exclusion of—any amount of the HAMP-PRA discharge. Instead, the HAMP-PRA discharge is included in gross income (or is reported on Form 982 as excluded from gross income) in the subsequent years in which the unpaid principal balance is reduced. If the first such reduction occurs in the year of the permanent modification, however, then the amount of any such reduction is reflected as an inclusion or exclusion on the federal income tax return for that year.

(2) A HAMP-PRA borrower who has been using the method described in section 6.02(1) of this revenue procedure may change to the method described in section 6.02(2) but must comply with the consistency and open-year requirements described in section 6.01 of this revenue procedure.

SECTION 7. PENALTY RELIEF FOR 2012

.01 The Service will not assert penalties under § 6721 or § 6722 against an investor for failing to timely file and furnish a 2012 Form 1099-C as required by section 5.03 through 5.04 and section 8.02 of this revenue procedure with respect to discharge of indebtedness resulting from HAMP-PRA permanent modifications that take place during calendar year 2012 if the following requirements are satisfied:

(1) Not later than February 28, 2013, a statement is sent to the HAMP-PRA borrower containing the following:

(a) The HAMP-PRA borrower's name, address, and taxpayer identification number; and

(b) The date and amount of the discharge of indebtedness (as described in sections 4.01 through 4.04 of this revenue procedure) that is required to be reported for 2012.

(2) Not later than March 28, 2013, a statement is sent to the Service. It must be in the form of a single statement that separately lists for each HAMP-PRA borrower the information specified in section 7.01(1) of this revenue procedure. The statement should be sent to the Service at the following address:

Internal Revenue Service Center
Stop 6728AUSC
Austin, TX 73301

.02 The Service will not assert penalties under § 6721 or § 6722 with respect to any Forms 1099-MISC for 2012 that sections 5.06 and 8.02 of this revenue procedure require to be filed with the Service and furnished to taxpayers.

.03 Section 8.03 and 8.04 of this revenue procedure, below, describes penalty relief regarding Forms 1099-C and 1099-MISC for 2010 and 2011.

SECTION 8. SCOPE AND EFFECTIVE DATE

.01 This revenue procedure applies to all borrowers, investors, and servicers who participate, or have participated, in the HAMP-PRA, regardless of when the permanent modification occurs.

.02 Section 5 of this revenue procedure is effective for Forms 1099-C and 1099-MISC due or filed after January 24, 2013.

.03 Because of the effective date in section 8.02 of this revenue procedure, an investor is not subject to penalties under § 6721 or § 6722 on the grounds that the investor failed to timely file and furnish a 2010 or 2011 Form 1099-C as described in section 5.03 through 5.04 of this revenue procedure (or on the grounds that the investor filed or furnished a 2010 or 2011 Form 1099-C that is inconsistent with section 5.03 through 5.04 of this revenue procedure), provided that the investor demonstrates a good faith attempt to comply with the requirements of § 6050P and that the failure was not due to willful neglect.

.04 Because of the effective date in section 8.02 of this revenue procedure, the Service will not assert penalties under § 6721 or § 6722 on the grounds of a failure to timely file and furnish a 2010 or 2011 Form 1099-MISC, as described in section 5.06 of this revenue procedure.

SECTION 9. DRAFTING INFORMATION

The principal authors of this revenue procedure are Ronald J. Goldstein of the Office of Chief Counsel (Procedure and Administration); Shareen S. Pflanz and Sheldon A. Iskow of the Office of Chief Counsel (Income Tax and Accounting); and Andrea M. Hoffenson of the Office of Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Procedure and Administration branch 1 at (202) 622–4910, Income Tax and Accounting branch 4 at (202) 622–4920, or Financial Institutions and Products branch 1 at (202) 622–3920 (not toll-free calls).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

IRS Truncated Taxpayer Identification Numbers

REG–148873–09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that create a new taxpayer identifying number known as an IRS truncated taxpayer identification number, a TTIN. As an alternative to using a social security number (SSN), IRS individual taxpayer identification number (ITIN), or IRS adoption taxpayer identification number (ATIN), the filer of certain information returns may use a TTIN on the corresponding payee statements to identify the individual being furnished a statement. The TTIN displays only the last four digits of an individual's identifying number and is shown in the format XXX–XX–1234 or ***–**–1234. These proposed regulations affect filers of certain information returns who will be permitted to identify an individual payee by use of a TTIN on the payee statement furnished to the individual, and those individuals who receive payee statements containing a TTIN.

DATES: Written or electronic comments must be received by February 21, 2013. Outlines of topics to be discussed at the public hearing scheduled for March 12, 2013 must be received by February 20, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148873–09), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148873–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, 20224 or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148873–09). The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tammie A. Geier, (202) 622–3620; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301). These amendments implement the pilot program announced in Notice 2009–93, 2009–51 I.R.B. 863, extended and modified in Notice 2011–38, 2011–20 I.R.B. 785, which together authorized filers of certain information returns to truncate an individual payee's nine-digit identifying number on specified paper payee statements furnished for calendar years 2009 through 2012. See §601.601(d)(2).

The pilot program was implemented in response to concerns about the risk of identity theft stemming from the inclusion of a taxpayer identifying number on a payee statement. In particular, the risks of misappropriation and subsequent misuse of that number were reported to be greatest with respect to paper payee statements.

I. *Information Reporting*

Information returns are returns, statements, forms, or other documents that must be filed with the IRS to report transactions (for example, payments, distributions, or transfers) with another person in a calendar year. Section 6724(d)(1); Treas. Reg. §301.6721–1(g)(1). Persons required to file information returns with the IRS are filers. Treas. Reg. §301.6721–1(g)(6). Generally, filers must furnish a statement to the person on the other side of the transaction — the payee — containing the information shown on the information return filed with the IRS. See Treas. Reg. §301.6721–1(g)(5) (defining "payee" for purposes of sections 6721 and 6722). The payee may be the recipient of a payment (as referred to on Copy B of Form 1099-MISC, *"Miscellaneous Income"*), a plan participant receiving distributions (as referred to on Copy B of Form 1099-R, *"Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.*"), a transferor selling or exchanging real estate (as referred to on Copy B of Form 1099-S, *"Proceeds from Real Estate Transactions")*, a payer/borrower making interest payments (as referred to on Copy B of Form 1098, *"Mortgage Interest Statement"*), a debtor whose debt was discharged, canceled or forgiven (as referred to on Copy B of Form 1099-C, *"Cancellation of Debt"*), or a student receiving scholarships, grants or qualified tuition (as referred to on Copy B of Form 1098-T, *"Tuition Statement"*). The statement furnished to the payee is referred to as a payee statement. Section 6724(d)(2); Treas. Reg. §301.6722–1(d)(2). In certain circumstances, persons required to file information returns may file substitute forms with the IRS and furnish substitute form statements to payees rather than use the official IRS forms. Rev. Proc. 2011–60. See §601.601(d)(2).

II. *Taxpayer Identifying Numbers*

Section 6011(a) requires, in part, that every person required to make a return or statement shall include therein the information required by forms or regulations. Regulations, forms, or instructions to forms may require that the filer of an information return include the identifying number of the payee on the corresponding payee statement.

Section 6109(a) authorizes the Secretary to prescribe regulations with respect to the inclusion in returns, statements, or other documents of an identifying number as may be prescribed for securing proper identification of a person. A taxpayer

identifying number is also referred to as a TIN, which section 7701(a)(41) defines as the identifying number assigned to a person under section 6109.

Section 6109(a)(3) generally provides that any person required to make a return, statement, or other document with respect to another person shall request from the other person, and shall include in the return, statement, or other document, the identifying number as may be prescribed for securing proper identification of the other person. Thus, for information reporting purposes, a filer of an information return must request a TIN from the payee and include the TIN on the information return.

Flush language in section 6109(a) states that the identifying number of an individual (or the individual's estate) is the individual's social security account number. Section 6109(d) provides that, except as otherwise specified under regulations, the social security account number issued to an individual under the Social Security Act is the identifying number for individuals for purposes of the Code. Regulations provide that the principal types of taxpayer identifying numbers are SSNs, ITINs, ATINs, and employer identification numbers (EINs). Treas. Reg. §301.6109–1(a)(1)(i). SSNs, ITINs, and ATINs are used to identify individuals. Treas. Reg. §301.6109–1(a)(1)(ii). An EIN is used to identify an individual or other person (whether or not an employer). Treas. Reg. §301.7701–12.

Summary of Comments

Comments received in response to the notices, and other feedback from the payor community, reflect that filers' participation in the pilot was positive. Some filers, however, noted a few limitations that prevented participation. Several commentators suggested expanding the pilot program by recommending that truncation be authorized on a greater number of payee statements, that truncation be permitted on electronically furnished payee statements, and that filers be permitted to truncate an individual payee's EIN in addition to the other types of taxpayer identifying numbers (SSNs, ITINs, and ATINs) included in the pilot program. A permanent voluntary program was encouraged, rather than a mandatory program. Other commentators suggested that taxpayers could be adversely affected by the truncation of their identifying numbers on payee statements due to the inability to identify errors in the first five masked digits. Also, some state tax authorities stated that the truncation of taxpayer identifying numbers on Federal payee statements that are attached to state income tax returns might hamper state income tax processing. The Treasury Department and the IRS gave serious consideration to the state government concerns, but concluded that truncation is unlikely to hamper state income tax return processing significantly because the vast majority of payee statements attached to state returns are Forms W–2, which are not subject to the truncation program, and because payee information is available to the states through data sharing programs with the Federal government.

All comments were considered in developing the regulations that, as proposed, create a permanent truncation program. The proposed regulations expand the scope of the pilot program so that filers are permitted to use TTINs on payee statements furnished by electronic means. With regard to including a greater number of payee statements, the pilot program and, therefore, the proposed regulations are limited in scope by statute. For example, section 6051(a)(2) requires that the written statement furnished to employees (Form W–2, *"Wage and Tax Statement"*) show the name of the employee "and his social security account number." Accordingly, these proposed regulations do not expand the number of payee statements included beyond those included in the pilot program.

Some commentators reported that the inability to truncate a payee's EIN on a payee statement resulted in their inability to participate in the pilot program. As described in the comments, some filers could not differentiate the type of identifying number assigned to a payee and/or could not differentiate numbers belonging to individuals. As explained in the comments, the affected filers, because of software limitations, could either truncate all payee identifying numbers, including EINs (whether assigned to an individual or a corporation, for example), or none at all. The IRS believes the misuse of EINs is less frequently an element of identity theft. As these regulations are proposed in response to the risk of identity theft stemming from the inclusion of an individual's taxpayer identifying number on a payee statement, these proposed regulations do not permit truncation for numbers that may be assigned to taxpayers other than individuals. The IRS seeks further comments regarding the number of filers who are unable to differentiate EINs from payee identifying numbers belonging to individuals and the feasibility of making software changes to address this issue.

Some commentators explained that their systems could not readily accommodate truncation (as exemplified above with respect to EINs) and that filers of information returns have varying volume and procedures. Accordingly, participation in the truncation program proposed by the regulations is voluntary.

Explanation of Provisions

These proposed regulations create and allow filers of certain information returns to use an IRS truncated taxpayer identification number, a TTIN, to identify individuals on the payee statements corresponding to those information returns. The proposed regulations provide that the TTIN may be used in lieu of a payee's SSN, ATIN, or ITIN, but use of a TTIN is not mandatory. A TTIN may be used only on a payee statement and may be used on payee statements furnished by paper or electronic means. A filer may not use a TTIN on an information return filed with the IRS. A filer may not truncate its own identifying number on information returns or payee statements. A filer may not truncate a payee's EIN under the proposed regulations.

The payee statements on which TTINs may be included are the same statements included in the current pilot program in Notice 2011–38. The current pilot program includes all statements in the Forms 1099, 1098, and 5498 series, with the exception of Form 1098-C, *Contributions of Motor Vehicles, Boats, and Airplanes*, because that form is not a payee statement but an "acknowledgement." Any subsequent changes to the list will appear in published guidance.

These proposed regulations also amend certain existing regulations under sections 6042, 6043, 6044, 6045, 6049, 6050A, 6050E, 6050N, 6050P, and 6050S to specifically authorize the use of TTINs on

payee statements furnished under those sections. Those regulations set forth requirements for payee statements that could be read as inconsistent with the use of TTINs to identify payees, in some cases requiring that the payee be furnished a copy of the information return filed with the IRS. Other information reporting regulations that do not contain provisions contradictory to the use of TTINs are not being updated in these proposed regulations.

Many of the regulations governing the furnishing of payee statements do not provide for the use of substitute statements. These regulations are not being revised to address substitute statements at this time. For information regarding substitute statements, see Rev. Proc. 2011–60, 2011–52 I.R.B. 934 (or its successor), republished as Publication 1179, "*General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.*" Rev. Proc. 2011–60 also contains rules for electronic delivery of payee statements. Provisions relating to the use of TTINs in electronically furnished payee statements, if any, will be included in successor revenue procedures to Rev. Proc. 2011–60. See §601.601(d)(2).

Proposed Effective and Applicability Dates

These regulations are proposed to take effect when published in the **Federal Register** as final regulations. The rules in these proposed regulations may be relied upon by the affected filers before the publication of the Treasury decision.

Effect on Other Documents

The following publication will be obsolete as of the date this notice of proposed rulemaking is published as final regulations in the **Federal Register**:

Notice 2011–38, 2011–20 I.R.B. 785.

Special Analyses

It has been determined that these regulations are 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 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), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS specifically request comments on issues encountered by filers and payees alike, whether filers should be permitted to truncate a payee's EIN and, if so, why and whether truncation should be permitted on additional types of payee statements. The Treasury Department and the IRS further request that filers provide details as to whether the exclusion of EINs from these regulations prevents them from using TTINs at all. All comments submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for March 12, 2013 beginning at 10:00 a.m., in the Internal Revenue Service Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 21, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 20, 2013. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Tammie A. Geier of the Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6042–4 is amended by revising paragraph (b) to read as follows:

§1.6042–4 Statements to recipients of dividend payments.

* * * * *

(b) *Form and content of the statement*. The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement that contains provisions that are substantially similar to those of the official Form 1099 for the respective calendar year. For further guidance on how to prepare an acceptable substitute statement, see Rev. Proc. 2011–60 (or its successor) republished as Publication 1179, "*General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.*" See §601.601(d)(2) of this chapter. An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 3. Section 1.6043–4 is amended by adding two new sentences to the end of paragraph (b)(4) to read as follows:

§1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

* * * * *

(b) * * *

(4) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual shareholder in lieu of the identifying number appearing on the Form 1099-CAP filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 4. Section 1.6044–5 is amended by adding two new sentences to the end of paragraph (b) to read as follows:

§1.6044–5 Statements to recipients of patronage dividends.

* * * * *

(b) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient in lieu of the identifying number appearing on the corresponding information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 5. Section 1.6045–2 is amended by adding two new sentences to the end of paragraph (c) to read as follows:

§1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(c) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual customer in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 6. Section 1.6045–3 is amended by adding two new sentences to the end of paragraph (e)(1) to read as follows:

§1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.

* * * * *

(e) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual customer. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 7. Section 1.6045–4 is amended by revising paragraph (m)(1) to read as follows:

§1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(m) * * *

(1)(i) *Requirement of furnishing statements.* A reporting person who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following: This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

(ii) This requirement may be satisfied by furnishing to the transferor a copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual transferor in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

(iii) In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is modified to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

* * * * *

Par. 8. Section 1.6045–5 is amended by adding two sentences before the last sentence of paragraph (a)(3)(i) to read as follows:

§1.6045–5 Information reporting on payments to attorneys.

(a) * * *

(3) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual attorney in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations). * * *

* * * * *

Par. 9. Section 1.6049–6 is amended by adding paragraph (b)(3) to read as follows:

§1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(b) * * *

(3) With respect to both statements to persons receiving payments of interest and persons holding obligations, the statement shall include the name, address, and taxpayer identifying number of such person. An IRS truncated taxpayer identifying number (TTIN) may be used as

the identifying number for an individual person. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 10. Section 1.6050A–1 is amended by adding two sentences to the end of paragraph (c)(1) to read as follows:

§1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(c) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 11. Section 1.6050E–1 is amended by adding two sentences to the end of paragraph (k)(1) to read as follows:

§1.6050E–1 Reporting of State and local income tax refunds.

* * * * *

(k) * * *

(1) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 12. Section 1.6050N–1 is amended by adding two sentences to the end of paragraph (b) to read as follows:

§1.6050N–1 Statements to recipients of royalties paid after December 31, 1986.

* * * * *

(b) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number for an individual recipient. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

Par. 13. Section 1.6050P–1 is amended by:

a. Removing "section;" from paragraph (f)(1)(i) and adding "section." in its place; and

b. Adding two sentences to the end of paragraph (f)(1)(i) to read as follows:

§1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(f) * * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN of an individual for whom there was an identifiable event in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations);

* * * * *

Par. 14. Section 1.6050S–1 is amended by:

a. Removing "section;" from paragraph (c)(1)(i) and adding "section." in its place; and

b. Adding two sentences to the end of paragraph (c)(1)(i) to read as follows:

§1.6050S–1 Information reporting for qualified tuition and related expenses.

* * * * *

(c)* * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN for the individual in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations);

* * * * *

Par. 15. Section 1.6050S–3 is amended by:

a. Removing "section;" from paragraph (d)(1)(i) and adding "section." in its place; and

b. Adding two sentences to the end of paragraph (d)(1)(i) to read as follows:

§1.6050S–3 Information reporting for payments of interest on qualified education loans.

* * * * *

(d) * * *

(1) * * *

(i) * * * An IRS truncated taxpayer identifying number (TTIN) may be used as the TIN for the individual payor in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter (Procedure and Administration Regulations).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 16. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 17. Section 301.6109–4 is added to read as follows:

§301.6109–4 IRS truncated taxpayer identification numbers.

(a) *In general* — (1) *Definition*. An IRS truncated taxpayer identification number (TTIN) is an individual's social security number (SSN), IRS individual taxpayer identification number (ITIN), or IRS adoption taxpayer identification number (ATIN) that is truncated by replacing the first five digits of the nine-digit number with Xs or asterisks. The TTIN is shown in the format XXX-XX–1234 or ***-**-1234.

(2) *Use of a TTIN*. (i) A TTIN may be used by a filer of certain information returns to identify an individual on the corresponding payee statement furnished to the individual, as authorized by regulations, forms or form instructions, or other guidance published by the Internal Revenue Service. A TTIN may not be used on payee statements corresponding to the Form W–2 series, the Form 1098-C (*Contributions of Motor Vehicles, Boats, and*

Airplanes), or where identification of a taxpayer by an SSN, ITIN, or ATIN is mandated by statute.

(ii) A TTIN cannot be used by a filer on any information return filed with the Internal Revenue Service.

(iii) A TTIN may only be used for identifying individuals assigned SSNs, ITINs, or ATINs.

(iv) A filer may not truncate its own taxpayer identifying number on any document.

(v) Use of a TTIN is permissive and not mandatory.

(b) *Definitions* — (1) *Filer*. A *filer* means a person who is required to report a transaction to the Internal Revenue Service on an information return.

(2) *Information return*. An *information return* means the returns, statements, forms, or other documents that businesses must file with the Internal Revenue Service to report transactions with other persons.

(3) *Payee statement*. A *payee statement* means the copy of the information set forth on an information return filed with the IRS that is furnished to the individual payee, recipient, participant, transferor, payer/borrower, debtor, or student, depending upon the specific reporting requirements.

(c) *Effective/applicability date*. This section applies after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The rules in these proposed regulations may be relied upon by the affected filers prior to the publication of final regulations.

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

(Filed by the Office of the Federal Register on January 2, 2013, 4:15 p.m., and published in the issue of the Federal Register for January 7, 2013, 78 F.R. 913)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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