Internal Revenue
bulletin

Bulletin No. 2013-12
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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

T.D. 9609, page 655.
REG–140437–12, page 676.

Final regulations under section 1275 of the Code provide that a taxpayer must use the coupon bond method described in regulations section 1.1275–7(d) to account for Treasury Inflation-Protected Securities issued with more than a *de minimis* amount of premium. Temporary and proposed regulations under section 171 of the Code provide guidance on the tax treatment of a debt instrument with a bond premium carryforward in the holder's final accrual period, including a Treasury bill acquired at a premium.

REG–140649–11, page 666.

Proposed regulations under section 367 of the Code, amends the existing rules governing the consequences of failing to file gain recognition agreements ("GRAs"), or to satisfy other reporting obligations, associated with transfers of stock and other property to foreign corporations. Under current law, a taxpayer who transfers stock or securities to a foreign corporation and seeks to avoid recognizing gain on the transfer under section 367 generally must file a GRA. A taxpayer who does not file a GRA with its timely filed tax return for the year of the transfer, or otherwise fails to comply with the requirements of the GRA regulations, must recognize the full gain on the transferred stock, unless the taxpayer receives a determination that the failure to comply was due to reasonable cause. These regulations modify the standard that the taxpayer must satisfy to avoid full gain recognition, such that a taxpayer may avoid gain recognition by showing that its failure to file was not willful. Similar changes are made to the rules governing liquidating distributions to foreign corporations under section 367(e)(2).

Notice 2013–13, page 659.

This notice invites comments on whether equipment simultaneously held by a dealer for sale or lease (dual-use property) is inventoriable property or depreciable property for purposes of section 167 of the Code, and whether and under what circumstances the property is eligible for like-kind exchange treatment under section 1031.

Rev. Proc. 2013–21, page 660.

This procedure provides the depreciation deduction limitations for owners of passenger automobiles (including trucks and vans) first placed in service during calendar year 2013 and amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2013.

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.

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 ACQUIESE in the following decision:

Zapara v. Commissioner[1]
652 F.3d 1042 (9th cir. 2011), No. 08–74173,
aff'g 126 T.C. 215,
denying reconsideration 124 T.C. 223 (2005), No. 9480–02

[1] Nonacquiescence as to whether in a post-jeopardy levy Collection Due Process hearing, the Tax Court has the authority to order a credit to the taxpayer for the Service's failure to comply with section 6335(f) of the Code.

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

Section 1275.—Other Definitions and Special Rules

26 CFR 1.171–2T: Amortization of bond premium (temporary).

T.D. 9609

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Treasury Inflation-Protected Securities Issued at a Premium; Bond Premium Carryforward

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on the tax treatment of Treasury Inflation-Protected Securities issued with more than a *de minimis* amount of premium. This document also contains temporary regulations that provide guidance on the tax treatment of a debt instrument with a bond premium carryforward in the holder's final accrual period, including a Treasury bill acquired at a premium. The regulations in this document provide guidance to holders of Treasury Inflation-Protected Securities and other debt instruments. The text of the temporary regulations in this document also serves as the text of the proposed regulations (REG–140437–12) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on January 4, 2013.

Applicability Dates: For the dates of applicability, see §§1.171–2T(a)(4)(i)(C)(2) and 1.1275–7(h)(2).

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, (202) 622–3900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2011, temporary regulations (T.D. 9561, 2012–5 I.R.B. 341) relating to the federal income tax treatment of Treasury Inflation-Protected Securities issued with more than a *de minimis* amount of premium were published in the **Federal Register** (76 FR 75781). *See* §1.1275–7T. A notice of proposed rulemaking (REG–130777–11, 2012–5 I.R.B. 347) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (76 FR 75829). No comments were received on the notice of proposed rulemaking. No public hearing was requested or held.

The proposed regulations are adopted without substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of provisions

1. *Final Regulations — Treasury Inflation-Protected Securities (TIPS) issued with more than a de minimis amount of premium*

The following is a general explanation of the provisions in the final regulations, which are the same as the provisions in the temporary regulations. However, the provisions that were in the temporary regulations are now contained in newly designated paragraphs (g)(2) and (h)(2) of §1.1275–7 of the final regulations.

TIPS are securities issued by the Department of the Treasury. The principal amount of a TIPS is adjusted for any inflation or deflation that occurs over the term of the security. The rules for the taxation of inflation-indexed debt instruments, including TIPS, are contained in §1.1275–7 of the Income Tax Regulations. *See also* §1.171–3(b) (rules for inflation-indexed debt instruments with bond premium).

Under §1.1275–7(d)(2)(i), the coupon bond method described in §1.1275–7(d) is not available with respect to inflation-indexed debt instruments that are issued with more than a *de minimis* amount of premium (that is, an amount greater than .0025 times the stated principal amount of the security times the number of complete years to the security's maturity). Prior to 2011, TIPS had not been issued with more than a *de minimis* amount of premium, and the coupon bond method had applied to TIPS rather than the more complex discount bond method described in §1.1275–7(e).

In 2011, the Treasury Department anticipated that TIPS might be issued with more than a *de minimis* amount of premium. As a result, in Notice 2011–21, 2011–19 I.R.B. 761, to provide a more uniform method for the federal income taxation of TIPS, the Treasury Department and the IRS announced that regulations would be issued to provide that taxpayers must use the coupon bond method described in §1.1275–7(d) for TIPS issued with more than a *de minimis* amount of premium. As a result, the discount bond method described in §1.1275–7(e) would not apply to TIPS issued with more than a *de minimis* amount of premium. Notice 2011–21 provided that the regulations would be effective for TIPS issued on or after April 8, 2011. On December 5, 2011, the Treasury Department and the IRS published the temporary regulations in the **Federal Register.** These temporary regulations contained the rules described in Notice 2011–21 and applied to TIPS issued on or after April 8, 2011. As noted earlier in this preamble, the final regulations are substantively the same as the temporary regulations.

Under the final regulations, a taxpayer must use the coupon bond method described in §1.1275–7(d) for a TIPS that is issued with more than a *de minimis* amount of premium. The final regulations include the example from the temporary regulations illustrating how to apply the coupon bond method to a TIPS issued with more than a *de minimis* amount of premium and a negative yield. As stated in Notice 2011–21, the final regulations apply to TIPS issued on or after April 8, 2011. *See* §601.601(d)(2)(ii)(b).

2. *Temporary Regulations — Treatment of bond premium carryforward in a holder's final accrual period*

During the consideration of the final regulations relating to TIPS issued with more than a *de minimis* amount of premium, the Treasury Department and the IRS received questions about the holder's treatment of a taxable zero coupon debt instrument, including a Treasury bill, acquired at a premium and a negative yield. In this situation, as described in more detail below, under §§1.171–2 and 1.1016–5(b) of the current regulations, a holder that elected to amortize the bond premium generally would have a capital loss upon the sale, retirement, or other disposition of the debt instrument rather than an ordinary deduction under section 171(a)(1) for all or a portion of the bond premium. This situation, which has arisen as a result of recent market conditions, was not contemplated when the current regulations were adopted in 1997.

Under section 171 and §1.171–2 of the current regulations, an electing holder amortizes bond premium by offsetting the qualified stated interest (as defined in §1.1273–1(c)) allocable to an accrual period with the bond premium allocable to the period. If the bond premium allocable to an accrual period exceeds the qualified stated interest allocable to the accrual period, the excess is treated by the holder as a bond premium deduction under section 171(a)(1) for the accrual period. However, the amount treated as a bond premium deduction is limited to the amount by which the holder's total interest inclusions on the bond in prior accrual periods exceed the total amount treated by the holder as a bond premium deduction on the bond in prior accrual periods. If the bond premium allocable to an accrual period exceeds the sum of the qualified stated interest allocable to the accrual period and the amount treated as a deduction under section 171(a)(1), the excess is carried forward to the next accrual period and is treated as bond premium allocable to that period. *See* §1.171–2(a)(4). Under §1.1016–5(b) of the current regulations, a holder's basis in a bond is reduced by the amount of bond premium used to offset qualified stated interest on the bond and the amount of bond premium allowed as a deduction under section 171(a)(1).

In the case of a zero coupon debt instrument, including a Treasury bill, there is no qualified stated interest. Therefore, under §1.171–2, the amount of bond premium allocable to an accrual period will always exceed the qualified stated interest allocable to the accrual period (zero) and, because there will be no bond premium deductions in any prior accrual periods, such amount will be carried forward to the next accrual period. As a result, upon the sale, retirement, or other disposition of the debt instrument, there will be a bond premium carryforward determined as of the end of the holder's final accrual period in an amount equal to the total amount of bond premium allocable to the holder's final accrual period, which includes the bond premium allocable by the holder to each prior accrual period. In this situation, because there is no qualified stated interest to offset the bond premium carryforward and because the holder's basis in the bond has not been reduced, under the current regulations, the holder would have a capital loss in an amount at least equal to the bond premium carryforward. The Treasury Department and the IRS, however, believe that the amount of the bond premium carryforward in this situation should be treated as a bond premium deduction under section 171(a)(1) rather than as a capital loss for the holder's taxable year in which the sale, retirement, or other disposition occurs.

In order to provide immediate guidance to investors, the temporary regulations in this document and the notice of proposed rulemaking that cross-references these temporary regulations (REG–140437–12) address this issue by adding a specific rule for the treatment of a bond premium carryforward determined as of the end of the holder's final accrual period for any taxable bond for which the holder has elected to amortize bond premium. Thus, for example, under §1.171–2T(a)(4)(i)(C), an electing holder that purchases a taxable zero coupon debt instrument at a premium deducts all or a portion of the premium under section 171(a)(1) when the instrument is sold, retired, or otherwise disposed of rather than as a capital loss.

In addition, because the rules in §1.171–3 for inflation-indexed debt instruments, including TIPS, generally treat a bond premium carryforward as a deflation adjustment, §1.171–3 is amended to apply the rule in §1.171–2T(a)(4)(i)(C)(*1*) to any remaining deflation adjustment attributable to bond premium as of the end of the holder's accrual period in which the bond is sold, retired, or otherwise disposed of.

Section 1.171–2T(a)(4)(i)(C)(*1*) applies to a debt instrument (bond) acquired on or after January 4, 2013. A taxpayer, however, may rely on this section for a debt instrument (bond) acquired before that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received. In addition, pursuant to section 7805(f) of the Code, the temporary regulations in this document have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1275–7T and by adding an entry in numerical order to read in part as follows:

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

Section 1.171–2T also issued under 26 U.S.C. 171(e). * * *

Par. 2. Section 1.171–2T is added to read as follows:

§1.171–2T Amortization of bond premium (temporary).

(a)(1) through (a)(4)(i)(B) [Reserved]. For further guidance, see §1.171–2(a)(1) through (a)(4)(i)(B).

(C) *Carryforward in holder's final accrual period—(1)* If there is a bond premium carryforward determined under §1.171–2(a)(4)(i)(B) as of the end of the holder's accrual period in which the bond is sold, retired, or otherwise disposed of, the holder treats the amount of the carryforward as a bond premium deduction under section 171(a)(1) for the holder's taxable year in which the sale, retirement, or other disposition occurs. For purposes of §1.1016–5(b), the holder's basis in the bond is reduced by the amount of bond premium allowed as a deduction under this paragraph (a)(4)(i)(C)(*1*).

(*2*) *Effective/applicability date*. Notwithstanding §1.171–5(a)(1), paragraph (a)(4)(i)(C)(*1*) of this section applies to a bond acquired on or after January 4, 2013. A taxpayer, however, may rely on paragraph (a)(4)(i)(C)(*1*) of this section for a bond acquired before that date.

(ii) through (c) [Reserved]. For further guidance, see §1.171–2(a)(4)(ii) through (c).

(d) *Expiration date*. The applicability of this section expires on or before December 31, 2015.

Par. 3. Section 1.171–3 is amended by adding a new sentence before the last sentence in paragraph (b) to read as follows:

§1.171–3 Special rules for certain bonds.

* * * * *

(b) * * * However, the rules in §1.171–2T(a)(4)(i)(C) apply to any remaining deflation adjustment attributable to bond premium as of the end of the holder's accrual period in which the bond is sold, retired, or otherwise disposed of. * * *

* * * * *

Par. 4. Section 1.1271–0(b) is amended by revising the entries for §1.1275–7(g) and (h) to read as follows:

§1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * * * *

* * * * *

§1.1275–7 Inflation-indexed debt instruments.

* * * * *

(g) TIPS.

(1) Reopenings.

(2) TIPS issued with more than a *de minimis* amount of premium.

(h) Effective/applicability dates.

(1) In general.

(2) TIPS issued with more than a *de minimis* amount of premium.

Par. 5. Section 1.1275–7 is amended as follows:

1. Revising the last sentence of paragraph (b)(1).

2. Adding a new sentence at the end of paragraph (d)(2)(i).

3. Revising paragraph (g).

4. Revising paragraph (h).

The revisions and addition read as follows:

§1.1275–7 Inflation-indexed debt instruments.

* * * * *

(b) * * *

(1) * * * For example, this section applies to Treasury Inflation-Protected Securities (TIPS).

* * * * *

(d) * * *

(2) * * *

(i) * * * See paragraph (g)(2) of this section, however, for the treatment of TIPS issued with more than a *de minimis* amount of premium.

* * * * *

(g) *TIPS—(1) Reopenings*. For rules concerning a reopening of TIPS, see paragraphs (d)(2), (k)(3)(iii), and (k)(3)(v) of §1.1275–2.

(2) *TIPS issued with more than a de minimis amount of premium—*(i) *Coupon bond method*. Notwithstanding paragraph (d)(2)(i) of this section, the coupon bond method described in paragraph (d) of this section applies to TIPS issued with more than a *de minimis* amount of premium. For this purpose, the *de minimis* amount is determined using the principles of §1.1273–1(d).

(ii) *Example*. The following example illustrates the application of the bond premium rules to a TIPS issued with bond premium:

Example. (i) *Facts*. X, a calendar year taxpayer, purchases at original issuance TIPS with a stated principal amount of $100,000 and a stated interest rate of .125 percent, compounded semiannually. For purposes of this example, assume that the TIPS are issued in Year 1 on January 1, stated interest is payable on June 30 and December 31 of each year, and that the TIPS mature on December 31, Year 5. X pays $102,000 for the TIPS, which is the issue price for the TIPS as determined under §1.1275–2(d)(1). Assume that the inflation-adjusted principal amount for the first coupon in Year 1 is $101,225 (resulting in an interest payment of $63.27) and for the second coupon in Year 1 is $102,500 (resulting in an interest payment of $64.06). X elects to amortize bond premium under §1.171–4. (For simplicity, contrary to actual practice, the TIPS in this example were issued on the date with respect to which the calculation of the first coupon began.)

(ii) *Bond premium*. The stated interest on the TIPS is qualified stated interest under §1.1273–1(c). X acquired the TIPS with bond premium of $2,000 (basis of $102,000 minus the TIPS' stated principal amount of $100,000). *See* §§1.171–1(d), 1.171–3(b), and paragraph (f)(3) of this section. The $2,000 is more than the *de minimis* amount of premium for the TIPS of $1,250 (.0025 times the stated principal amount of the TIPS ($100,000) times the number of complete years to the TIPS' maturity (5 years)). Under paragraph (g)(2)(i) of this section, X must use the coupon bond method to determine X's income from the TIPS.

(iii) *Allocation of bond premium*. Under §1.171–3(b), the bond premium of $2,000 is allocable to each semiannual accrual period by assuming that there will be no inflation or deflation over the term of the TIPS. Moreover, for purposes of §1.171–2, the yield of the securities is determined by assuming that there will be no inflation or deflation over their term. Based on this assumption, for purposes of section 171, the TIPS provide for semiannual interest payments of $62.50 and a $100,000 payment at maturity. As a result, the yield of the securities for purposes of section 171 is -0.2720 percent, compounded semiannually. Under §1.171–2, the bond premium allocable to an accrual period is the excess of the qualified stated interest allocable to the accrual period ($62.50 for each accrual period) over the product of the taxpayer's adjusted acquisition price at the beginning of the accrual period (determined without regard to any inflation or deflation) and the taxpayer's yield. Therefore, the $2,000 of bond premium is alloca-

ble to each semiannual accrual period in Year 1 as follows: $201.22 to the accrual period ending on June 30, Year 1 (the excess of the stated interest of $62.50 over ($102,000 x -0.002720/2)); and $200.95 to the accrual period ending on December 31, Year 1 (the excess of the stated interest of $62.50 over ($101,798.78 x -0. 002720/2)). The adjusted acquisition price at the beginning of the accrual period ending on December 31, Year 1 is $101,798.78 (the adjusted acquisition price of $102,000 at the beginning of the accrual period ending on June 30, Year 1 reduced by the $201.22 of premium allocable to that accrual period).

(iv) *Income determined by applying the coupon bond method and the bond premium rules*. Under paragraph (d)(4) of this section, the application of the coupon bond method to the TIPS results in a positive inflation adjustment in Year 1 of $2,500, which is includible in X's income for Year 1. However, because X acquired the TIPS at a premium and elected to amortize the premium, the premium allocable to Year 1 will offset the income on the TIPS as follows: The premium allocable to the first accrual period of $201.22 first offsets the interest payable for that period of $63.27. The remaining $137.95 of premium is treated as a deflation adjustment that offsets the positive inflation adjustment. *See* §1.171–3(b). The premium allocable to the second accrual period of $200.95 first offsets the interest payable for that period of $64.06. The remaining $136.89 of premium is treated as a deflation adjustment that further offsets the positive inflation adjustment. As a result, X does not include in income any of the stated interest received in Year 1 and includes in Year 1 income only $2,225.16 of the positive inflation adjustment for Year 1 ($2,500 - $137.94 - $136.89).

(h) *Effective/applicability dates*—(1) *In general*. This section applies to an inflation-indexed debt instrument issued on or after January 6, 1997.

(2) *TIPS issued with more than a de minimis amount of premium*. Notwithstanding paragraph (h)(1) of this section, paragraph (g)(2) of this section applies to TIPS issued with more than a *de minimis* amount of premium on or after April 8, 2011.

§1.1275–7T [Removed]

Par. 6. Section 1.1275–7T is removed.

Par. 7. Section 1.1286–2 is amended by removing the language "Inflation-Indexed" and adding the language "Inflation-Protected" in its place.

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

Approved December 20, 2012.

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

(Filed by the Office of the Federal Register on January 3, 2013, 8:45 a.m., and published in the issue of the Federal Register for January 4, 2013, 78 F.R. 666)

Part III. Administrative, Procedural, and Miscellaneous

Request for Comments on Property Simultaneously Held for Sale or Lease ("Dual-Use Property")

Notice 2013–13

I. PURPOSE

This notice invites comments regarding whether construction and agricultural equipment held simultaneously for sale or lease to customers ("dual-use property") by a dealer in such equipment is properly treated as inventoriable property or as depreciable property for purposes of § 167 of the Internal Revenue Code. This notice also invites comments on whether, and under what circumstances, dual-use property may be eligible for like-kind exchange treatment under § 1031.

II. BACKGROUND

Dealers in construction and agricultural equipment purchase equipment from a manufacturer and generally seek to resell the equipment to customers as soon as possible. However, to accommodate particular needs of its customers, a dealer may lease equipment to a customer prior to selling it. Ordinarily, dealers reacquire their leased equipment upon termination of the lease and thereafter hold the equipment for varying periods before re-leasing or selling it. Alternatively, the lessee may purchase the leased equipment rather than return it to the dealer upon termination of the lease. Dealers ultimately dispose of all construction and agricultural equipment by sales, exchanges, or abandonment.

Section 167(a) allows, as a depreciation deduction, a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or held for the production of income.

Section 1.167(a)–2 of the Income Tax Regulations provides that no depreciation deduction may be taken with respect to inventories or stock in trade.

Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment.

Section 1031(a)(2)(A) provides that like-kind exchange treatment is not allowed for any exchange of property that is stock in trade or other property held primarily for sale.

The Internal Revenue Service has presumptively treated dual-use property held by a dealer as inventoriable property that is not eligible for depreciation deductions. Rev. Rul. 75–538, 1975–2 C.B. 35. To rebut this presumption, the IRS has required the dealer to show that the property was actually used in the dealer's business and that the dealer looks to consumption through use of the property in the ordinary course of business operation to recover the dealer's cost. Rev. Rul. 75–538; *see also* Rev. Rul. 89–25, 1989–1 C.B. 79. As a factual matter, it can be difficult to discern whether dual-use property is held primarily for sale to customers in the ordinary course of business or as an asset used in a trade or business. *Compare Latimer-Looney Chevrolet, Inc. v. Commissioner*, 19 T.C. 120 (1952), *acq.* 1953–1 C.B. 5 (new automobiles were "held for use in a trade or business" where automobile dealer provided them to employees for use in the business prior to sale), *with Duval Motor Co. v. Commissioner*, 264 F.2d 548 (5th Cir. 1959), aff'g 28 T.C. 42 (1957), and *Johnson-McReynolds Chevrolet Corporation v. Commissioner*, 27 T.C. 300 (1956) (new automobiles were "property held for sale to customers" where automobile dealer temporarily removed them from inventory for use by employees).

Construction and agricultural equipment that is treated as inventoriable dual-use property under the presumption is not eligible for § 1031 like-kind exchange treatment because it is property held primarily for sale within the meaning of § 1031(a)(2)(A). Conversely, if the presumption is rebutted and the construction and agricultural equipment is treated as depreciable dual-use property, it may be eligible for § 1031 like-kind exchange treatment if the requirements of § 1031 are satisfied, including the requirement that the property is not held primarily for sale at the time of disposition.

III. REQUEST FOR COMMENTS

To minimize disputes between the IRS and dealers in construction and agricultural equipment, the Treasury Department and the IRS are considering issuing guidance that clarifies the circumstances under which construction and agricultural equipment that is dual-use property is properly treated either as inventoriable property or as depreciable property. Guidance is also being considered concerning whether exchanges of construction and agricultural equipment that is dual-use property are eligible for § 1031 like-kind exchange treatment or whether these exchanges are ineligible for § 1031 because the equipment is treated as "stock in trade or other property held primarily for sale" within the meaning of § 1031(a)(2)(A).

The Treasury Department and the IRS request public comments to assist in developing this guidance. Specifically, comments are requested regarding the following items:

1. Factors that are relevant in determining whether construction and agricultural dual-use property is inventoriable or depreciable property, or eligible for § 1031 like-kind exchange treatment. For example, the following factors have previously been considered by the Service to be relevant:

(a) The dealer's prior business experience with dual-use property, including the proportion of the dealer's total dual-use property that is leased and the number of times the same property is leased or re-leased by the dealer prior to disposition;

(b) Whether dual-use property may be leased (or held for subsequent lease) for a period exceeding its recovery period for depreciation purposes;

(c) The proportion of annual lease revenue to total revenue, the proportion of annual lease revenue to revenue from sales of leased property, and the proportion of revenue from sales of leased property to annual sales revenue;

(d) Whether lease agreements customarily allow the dealer to terminate the lease and reacquire the property at any time without penalty (and, if so, the frequency with which the dealer exercises this option);

(e) For lease agreements that provide a purchase option, the frequency with which the lessee exercises this option and whether the lessee receives a price reduction;

(f) The manner in which dual-use property is typically disposed of (*e.g.* sold to lessee, at auction, or through a third-party); and

(g) The dealer's initial classification of dual-use property (as inventoriable or depreciable property) for federal income tax and financial accounting purposes.

Comments are also requested on whether any such factors should be evaluated separately for different classes or product lines of equipment.

2. Whether a safe harbor or bright-line test would be helpful in resolving these issues, and if so what methodology or criteria should be incorporated in such a safe harbor or bright-line test.

3. Whether guidance is needed for dealers of dual-use property, other than dealers in the construction and agriculture industries, regarding whether dual-use property is inventoriable or depreciable property, or eligible for § 1031 like-kind exchange treatment.

4. Whether the Industry Issue Resolution (IIR) process (see Rev. Proc. 2003–36, 2003–1 C.B. 859) would be a useful approach to resolving these issues.

Written comments should be submitted by June 16, 2013. Send submissions to CC:PA:LPD:PR (Notice 2013–13), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2013–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Alternatively, comments may be submitted electronically to the IRS *via* the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2013–13" in the subject line of any electronic communication. All comments will be available for public inspection and copying.

IV. DRAFTING INFORMATION

The principal author of this notice is Cheryl Oseekey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Oseekey at (202) 622–4970 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, §§ 280F; 1.280F–7.)

Rev. Proc. 2013–21

SECTION 1. PURPOSE

This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service by the taxpayer during calendar year 2013, including separate tables of limitations on depreciation deductions for trucks and vans; and (2) the amounts that must be included in income by lessees of passenger automobiles first leased by the taxpayer during calendar year 2013, including a separate table of inclusion amounts for lessees of trucks and vans. The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 For owners of passenger automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for the year the taxpayer places the passenger automobile in service and for each succeeding year. For passenger automobiles placed in service after 1988, § 280F(d)(7) requires the Internal Revenue Service to increase the amounts allowable as depreciation deductions by a price inflation adjustment amount. The method of calculating this price inflation amount for trucks and vans placed in service in or after calendar year 2003 uses a different CPI "automobile component" (the "new trucks" component) than that used in the price inflation amount calculation for other passenger automobiles (the "new cars" component), resulting in somewhat higher depreciation deductions for trucks and vans. This change reflects the higher rate of price inflation for trucks and vans since 1988.

.02 Section 331(a) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (Jan. 2, 2013) (the "Act") extended the 50 percent additional first year depreciation deduction under § 168(k) to qualified property acquired by the taxpayer after December 31, 2007, and before January 1, 2014, if no written binding contract for the acquisition of the property existed before January 1, 2008, and if the taxpayer places the property in service generally before January 1, 2014.

Section 168(k)(2)(F)(i) increases the first year depreciation allowed under § 280F(a)(1)(A)(i) by $8,000 for passenger automobiles to which the additional first year depreciation deduction under § 168(k) (hereinafter, referred to as "§ 168(k) additional first year depreciation deduction") applies.

.03 Section 168(k)(2)(D)(i) provides that the § 168(k) additional first year depreciation deduction does not apply to any property required to be depreciated under the alternative depreciation system of § 168(g), including property described in § 280F(b)(1). Section 168(k)(2)(D)(iii) permits a taxpayer to elect out of the § 168(k) additional first year depreciation deduction for any class of property. Section 168(k)(4), as amended by the Act, permits a corporation to elect to increase the alternative minimum tax ("AMT") credit limitation under § 53(c), instead of claiming the § 168(k) additional first year depreciation deduction for all eligible qualified property placed in service after December 31, 2012, that is round 3 extension property (as defined in § 168(k)(4)(J)(iv)).

Accordingly, this revenue procedure provides tables for passenger automobiles for which the § 168(k) additional first year depreciation deduction applies. This revenue procedure also provides tables for passenger automobiles for which the § 168(k) additional first year depreciation deduction does not apply, either because taxpayer: (1) purchased the passenger automobile used; (2) did not use the passenger automobile during 2013 more than 50 percent for business purposes; (3) elected out of the § 168(k) additional first year depreciation deduction pursuant to § 168(k)(2)(D)(iii); or (4) elected to increase the § 53 AMT credit limitation in lieu of claiming § 168(k) additional first year depreciation.

.04 Section 280F(c) requires a reduction in the deduction allowed to the lessee of a leased passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under § 1.280F–7(a) of the Income Tax Regulations, this reduction requires a lessee to include in gross income an amount determined by applying a formula to the amount obtained from a table. One table applies to lessees of trucks and vans and another table applies to all other passenger automobiles. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

SECTION 3. SCOPE

.01 The limitations on depreciation deductions in section 4.01(2) of this revenue procedure apply to passenger automobiles (other than leased passenger automobiles) that are placed in service by the taxpayer in calendar year 2013, and continue to apply for each taxable year that the passenger automobile remains in service.

.02 The tables in section 4.02 of this revenue procedure apply to leased passenger automobiles for which the lease term begins during calendar year 2013. Lessees of these passenger automobiles must use these tables to determine the inclusion amount for each taxable year during which the passenger automobile is leased. See Rev. Proc. 2008–22, 2008–1 C.B. 658, for passenger automobiles first leased during calendar year 2008; Rev. Proc. 2009–24, 2009–17 I.R.B. 885, for passenger automobiles first leased during calendar year 2009; Rev. Proc. 2010–18, 2010–09 I.R.B. 427, as amplified and modified by section 4.03 of Rev. Proc. 2011–21, 2011–12 I.R.B. 560, for passenger automobiles first leased during calendar year 2010; Rev. Proc. 2011–21, for passenger automobiles first leased during calendar year 2011; and Rev. Proc. 2012–23, 2012–14 I.R.B. 712, for passenger automobiles first leased during calendar year 2012.

SECTION 4. APPLICATION

.01 *Limitations on Depreciation Deductions for Certain Automobiles.*

(1) *Amount of the inflation adjustment.*

(a) *Passenger automobiles (other than trucks or vans).* Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. Section 280F(d)(7)(B)(ii) defines the term "CPI automobile component" as the automobile component of the Consumer Price Index for all Urban Consumers published by the Department of Labor. The new car component of the CPI was 115.2 for October 1987 and 143.787 for October 2012. The October 2012 index exceeded the October 1987 index by 28.587. Therefore, the automobile price inflation adjustment for 2013 for passenger automobiles (other than trucks and vans) is 24.8 percent (28.587/115.2 x 100%). The dollar limitations in § 280F(a) are multiplied by a factor of 0.248, and the resulting increases, after rounding to the nearest $100, are added to the 1988 limitations to give the depreciation limitations applicable to passenger automobiles (other than trucks and vans) for calendar year 2013. This adjustment applies to all passenger automobiles (other than trucks and vans) that are first placed in service in calendar year 2013.

(b) *Trucks and vans.* To determine the dollar limitations for trucks and vans first placed in service during calendar year 2013, the Service uses the new truck component of the CPI instead of the new car component. The new truck component of the CPI was 112.4 for October 1987 and 149.386 for October 2012. The October 2012 index exceeded the October 1987 index by 36.986. Therefore, the automobile price inflation adjustment for 2013 for trucks and vans is 32.9 percent (36.986/112.4 x 100%). The dollar limitations in § 280F(a) are multiplied by a factor of 0.329, and the resulting increases, after rounding to the nearest $100, are added to the 1988 limitations to give the depreciation limitations for trucks and vans. This adjustment applies to all trucks and vans that are first placed in service in calendar year 2013.

(2) *Amount of the limitation.* Tables 1 through 4 contain the dollar amount of the depreciation limitation for each taxable year for passenger automobiles a taxpayer places in service in calendar year 2013. Use Table 1 for a passenger automobile (other than a truck or van), and Table 2 for a truck or van, placed in service in calendar year 2013 for which the § 168(k) additional first year depreciation deduction applies. Use Table 3 for a passenger automobile (other than a truck or van), and Table 4 for a truck or van, placed in service in calendar year 2013 for which the § 168(k) additional first year depreciation deduction does not apply.

REV. PROC. 2013–21 TABLE 1

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE IN CALENDAR YEAR 2013 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

Tax Year	*Amount*
1st Tax Year	$11,160
2nd Tax Year	$5,100
3rd Tax Year	$3,050
Each Succeeding Year	$1,875

REV. PROC. 2013–21 TABLE 2

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2013 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

Tax Year	*Amount*
1st Tax Year	$11,360
2nd Tax Year	$5,400
3rd Tax Year	$3,250
Each Succeeding Year	$1,975

REV. PROC. 2013–21 TABLE 3

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE IN CALENDAR YEAR 2013 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

Tax Year	*Amount*
1st Tax Year	$3,160
2nd Tax Year	$5,100
3rd Tax Year	$3,050
Each Succeeding Year	$1,875

REV. PROC. 2013–21 TABLE 4

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE IN CALENDAR YEAR 2013 FOR WHICH THE § 168(k) ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

Tax Year	*Amount*
1st Tax Year	$3,360
2nd Tax Year	$5,400
3rd Tax Year	$3,250
Each Succeeding Year	$1,975

.02 *Inclusions in Income of Lessees of Passenger Automobiles*.

A taxpayer must follow the procedures in § 1.280F–7(a) for determining the inclusion amounts for passenger automobiles first leased in calendar year 2013. In applying these procedures, lessees of passenger automobiles other than trucks and vans should use Table 5 of this revenue procedure, while lessees of trucks and vans should use Table 6 of this revenue procedure.

REV. PROC. 2013–21 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2013

Fair Market Value of Passenger Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th & later
$19,000	$19,500	2	4	6	7	8
19,500	20,000	2	5	6	9	9
20,000	20,500	2	5	8	9	11
20,500	21,000	3	6	8	10	12
21,000	21,500	3	6	10	11	13
21,500	22,000	3	7	10	13	14
22,000	23,000	4	8	11	14	16

REV. PROC. 2013–21 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2013

Fair Market Value of Passenger Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th & later
23,000	24,000	4	9	14	16	18
24,000	25,000	5	10	15	18	21
25,000	26,000	5	12	16	21	23
26,000	27,000	6	12	19	23	25
27,000	28,000	6	14	20	25	28
28,000	29,000	7	15	22	27	30
29,000	30,000	7	16	24	29	33
30,000	31,000	8	17	26	31	35
31,000	32,000	8	19	27	33	38
32,000	33,000	9	20	29	35	40
33,000	34,000	10	21	31	37	43
34,000	35,000	10	22	33	39	45
35,000	36,000	11	23	35	41	48
36,000	37,000	11	25	36	43	50
37,000	38,000	12	26	38	45	53
38,000	39,000	12	27	40	47	55
39,000	40,000	13	28	42	49	58
40,000	41,000	13	29	44	52	59
41,000	42,000	14	30	45	54	63
42,000	43,000	14	32	47	56	64
43,000	44,000	15	33	48	59	67
44,000	45,000	15	34	51	60	69
45,000	46,000	16	35	52	63	72
46,000	47,000	17	36	54	65	74
47,000	48,000	17	38	55	67	77
48,000	49,000	18	39	57	69	79
49,000	50,000	18	40	59	71	82
50,000	51,000	19	41	61	73	84
51,000	52,000	19	42	63	75	87
52,000	53,000	20	43	65	77	89
53,000	54,000	20	45	66	79	92
54,000	55,000	21	46	68	81	94
55,000	56,000	21	47	70	84	96
56,000	57,000	22	48	72	85	99
57,000	58,000	22	50	73	88	101
58,000	59,000	23	51	75	90	103
59,000	60,000	24	52	76	92	106
60,000	62,000	24	54	79	95	110
62,000	64,000	25	56	83	99	115
64,000	66,000	27	58	87	103	120
66,000	68,000	28	60	90	108	125
68,000	70,000	29	63	93	112	130
70,000	72,000	30	65	97	117	134
72,000	74,000	31	68	100	121	139
74,000	76,000	32	70	104	125	144
76,000	78,000	33	73	107	129	149
78,000	80,000	34	75	111	133	154
80,000	85,000	36	79	117	141	162
85,000	90,000	39	85	126	151	174
90,000	95,000	41	91	135	162	186
95,000	100,000	44	97	144	172	199
100,000	110,000	48	106	157	188	217
110,000	120,000	53	118	174	210	241
120,000	130,000	59	129	193	230	266

REV. PROC. 2013–21 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2013

Fair Market Value of Passenger Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th & later
130,000	140,000	64	141	210	252	290
140,000	150,000	70	153	227	273	315
150,000	160,000	75	165	245	294	339
160,000	170,000	80	177	263	315	363
170,000	180,000	86	189	280	336	388
180,000	190,000	91	201	298	357	412
190,000	200,000	97	212	316	378	436
200,000	210,000	102	224	333	400	461
210,000	220,000	107	236	351	420	486
220,000	230,000	113	248	368	442	509
230,000	240,000	118	260	386	463	534
240,000	And up	124	272	403	484	558

REV. PROC. 2013–21 TABLE 6

DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2013

Fair Market Value of Truck or Van		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th & later
$19,000	$19,500	1	3	4	5	6
19,500	20,000	2	3	5	6	7
20,000	20,500	2	4	6	7	8
20,500	21,000	2	5	7	8	9
21,000	21,500	2	5	8	9	11
21,500	22,000	3	6	8	10	12
22,000	23,000	3	7	10	11	14
23,000	24,000	4	8	11	14	16
24,000	25,000	4	9	14	16	18
25,000	26,000	5	10	15	18	21
26,000	27,000	5	12	17	20	23
27,000	28,000	6	13	18	23	25
28,000	29,000	6	14	20	25	28
29,000	30,000	7	15	22	27	30
30,000	31,000	7	16	24	29	33
31,000	32,000	8	17	26	31	35
32,000	33,000	8	19	27	33	38
33,000	34,000	9	20	29	35	41
34,000	35,000	10	21	31	37	43
35,000	36,000	10	22	33	39	46
36,000	37,000	11	23	35	41	48
37,000	38,000	11	25	36	43	51
38,000	39,000	12	26	38	45	53
39,000	40,000	12	27	40	48	55
40,000	41,000	13	28	42	49	58
41,000	42,000	13	29	44	52	60
42,000	43,000	14	30	46	54	62
43,000	44,000	14	32	47	56	65
44,000	45,000	15	33	48	59	67
45,000	46,000	15	34	51	60	70
46,000	47,000	16	35	52	63	72
47,000	48,000	17	36	54	65	74

REV. PROC. 2013–21 TABLE 6

DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2013

Fair Market Value of Truck or Van		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th & later
48,000	49,000	17	38	55	67	77
49,000	50,000	18	39	57	69	79
50,000	51,000	18	40	59	71	82
51,000	52,000	19	41	61	73	84
52,000	53,000	19	42	63	75	87
53,000	54,000	20	43	65	77	89
54,000	55,000	20	45	66	80	91
55,000	56,000	21	46	68	81	94
56,000	57,000	21	47	70	84	96
57,000	58,000	22	48	72	86	98
58,000	59,000	22	50	73	88	101
59,000	60,000	23	51	75	90	103
60,000	62,000	24	52	78	93	108
62,000	64,000	25	55	81	97	113
64,000	66,000	26	57	85	101	118
66,000	68,000	27	60	88	106	122
68,000	70,000	28	62	92	110	127
70,000	72,000	29	64	96	114	132
72,000	74,000	30	67	99	118	137
74,000	76,000	31	69	103	122	142
76,000	78,000	32	72	105	127	147
78,000	80,000	34	73	110	131	151
80,000	85,000	35	78	116	138	160
85,000	90,000	38	84	124	149	172
90,000	95,000	41	90	133	160	184
95,000	100,000	44	95	142	171	196
100,000	110,000	48	104	156	186	214
110,000	120,000	53	116	173	207	240
120,000	130,000	58	128	191	228	264
130,000	140,000	64	140	208	249	288
140,000	150,000	69	152	226	270	313
150,000	160,000	75	164	243	292	336
160,000	170,000	80	176	261	312	361
170,000	180,000	85	188	278	334	386
180,000	190,000	91	199	296	355	410
190,000	200,000	96	211	314	376	434
200,000	210,000	101	223	332	397	459
210,000	220,000	107	235	349	418	483
220,000	230,000	112	247	367	439	507
230,000	240,000	118	259	384	460	532
240,000	And up	123	271	401	482	556

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to passenger automobiles that a taxpayer first places in service or first leases during calendar year 2013.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Harvey at (202) 622–4930 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Failure to File Gain Recognition Agreements and Other Required Filings

REG–140649–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would amend the existing rules governing the consequences to U.S. persons for failing to file gain recognition agreements (GRAs) and related documents, or to satisfy other reporting obligations, associated with certain transfers of property to foreign corporations in nonrecognition exchanges. These regulations affect U.S. persons that transfer property to foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 1, 2013.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–140649–11), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140649–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal Rulemaking Portal at *http://www.regulations.gov* (IRS REG–140649–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mary W. Lyons, (202) 622–3860; concerning submission of comments and to request a hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1487.

The collections of information are in §§1.367(a)–3(f)(2), 1.367(a)–8(p)(2), 1.367(e)–2(f)(2), 1.6038B–1(c)(4)(ii), and 1.6038B–1(e)(4). The collections of information are mandatory. The likely respondents are domestic corporations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A. Sections 367(a) and 6038B

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person (U.S. transferor) transfers property to a foreign corporation (transferee foreign corporation), the transferee foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation. Sections 367(a)(2), (3), and (6) provide exceptions to the general rule of section 367(a)(1) and grant regulatory authority to the Secretary to provide additional exceptions and to limit the statutory exceptions.

Section 1.367(a)–3 provides exceptions to the general rule of section 367(a)(1) for certain transfers by a U.S. transferor of stock or securities to a foreign corporation. In some cases, these exceptions require the U.S. transferor to file a GRA and other related documents under the provisions of §1.367(a)–8 (section 367(a) GRA regulations) in order to avoid the recognition of gain under section 367(a)(1). See §1.367(a)–3(b), (c), and (e) (addressing transfers of foreign stock or securities, transfers of domestic stock or securities, and transfers in certain section 361 exchanges, respectively). Under the terms of a GRA, the U.S. transferor agrees to include in income the gain realized but not recognized on the initial transfer of the stock or securities and pay interest on any additional tax due if a gain recognition event, as defined in §1.367(a)–8(b)(1)(iv), occurs during the term of the GRA (generally 60 months following the close of the taxable year in which the initial transfer occurs). See §1.367(a)–8(c)(1)(i) and (v).

One of the gain recognition events enumerated is a failure to comply in any material respect with any requirement of the section 367(a) GRA regulations or with the terms of an existing GRA (failure to comply). See §1.367(a)–8(j)(8). An example of such a failure to comply is the failure to file an annual certification. The section 367(a) GRA regulations provide that if there is a failure to comply, the U.S. transferor must recognize the full amount of gain realized on the initial transfer of stock or securities unless the U.S. transferor demonstrates that the failure was due to reasonable cause and not willful neglect under the procedure that is described in §1.367(a)–8(p). Similarly, if there is a failure to timely file a GRA in connection with the initial transfer, the U.S. transferor must recognize gain with respect to the transfer unless the reasonable cause exception is satisfied.

In addition to the section 367(a) GRA regulations, other regulations under section 367(a) require certain other statements to be filed in connection with a transfer of stock or securities by a U.S. person to a foreign corporation. A domestic target corporation in certain cases must file statements in connection with the transfer by its shareholders or security holders of stock or securities in the domestic target corporation to a foreign corporation under §1.367(a)–3(c). See §1.367(a)–3(c)(6) and (7). Also, a domestic target corporation must file a statement when its assets are transferred to a foreign acquiring corporation in a section 361 exchange and

all or a portion of those assets are subsequently transferred to a domestic subsidiary of the foreign acquiring corporation in a transaction treated as an indirect stock transfer under §1.367(a)–3(d). See §1.367(a)–3(d)(2)(vi)(B)(*1*)(*ii*).

In addition, a U.S. person who transfers certain property to a foreign corporation in certain nonrecognition transactions is subject to the reporting requirements of section 6038B and the regulations. See §§1.6038B–1 and –1T. In general, the U.S. transferor must file IRS Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*, identifying the transferee foreign corporation and describing the property transferred. The penalty for failure to satisfy the section 6038B reporting requirement is equal to ten percent of the fair market value of the property at the time of the exchange, but not to exceed $100,000 unless the failure was due to intentional disregard of the reporting obligation. If, however, the U.S. transferor demonstrates that the failure was due to reasonable cause and not willful neglect, no penalty is imposed.

Section 1.6038B–1T(c)(4)(ii) provides that if stock or securities are transferred, the U.S. transferor must provide information about the stock or securities on Form 926. Section 1.6038B–1(f)(2)(i) provides that a failure to comply with the reporting requirements of the regulations includes the failure to provide material information about the property transferred. Thus, the failure to provide the required information about the stock or securities transferred could result in a section 6038B penalty. The current section 6038B regulations have a rule coordinating the obligations to file a GRA and complete Form 926. Specifically, §1.6038B–1(b)(2) relieves a U.S. transferor of the obligation to report a transfer of stock or securities on Form 926 and from the section 6038B penalty if the U.S transferor has properly filed a GRA.

On the other hand, a U.S. transferor who transfers stock or securities for which a GRA must be properly filed to avoid recognizing gain under section 367(a)(1) and who neither properly files a GRA nor a Form 926 with respect to the transfer is potentially subject both to the penalty under section 6038B and full gain recognition under section 367(a)(1). Both of these provisions have a reasonable cause exception for a failure to file, and a U.S. transferor who cannot establish reasonable cause is subject to both provisions.

The Deficit Reduction Act of 1984 (1984 Act) (Public Law 98–369, 98 Stat 494 (1984)) amended section 367(a) and enacted section 6038B. The legislative history to the 1984 Act indicates that Congress intended sections 367 and 6038B to operate in tandem, with section 6038B serving as a notification requirement for transfers under section 367(a). H.R. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess., March 5, 1984 at 1325; S. Rep. No. 169, Vol. 1, 98th Cong., 2d Sess., Apr. 2, 1984 at 370.

Temporary regulations were published on May 16, 1986 (T.D. 8087, 1986–1 C.B. 175, 51 FR 17936), addressing GRAs and reporting under section 6038B (1986 temporary regulations). The 1986 temporary regulations imposed both full gain recognition under section 367(a)(1) for failure to comply with the regulations under section 367(a) as well as the penalty under section 6038B for failure to comply with the section 6038B reporting requirements. Both rules have been retained in later-issued guidance under sections 367(a) and 6038B.

In addition, the current final regulations under §1.367(a)–8(p)(1) allow a U.S. transferor to obtain relief from gain recognition caused by a failure to file a GRA or a failure to comply in any material respect with the regulations by requesting relief and establishing that a failure to file or comply was due to reasonable cause and not willful neglect. When a U.S. transferor requests relief from full gain recognition under this section, the regulations provide that the appropriate IRS examination official (Director) shall notify the U.S. transferor in writing if it is determined that the U.S. transferor's failure was not due to reasonable cause, or if additional time will be needed to make a determination. This notification is to be made within the 120-day period that begins on the date that the IRS notifies the U.S. transferor in writing that its request for relief has been received and assigned for review. If the U.S. transferor is not so notified before the close of this 120-day period, the U.S. transferor is deemed to have established that the failure to file or failure to comply was due to reasonable cause and not willful neglect.

B. Section 367(e)(2)

Section 367(e)(2) provides generally that in a liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply when the 80-percent distributee (as defined in section 337(c)) is a foreign corporation. As a result, if a domestic liquidating corporation liquidates into a foreign parent corporation (an outbound liquidation), or if a foreign liquidating corporation liquidates into a foreign parent corporation (a foreign-to-foreign liquidation), the liquidating corporation generally must recognize gain or loss on the distribution as if such property were sold to the distributee at its fair market value. Section 1.367(e)–2(b)(1) provides that a domestic liquidating corporation must recognize gain or loss on an outbound liquidation, subject to an overall loss limitation, except to the extent it satisfies one of the exceptions provided under §1.367(e)–2(b)(2). These exceptions are for distributions of: (i) property used in the conduct of a trade or business in the United States (a U.S. trade or business); (ii) a U.S. real property interest; or (iii) stock of a domestic subsidiary corporation that is at least 80-percent owned by the domestic liquidating corporation.

The regulations also address foreign-to-foreign liquidations and provide that a foreign liquidating corporation generally is not required to recognize gain or loss on the distribution, except in the case of certain distributions of property used in a U.S. trade or business or formerly used in a U.S. trade or business. See §1.367(e)–2(c).

Other than the exception for a distribution of a U.S. real property interest, the exceptions provided under §1.367(e)–2 require the filing of certain statements or schedules by the liquidating corporation and the distributee corporation. In addition, a domestic liquidating corporation that distributes property to a foreign corporation in a transaction subject to section 367(e)(2) must file a Form 926 with respect to the distribution. See §1.6038B–1(e).

Explanation of Provisions

A. Proposed Amendments to the Section 367(a) GRA Regulations

Under current law, if a U.S. transferor fails to timely file an initial GRA, or fails to comply in any material respect with the section 367(a) GRA regulations with respect to an existing GRA (for example, because it fails to timely file an annual certification), the U.S. transferor is subject to full gain recognition under section 367(a)(1) unless the U.S. transferor later discovers the failure, promptly files the GRA or other required information with the IRS, and demonstrates that its failure was due to reasonable cause and not willful neglect. The existing reasonable cause standard, given its interpretation under the case law, may not be satisfied by U.S. transferors in many common situations even though the failure was not intentional and not due to willful neglect. Based on the current operation of the section 367(a) GRA regulations, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) believe that full gain recognition under section 367(a)(1) should apply only if a failure to timely file an initial GRA or a failure to comply with the section 367(a) GRA regulations with respect to an existing GRA is willful. The IRS and the Treasury Department believe that the penalty imposed by section 6038B generally should be sufficient to encourage proper reporting and compliance.

Accordingly, the proposed regulations would revise the section 367(a) GRA regulations to provide that a U.S. transferor seeking either to (i) avoid recognizing gain under section 367(a)(1) on the initial transfer as a result of a failure to timely file an initial GRA, or (ii) avoid triggering gain as a result of a failure to comply in all material respects with the section 367(a) GRA regulations or the terms of an existing GRA, must demonstrate that the failure was not a willful failure. For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties (for example, section 6672), which would include a failure due to gross negligence, reckless disregard, or willful neglect.

Whether a failure is willful will be determined based on all the relevant facts and circumstances. The proposed regulations illustrate the application of this standard through a series of examples. For example, the section 367(a) GRA regulations require a GRA to include information about the adjusted basis and fair market value of the property transferred. Filing a GRA and intentionally not providing such information, including noting on the GRA that this information is "available upon request," would be a willful failure.

In addition, the proposed regulations modify the process through which requests for relief from a failure to file or a failure to comply are evaluated by eliminating the requirement for the IRS to respond to such relief requests within 120 days. While the IRS is committed to processing requests promptly, the IRS and the Treasury Department do not believe that the IRS's processing time with respect to a relief request should be determinative of whether a U.S. transferor has satisfied its obligations under the section 367(a) GRA regulations.

The proposed regulations also provide guidance clarifying when an initial GRA is considered timely filed, and what gives rise to a failure to comply in any material respect with the requirements of the section 367(a) GRA regulations or the terms of an existing GRA. In general, an initial GRA is timely filed only if each document that is required to be filed as part of an initial GRA is timely filed and completed in all material respects. Similarly, in general, there is a failure to comply in a material respect with the section 367(a) GRA regulations or the terms of an existing GRA if a document (such as an annual certification) that is required to be filed is not timely filed, or is not completed in all material respects. The examples provided in the proposed regulations also illustrate the application of the "completed in all material respects" requirement of the current final regulations.

The proposed regulations also clarify that the section 6038B penalty will apply to a failure to comply in any material respect with the section 367(a) GRA regulations or the terms of an existing GRA, such as a failure to properly file a gain recognition agreement document (including an annual certification or new GRA). Under the proposed regulations, a failure to comply has the same meaning for purposes of the section 367(a) GRA regulations and the section 6038B regulations; however, the current reasonable cause standard continues to apply to U.S. transferors seeking relief from the section 6038B penalty.

In addition, the section 6038B penalty continues to apply, as provided under the current section 6038B regulations, if both a Form 926 is not filed with respect to the initial transfer and there is a failure to file an initial GRA. In this case, the current reasonable cause standard continues to apply to U.S. transferors seeking relief from the section 6038B penalty.

The proposed regulations modify the information that must be reported with respect to a transfer of stock or securities on Form 926. Specifically, the U.S. transferor must include on Form 926 the basis and fair market value of the property transferred. Finally, the proposed regulations require that a Form 926 be filed in all cases in which a GRA is filed, but provide that only Part I and Part II of the Form 926 must be completed if the only asset transferred is stock or securities.

B. Proposed Amendments to the Section 367(e)(2) Regulations

The section 367(e)(2) regulations governing liquidating distributions to foreign parent corporations contain several rules that condition nonrecognition treatment upon the timely filing of statements or other documents, or complying with the requirements of those regulations. These documents are functionally similar to GRAs in certain respects. The current section 367(e)(2) regulations provide no explicit guidance regarding the treatment of taxpayers who fail to file these documents or report the required information, and also provide no mechanism to obtain relief for such failures. As discussed in this preamble, the section 6038B regulations also require that a Form 926 be filed with respect to liquidating distributions by a domestic corporation to a foreign parent corporation.

The IRS and the Treasury Department believe that the changes made by the proposed regulations in the case of section 367(a) transfers are also appropriate for failures to file or failures to comply for purposes of the section 367(e)(2) regulations and the related section 6038B regulations. Accordingly, the proposed regulations provide rules similar to the rules under the section 367(a) GRA regulations

and related section 6038B regulations for failures to file the required documents or statements and failures to comply under the section 367(e)(2) regulations and related section 6038B regulations. Finally, the proposed regulations modify the information that must be reported with respect to one or more liquidating distributions of property, including the addition of the requirement to report the basis and fair market value of the property distributed.

C. Other Reporting Under Section 1.367(a)–3

The section 367(a) regulations currently do not address a taxpayer's failure to file certain other statements required under §1.367(a)–3 in connection with certain transfers of stock or securities. These include the statements required to be filed by a domestic target corporation in connection with a transfer of stock or securities of such corporation to a foreign corporation as described in §§1.367(a)–3(c)(6) and (7), and the statement required to be filed by a domestic target corporation in connection with the transfer of its assets to a foreign corporation in an exchange described in section 361 and the subsequent transfer of those assets to a domestic subsidiary in a transaction described in §1.367(a)–3(d)(2)(vi)(B)(*1*)(*ii*). The IRS and the Treasury Department believe that failures to timely file these statements or failures to comply in all material respects with these regulations should be treated similarly to failures to file or failures to comply with the section 367(a) GRA regulations. Accordingly, these proposed regulations incorporate similar rules with respect to these other filing obligations.

Proposed Effective/Applicability Date

These regulations are proposed to apply with respect to documents or statements required under the section 367(a) GRA regulations, §1.367(a)–3(c) or (d) of the regulations, or the section 367(e) regulations that are required to be filed with a timely filed return on or after the date that final regulations are published in the **Federal Register**, as well as with respect to any requests for relief for failures to file documents and statements required under these regulations, or failures to comply, if such requests are submitted on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations merely provide for a change in the standard, or clarify or provide the standard, that will be used to determine whether a taxpayer that has failed to file, or comply with the terms of, a gain recognition agreement or other related document, a §1.367(a)–3 statement, or a document or statement required under §1.367(e)–2 will be entitled to avoid full gain recognition under section 367(a)(1) or 367(e)(2), as applicable. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

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

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.367(a)–3 is amended:

1. By revising paragraph (c)(6)(ii).

2. In paragraph (d)(2)(vi)(B)(*1*)(*ii*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

3. By adding paragraph (f).

4. By adding paragraph (g)(1)(ix).

The additions and revisions read as follows:

§1.367(a)–3. Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(c) * * *

(6) * * *

(ii) Except as provided in paragraph (f) of this section, for purposes of this paragraph (c)(6), an income tax return will be considered timely filed if such return is filed, together with the statement required by this paragraph (c)(6), on or before the last date for filing a Federal income tax return (taking into account any extensions of time therefor) for the taxable year in which the transfer occurs.

* * * * *

(f) *Failure to file statements*—(1) *Consequences of a failure to file.* Except as provided in paragraph (f)(2) of this section, if there is a failure to file a statement described in paragraph (c)(6), (c)(7), or (d)(2)(vi)(C) of this section, then the exceptions to the application of section 367(a)(1) provided in paragraphs (c) and

(d)(2)(vi)(B)(*1*)(*ii*) of this section will not apply. For this purpose, there is a failure to file the statement if the statement is not filed with a timely filed return or is not completed in all material respects.

(2) *Relief for certain failures to file that are not willful*—(i) *In general*. A failure to file described in paragraph (f)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of the applicable regulation if the taxpayer is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (f)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (f)(2)(ii) of this section. Although a taxpayer whose failure to file is determined not to be willful will avoid gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements, if any, under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See §1.6038B–1(f). The determination of whether the failure to file was willful under this section has no effect on any request for relief made under §1.6038B–1(f).

(ii) *Time of submission*. A taxpayer's statement that the failure to file was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the required statement and a written statement explaining the reasons for the failure. The amended return must be filed with the applicable Internal Revenue Service Center with which the taxpayer filed its original return for such taxable year. The taxpayer may also submit a request for relief from the penalty of section 6038B as part of the same submission.

(iii) *Notice requirement*. In addition to the requirements of paragraph (f)(2)(ii) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(iii). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For illustrations of the application of the willfulness standard, see the examples in §1.367(a)–8(p)(3).

(g) * * *

(1) * * *

(ix) Paragraphs (c)(6)(ii), (d)(2)(vi)(B)(*1*)(*ii*) and (f) of this section will apply to statements that are required to be filed with a timely filed U.S. income tax return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file statements, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 3. Section 1.367(a)–8 is amended:

1. By revising the eleventh sentence of paragraph (a).

2. In paragraph (b)(1) by

a. Redesignating definitions (xii) through (xv) as (xiv) through (xvii).

b. Redesignating definition (xi) as (xiii).

c. Redesignating definitions (v) through (x) as (vii) through (xii).

d. Redesignating definition (iv) as (v).

e. Adding new definitions (iv) and (vi).

f. Revising redesignated definitions (xiii), (xiv), and (xv).

3. By revising paragraph (d)(1).

4. By revising paragraph (j)(8).

5. By revising paragraph (p).

6. By adding a sentence at the end of paragraph (r)(1)(i).

The revisions and addition read as follows:

§1.367(a)–8 Gain recognition agreement requirements—(a) *Scope*.* * *

Paragraph (p) of this section provides relief for certain failures to file an initial gain recognition agreement or to comply with the requirements of this section with respect to an existing gain recognition agreement. * * *

(b) * * *

(1) * * *

(iv) A *gain recognition agreement document* means any agreement, statement, schedule, or form required to be filed under this section, including an initial gain recognition agreement, a new gain recognition agreement described in paragraph (c)(5) of this section, a Form 8838 extending the period of limitations on assessment of tax described in paragraph (f) of this section, and an annual certification described in paragraph (g) of this section.

* * * * *

(vi) An *initial gain recognition agreement* means the gain recognition agreement entered into under paragraph (c) of this section with respect to the initial transfer.

* * * * *

(xiii) A *timely filed return* is a Federal income tax return filed by the due date set forth in section 6072(a) or (b), plus any extension of time to file such return granted under section 6081.

(xiv) *Transferee foreign corporation*. Except as provided in this paragraph (b)(1)(xiv), the *transferee foreign corporation* is the foreign corporation to which the transferred stock or securities are transferred in an initial transfer. In the case of an indirect stock transfer, the transferee foreign corporation has the meaning set forth in §1.367(a)–3(d)(2)(i). The transferee foreign corporation also includes a corporation designated as the transferee foreign corporation in the case of a new gain recognition agreement entered into under this section.

(xv) *Transferred corporation*. Except as provided in this paragraph (b)(1)(xv), the *transferred corporation* is the corporation the stock or securities of which are transferred in the initial transfer. In the case of an indirect stock transfer, the transferred corporation has the meaning set forth in §1.367(a)–3(d)(2)(ii). The transferred corporation also includes a

corporation designated as the transferred corporation in the case of a new gain recognition agreement entered into under this section.

* * * * *

(d) *Filing requirements*—(1) *General rule*. An initial gain recognition agreement must be timely filed in order for the U.S. transferor to avoid recognizing gain under section 367(a)(1) with respect to the transferred stock or securities by reason of the applicable exceptions provided under §1.367(a)–3. Except as provided in paragraph (p) of this section, an initial gain recognition agreement is timely filed only if—

(i) The initial gain recognition agreement and any other gain recognition agreement document required to be filed with the initial gain recognition agreement are included with a timely filed return of the U.S. transferor for the taxable year during which the initial transfer occurs; and

(ii) Each gain recognition agreement document identified in paragraph (d)(1)(i) of this section is completed in all material respects.

* * * * *

(j) * * *

(8) *Failure to comply*. A U.S. transferor fails to comply in any material respect with any requirement of this section, or the terms of the gain recognition agreement as described in paragraph (c)(1) of this section. A failure to comply under this paragraph (j)(8) will extend the period of limitations on assessment of tax until the close of the third full taxable year ending after the date on which the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) receives actual notice of the failure to comply from the U.S. transferor. Except as provided in paragraph (p) of this section, for purposes of this paragraph (j)(8), a failure to comply includes—

(i) If there is a gain recognition event in a taxable year, a failure to report gain or pay any additional tax or interest due under the terms of the gain recognition agreement; and

(ii) A failure to file a gain recognition agreement document, other than an initial gain recognition agreement or a document required to be filed with the initial gain recognition agreement. For this purpose, there is a failure to file a gain recognition agreement document if—

(A) The gain recognition agreement document is not timely filed as required under this section, or

(B) The gain recognition agreement document is not completed in all material respects.

* * * * *

(p) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general*. This paragraph (p) provides relief if there is a failure to file an initial gain recognition agreement as required under paragraph (d)(1) of this section (failure to file), or a failure to comply that is a triggering event under paragraph (j)(8) of this section (failure to comply). A failure to file or failure to comply will be deemed not to have occurred for purposes of paragraph (d)(1) of this section or paragraph (j)(8) of this section if the U.S. transferor is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (p). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply was willful will be determined by the Director based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (p)(2)(i) of this section. Although a U.S. transferor whose failure to file or failure to comply, as applicable, is determined not to be willful will avoid gain recognition under paragraph (b), (c), or (e) of §1.367(a)–3, or paragraph (c)(1) of this section, as applicable, the U.S. transferor will be subject to a penalty under section 6038B if the U.S. transferor fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See §1.6038B–1(b)(2) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under §1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or failure to comply was not willful*—(i) *Time of submission*. A U.S. transferor's statement that a failure to file or failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to file or failure to comply. The U.S. transferor must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to the later of (1) the close of the eighth full taxable year following the taxable year during which the initial transfer occurred, or (2) three years from the date the required information is provided to the IRS. The amended return and Form 8838 must be filed with the applicable Internal Revenue Service Center with which the U.S. transferor filed its original return for such taxable year. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See §1.6038B–1(f).

(ii) *Notice requirement*. In addition to the requirements of paragraph (p)(2)(i) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (p)(2)(ii). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Examples*. The following examples illustrate the application of this paragraph (p). All of the examples are based solely on the following facts and any additional facts stated in the particular example. DC, a domestic corporation, wholly owns FS and FA, each a foreign corporation. In Year 1, pursuant to a transaction qualifying both as a reorganization under section 368(a)(1)(B) and an exchange under section 351, DC transferred all the FS stock to FA solely in exchange for voting stock of FA (FS Transfer). The fair mar-

ket value of the FS stock exceeded DC's tax basis in the stock. Absent the application of section 367 to the transaction, DC's exchange of the FS stock for the stock of FA qualified as a tax-free exchange under section 354. Immediately after the transaction, both FA and FS were controlled foreign corporations (as defined in section 957). Furthermore, DC was a section 1248 shareholder (as defined in §1.367(b)–2(b)) with respect to FA and FS, and a 5-percent shareholder with respect to FA for purposes of §1.367(a)–3(b)(ii). Thus, DC was required to recognize gain under section 367(a)(1) by reason of the FS Transfer unless DC timely filed an initial gain recognition agreement (GRA) as required by paragraph (d)(1) of this section and complied in all material respects with the requirements of this section throughout the term of the GRA. The application of section 6038B is not addressed in these examples. DC may be subject to a penalty under section 6038B even if DC demonstrates under this section that a failure to file or failure to comply was not willful. See §§1.6038B–1(b) and (f) for the application of section 6038B.

Example 1. Taxpayer failed to file a GRA due to accidental oversight. (i) *Additional facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1), and had the experience and competency to properly prepare the GRA. DC had filed many GRAs over the years and had never failed to timely file a GRA. However, although DC prepared the GRA with respect to the FS Transfer, it was not filed with DC's tax return for the year of the FS Transfer due to an accidental oversight. During the preparation of the following year's tax return, DC discovered that the GRA was not filed. DC filed an amended return to file the GRA and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. However, based on the facts of this *Example 1*, including that the failure to timely file the GRA was an isolated oversight, the failure to timely file is not a willful failure to file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is considered to be satisfied, and DC is not required to recognize the gain realized on the FS Transfer under section 367(a)(1).

Example 2. Taxpayer's course of conduct is taken into account in determination. (i) *Additional facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock, but failed to file a GRA. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1). DC had not consistently and in a timely manner filed GRAs in the past, and also had an established history of failing to timely file other tax and information returns for which it was subject to penalties. In a year subsequent to Year 1, DC transferred stock of another foreign subsidiary with respect to which DC had a built-in gain (FS2) to FA in a transaction that qualified as both a reorganization under section 368(a)(1)(B) and an exchange described under section 351 (FS2 Transfer). DC was required to recognize gain on the FS2 Transfer under section 367(a)(1) unless DC timely filed a GRA as required by paragraph (d)(1) of this section and complied with the requirements of this section during the term of the GRA. DC reported no gain on the FS2 Transfer on its tax return, but failed to file a GRA. At the time of the FS2 Transfer, DC was already aware of its failure to file the GRA required for the prior FS Transfer, but had not implemented any safeguards to ensure that it would timely file GRAs for future transactions. DC filed an amended return to file the GRA for the FS2 Transfer and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure. DC asserts that its failure to timely file a GRA with respect to the FS2 Transfer was due to an isolated oversight similar to the one that occurred with respect to the FS Transfer. At issue is DC's failure to timely file a GRA for the FS2 Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS2 Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. DC's course of conduct is taken into account in determining whether its failure to timely file a GRA for the FS2 Transfer was willful. Based on the facts of this *Example 2*, including DC's history of failing to file required tax and information returns in general and GRAs in particular, and its failure to implement safeguards to ensure that it would timely file GRAs, the failure to timely file a GRA with respect to the FS2 Transfer rises to the level of a willful failure to timely file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is not satisfied, and DC must recognize the full amount of the gain realized on the FS2 Transfer.

Example 3. GRA not completed in all material respects. (i) *Additional facts.* DC timely filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1), including the requirement to provide the basis and fair market value of the transferred stock. However, DC filed a purported GRA that did not contain the fair market value of the FS stock. Instead, the GRA was filed with the statement that the fair market value information was "available upon request." Other than the omission of the fair market value of the FS stock, the GRA contained all other information required by this section.

(ii) *Result.* Because DC omitted the fair market value of the FS stock from the GRA, the GRA was not completed in all material respects. Accordingly, there is a failure to timely file the GRA. Furthermore, because DC knowingly omitted such information, DC's omission is a willful failure to timely file a GRA. Accordingly, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer. A similar result would arise if DC had included the fair market value of the FS stock, but omitted its tax basis from the GRA.

Example 4. GRA filed as a result of hindsight. (i) *Additional facts.* At the time that DC filed its tax return for the tax year of the FS Transfer, DC anticipated selling Business A in the following tax year, which was expected to produce a capital loss that could be carried back to fully offset the gain recognized on the FS Transfer. DC chose not to file a GRA but to recognize the gain from the FS Transfer under section 367(a)(1), which it reported on its timely filed tax return. However, a large class action lawsuit was filed against Business A at the end of the following year, and DC was unable to sell the business. As a result, DC did not realize the expected capital loss, and was not able to offset the gain from the FS Transfer. DC now seeks to file a GRA for the FS Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. Furthermore, because DC knowingly chose not to file a GRA for the FS Transfer, its actions constitute a willful failure to timely file a GRA. Accordingly, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer.

* * * * *

(r) *Effective/applicability date*—(1) *General rule*—(i) *Transfers occurring on or after March 13, 2009.* * * * The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to gain recognition agreement documents that are required to be filed with a timely filed return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file gain recognition agreement documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 4. Section 1.367(e)–2 is amended:

1. By revising the ninth sentence and adding two new sentences before the last sentence of paragraph (a).

2. By revising paragraph (b)(1)(i).

3. In paragraph (b)(2)(i)(A)(*2*) by removing the language "its U.S. income tax returns" and adding the language "its timely filed U.S. income tax returns" in its place.

4. In paragraph (b)(2)(i)(A)(*3*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

5. In the first sentence of paragraph (b)(2)(i)(E)(*3*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

6. In paragraph (b)(2)(i)(E)(*4*)(*ii*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

7. In paragraph (b)(2)(i)(E)(*5*)(*ii*) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

8. In the first sentence of paragraph (b)(2)(iii)(A) by removing the language "its U.S. income tax return" and adding the language "its timely filed U.S. income tax return" in its place.

9. In paragraph (c)(2)(i)(B)(*3*) by removing the language "their U.S. income tax returns" and adding the language "their timely filed U.S. income tax returns" in its place.

10. By revising paragraph (e).

11. By adding paragraphs (f) and (g).

The revisions and additions read as follows:

§1.367(e)–2. Distributions described in section 367(e)(2)—(a) *Purpose and scope*—(1) *In general*. * * *

Paragraph (e) of this section provides rules regarding failures to file statements or other documents required under this section or failures to comply with the requirements of this section. Paragraph (f) of this section provides relief for certain failures to file or comply. Finally, paragraph (g) of this section specifies the effective/applicability date for the rules of this section. * * *

* * * * *

(b) *Distribution by a domestic corporation*—(1) *General rule*—(i) *Recognition of gain and loss*. If a domestic corporation (domestic liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation (foreign distributee corporation) that meets the stock ownership requirements of section 332(b) with respect to stock in the domestic liquidating corporation, then—

(A) Pursuant to section 367(e)(2), section 337(a) and (b)(1) shall not apply; and

(B) The domestic liquidating corporation shall recognize gain or loss on the distribution of property to the foreign distributee corporation, except as provided in paragraph (b)(2) of this section.

* * * * *

(e) *Failures to file or failures to comply*—(1) *Scope*. This paragraph (e) provides rules regarding a failure to file an initial liquidation document with respect to one or more liquidating distributions by a domestic liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (b)(2)(i) or (iii) of this section, or with respect to one or more liquidating distributions by a foreign liquidating corporation that, absent such failure, would qualify for nonrecognition treatment under paragraph (c)(2)(i)(B) of this section (failure to file). This paragraph (e) also provides rules regarding failures to comply in all material respects with the terms of this section with respect to one or more liquidating distributions for which nonrecognition treatment was initially claimed under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section, as applicable (failure to comply).

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

(i) An *initial liquidation document* means any statement, schedule, or form required to be filed under this section in order for the domestic liquidating corporation or foreign liquidating corporation, as applicable, to initially qualify to claim nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The statement and attachments described in paragraph (b)(2)(i)(C) of this section;

(B) The statement described in paragraph (b)(2)(iii)(D) of this section; and

(C) The statement and attachments described in paragraph (c)(2)(i)(C) of this section.

(ii) A *subsequent liquidation document* means any statement, schedule, or form (other than an initial liquidation document) required to be filed under this section in order for the domestic liquidating corporation or foreign liquidating corporation, as applicable, to continue to qualify for nonrecognition treatment with respect to one or more liquidating distributions described in this section, including—

(A) The schedule described in paragraph (b)(2)(i)(E)(*3*) of this section;

(B) The schedule described in paragraph (b)(2)(i)(E)(*4*)(*ii*) of this section; and

(C) The statement and attachments described in paragraph (b)(2)(i)(E)(*5*) of this section.

(iii) A *timely filed U.S. income tax return* means a Federal income tax return filed by the due date set forth in section 6072, plus any extension of time to file such return granted under section 6081.

(3) *Failure to file*—(i) *General rule*. For purposes of this section and except as provided in paragraph (e)(5) or (f) of this section, there is a failure to file an initial liquidation document if—

(A) An initial liquidation document is not filed with the timely filed U.S. income tax return specified under this section, or

(B) An initial liquidation document is not completed in all material respects.

(ii) *Consequences of a failure to file*. If there is a failure to file an initial liquidation document, then nonrecognition treatment under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section (as appropriate) will not apply.

(4) *Failure to comply*—(i) *General rule*. For purpose of this section and except as provided in paragraph (e)(5) or (f) of this section, a failure to comply includes—

(A) A failure to report gain, or pay any additional tax or interest due, in accordance with the requirements under this section; and

(B) A failure to file a subsequent liquidation document, as determined applying paragraph (e)(3)(i) of this section, but replacing the term "initial liquidation document" with the term "subsequent liquidation document."

(ii) *Consequences of a failure to comply*. If there is a failure to comply in any material respect with the terms of paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i) of this section, as applicable, then—

(A) Any gain (but not loss) that was not previously recognized by the domestic liquidating corporation or foreign liquidating corporation, as applicable, under paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section must be recognized; and

(B) The period of limitations on assessment of tax is extended until the close of the third full taxable year ending after the date on which the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) is provided written notification that specifically references the failure to comply, or a tax return is filed reporting the gain that was not recognized by the domestic liquidating corporation or the foreign liquidating corporation, as applicable, by reason of paragraph (b)(2)(i), (b)(2)(iii), or (c)(2)(i)(B) of this section.

(f) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general*. This paragraph (f) provides relief if there is a failure to file an initial liquidation document as described in paragraph (e)(3)(i) of this section (failure to file), or a failure to comply in any material respect with the terms of this section as described in paragraph (e)(4)(i) of this section (failure to comply), respectively. The failure to file or a failure to comply, as applicable, is deemed not to have occurred for purposes of paragraph (e)(3)(ii) or (e)(4)(ii) of this section if the taxpayer is able to demonstrate that the failure was not willful using the procedure set forth in this paragraph (f). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to file or failure to comply, as applicable, was willful will be determined by the Director based on all the facts and circumstances.

The taxpayer shall submit a request for relief and an explanation as provided in paragraph (f)(2)(i) of this section. Although a taxpayer whose failure to file or failure to comply, as applicable, is determined not to be willful will avoid gain or loss recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See §1.6038B–1(e)(4) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under §1.6038B–1(f).

(2) *Procedures for establishing that a failure to file or comply was not willful*—(i) *Time of submission*. A taxpayer's statement that the failure to file or failure to comply, as applicable, was not willful will be considered only if, promptly after the taxpayer becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure. In the case of a liquidating distribution described in paragraph (b)(2)(i) or (c)(2)(i)(B) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on the assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to the later of the date provided in paragraph (b)(2)(i)(C)(*5*), taking into account paragraph (c)(2)(i)(C) and (D), as applicable, or three years from the date the required information is provided to, or the required gain or loss is reported to, as applicable, the IRS. In the case of a liquidating distribution described in paragraph (b)(2)(iii) of this section, the taxpayer must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized with respect to the liquidating distribution to three years from the date the required information is provided to the IRS, or the required gain or loss is reported to the IRS. The amended return and Form 8838 must be filed with the applicable Internal Revenue Service Center with which the taxpayer filed its original return for such taxable year. The taxpayer may also submit a request for relief from the penalty of section 6038B as part of the same submission.

(ii) *Notice requirement*. In addition to the requirements of paragraph (f)(2)(i) of this section, the taxpayer must comply with the notice requirements of this paragraph (f)(2)(ii). If any taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the taxpayer is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) For an illustration of the application of the willfulness standard, see the examples in §1.367(a)–8(p)(3).

(g) *Effective/applicability dates*. The ninth, tenth, and eleventh sentences of paragraph (a) of this section, and paragraphs (b)(1)(i), (b)(2)(i)(A)(*2*), (b)(2)(i)(A)(*3*), (b)(2)(i)(E)(*3*), (b)(2)(i)(E)(*4*)(*ii*), (b)(2)(i)(E)(*5*)(*ii*), (b)(2)(iii)(A), (c)(2)(i)(B)(*3*), (e), and (f) of this section will apply to liquidation documents that are required to be filed with a timely filed U.S. income tax return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file liquidation documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.6038B–1 is amended by:

1. Adding a sentence after the first sentence in paragraph (b)(1)(i).
2. Revising paragraph (b)(2)(i)(B)(*1*).
3. Adding paragraph (b)(2)(iii).
4. Adding paragraph (b)(2)(iv).
5. Revising paragraph (c).
6. Revising paragraph (e)(4).
7. Adding paragraph (f)(2)(iii).
8. Adding paragraph (f)(2)(iv).
9. Adding paragraph (g)(5).

The revisions and additions read as follows:

§1.6038B–1. Reporting of certain transfers to foreign corporations.

* * * * *

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure*. * * * In addition, if the U.S. person files a statement under §1.367(a)–3(d)(2)(vi)(C), a gain recognition agreement under §1.367(a)–8, or a liquidation document under §1.367(e)–2(b), such person must comply in all material respects with the requirements of such section pursuant to the terms of the statement, gain recognition

agreement, or liquidation document, as applicable, in order to satisfy a reporting obligation under section 6038B. * * *

* * * * *

(2) * * *

(i) * * *

(B) * * *

(*1*) Except as provided in paragraph (b)(2)(iii) of this section, the U.S. transferor (or one or more successors) filed an initial gain recognition agreement under §1.367(a)–8, and filed Form 926 in accordance with paragraph (b)(2)(iv) of this section; or

* * * * *

(ii) * * *

(iii) *Timely filed initial gain recognition agreement*. Paragraph (b)(2)(i)(B)(*1*) of this section will not apply unless the initial gain recognition agreement is timely filed as determined under §1.367(a)–8(d)(1), but for purposes of this section, determined without regard to §1.367(a)–8(p). However, see paragraph (f)(3) of this section for certain relief that may be available.

(iv) *Satisfaction of section 6038B reporting if a gain recognition agreement is filed*. If the U.S. transferor is described in paragraph (b)(2)(i)(B)(*1*) of this section and is not otherwise required to file a Form 926 with respect to a transfer of assets other than the stock or securities to the transferee foreign corporation, the requirements of this section are satisfied with respect to the transfer of the stock or securities by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 with respect to the transfer of stock or securities is contained in a gain recognition agreement filed pursuant to §1.367(a)–8, and attaching a signed copy of the Form 926 to its U.S. income tax return for the year of the transfer. If the U.S. transferor is required to file Form 926 with respect to a transfer of assets in addition to the stock or securities, the requirements of this section are satisfied with respect to the transfer of the stock or securities by noting in Part III that the information required by Form 926 with respect to the transfer of stock or securities is contained in a gain recognition agreement filed pursuant to §1.367(a)–8.

* * * * *

(c) * * *

(1) through (4)(i) [Reserved]. For further guidance, see §1.6038B–1T(c)(1) through (4)(i).

(ii) *Stock or securities*. Describe any stock or securities that are transferred, including the adjusted tax basis and fair market value of the stock or securities, the class or type, amount, and characteristics of the stock or securities, and the name, address, place of incorporation, and general description of the corporation issuing the stock or securities. In addition, if any provision of §1.367(a)–3 applies to except the transfer of the stock or securities from section 367(a)(1), provide information supporting the claimed application of such provision. However, see paragraph (b)(2) of this section for certain exceptions and special rules for reporting transfers of stock or securities under section 367(a).

(5) [Reserved]. For further guidance, see §1.6038B–1T(c)(5).

* * * * *

(e) * * *

(4) *Reporting rules for section 367(e)(2) distributions by domestic liquidating corporations*—(i) *General rule*. Except as provided in paragraph (e)(4)(ii) of this section, if the distributing corporation makes a distribution of property in complete liquidation under section 332 to a foreign distributee corporation that meets the stock ownership requirements of section 332(b) with respect to the stock of the distributing corporation, then the distributing corporation shall complete a Form 926 and attach a signed copy of such form to its timely filed U.S. income tax return for the taxable years that include one or more liquidating distributions. The property description contained in Part III of the Form 926 shall contain a description, including the adjusted tax basis and fair market value, of all property distributed by the distributing corporation (regardless of whether the distribution of the property qualifies for nonrecognition treatment). The description shall also identify the items of property for which nonrecognition treatment is claimed under §1.367(e)–2(b)(2)(ii) or (iii), as applicable.

(ii) *Special rule*. Except as provided in paragraph (e)(4)(iii) of this section, if the distributing corporation distributes items of property that will be used by the foreign distributee corporation in the conduct of a trade or business in the United States and the distributing corporation does not recognize gain or loss on such distribution under §1.367(e)–2(b)(2)(i) with respect to such property, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by §1.367(e)–2(b)(2)(i)(C)(*2*), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return for the taxable years that include one or more distributions in liquidation. In addition, if the distributing corporation distributes stock of a domestic subsidiary corporation and does not recognize gain or loss on such distribution under §1.367(e)–2(b)(2)(iii) with respect to such stock, then the distributing corporation may satisfy the requirements of this section by completing Part I and Part II of Form 926, noting in Part III that the information required by Form 926 is contained in a statement required by §1.367(e)–2(b)(2)(iii)(D), and attaching a signed copy of Form 926 to its timely filed U.S. income tax return for the taxable years that include one or more distributions of domestic subsidiary stock.

(iii) *Properly filed statement*. Paragraph (e)(4)(ii) will not apply if there is a failure to file an initial liquidation document as determined under §1.367(e)–2(e)(3)(i), but for purposes of this section, determined without regard to §1.367(e)–2(f). However, see paragraph (f)(3) of this section for certain relief that may be available.

(f) * * *

(2) * * *

(iii) With respect to an initial gain recognition agreement filed under §1.367(a)–8, a failure to comply as determined under §1.367(a)–8(j)(8), but for purposes of this section, determined without regard to the application of §1.367(a)–8(p).

(iv) With respect to an initial liquidation document filed under §1.367(e)–2(b)(1), a failure to comply as determined under §1.367(e)–2(e)(4)(i), but for purposes of this section, determined without regard to the application of §1.367(e)–2(f).

* * * * *

(g) * * *

(5) The second sentence of paragraph (b)(1)(i) and paragraphs (b)(2)(i)(B)(*1*), (b)(2)(iii), (b)(2)(iv), (c), (e)(4), (f)(2)(iii), and (f)(2)(iv) of this section will apply to documents required to be filed with a timely filed return on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, as well as to any requests for relief for failures to file documents, or failures to comply, if such requests are submitted on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on January 30, 2013, 8:45 a.m., and published in the issue of the Federal Register for January 31, 2013, 77 F.R. 6772)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Bond Premium Carryforward

REG–140437–12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations that provide guidance on the tax treatment of a debt instrument with a bond premium carryforward in the holder's final accrual period, including a Treasury bill acquired at a premium. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by April 4, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–140437–12), 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–140437–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–140437–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William E. Blanchard, (202) 622–3900; concerning submissions of comments, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 171. The temporary regulations provide guidance on the tax treatment of a taxable debt instrument with a bond premium carryforward in the holder's final accrual period, including a Treasury bill acquired at a premium. In general, the temporary regulations provide that, upon the sale, retirement, or other disposition of a taxable bond, the holder treats the amount of any bond premium carryforward determined as of the end of the accrual period under §1.171–2(a)(4)(i)(B) as a bond premium deduction under section 171(a)(1) for the holder's taxable year in which the sale, retirement, or other disposition occurs. The text of the temporary regulations also serves as the text of these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, 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) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments

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 as prescribed in the preamble under the "Addresses" heading. The Treasury Department and the IRS welcome comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available at *www.regulations.gov* for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for a public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is William E. Blanchard, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.171–2 is amended by adding a new paragraph (a)(4)(i)(C) to read as follows:

§1.171–2 Amortization of bond premium.

(a) * * *

(4) * * *

(i) * * *

(C) [The text of the proposed amendment to §1.171–2(a)(4)(i)(C) is the same as the text for §1.171–2T(a)(4)(i)(C) published elsewhere in this issue of the Bulletin].

* * * * *

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

(Filed by the Office of the Federal Register on January 3, 2013, 8:45 a.m., and published in the issue of the Federal Register for January 4, 2013, 78 F.R. 687)

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 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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