Internal Revenue
bulletin

Bulletin No. 2013-39
September 23, 2013

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. 9632, page 241.

Final regulations on the requirement to maintain minimum essential coverage under §5000A, which was enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111–173. These final regulations provide guidance to individual taxpayers on the liability under §5000A for the shared responsibility payment for not maintaining minimum essential coverage and largely finalize the rules in the notice of proposed rulemaking (REG–148500–12) published in the Federal Register (78 FR 7314) on February 1, 2013.

T.D. 9633, page 227.

These final regulations prevent the duplication of a net loss when loss assets are contributed to a corporation in a section 351 nonrecognition exchange. Under the regulations, the duplication of a net loss is prevented by reducing the transferee-corporation's basis in the assets transferred, unless the transferor-shareholder elects to reduce its basis in the stock received in the exchange by the amount that would otherwise have been applied to reduce the corporation's basis in its assets. Notice 2005–70 is obsolete.

EMPLOYEE PLANS

REG–111837–13, page 266.

These proposed regulations relate to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media. These proposed regulations provide that a plan administrator (or, in certain situations, an employer maintaining a plan) required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year must use magnetic media to file certain statements, returns, and reports under sections 6057, 6058, and 6059. Comments requested by October 29, 2013.

ESTATE TAX

Rev. Rul. 2013–19, page 240.

Special Use Value; Farms; Interest Rates. The 2013 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

ADMINISTRATIVE

REG–144990–12, page 264.

These proposed regulations amend user fees for installment agreements and offers in compromise. They affect taxpayers who wish to pay their liabilities through installment agreements and offers in compromise. Comments are requested by September 30, 2013, and a public hearing is scheduled for October 1, 2013.

Notice 2013–56, page 262.

This notice under sections 6050W and 3406 provides guidance on the issuance of CP2100/CP2100As based on Forms 1099–K filed for calendar year 2012 payments. Additionally, the notice provides relief from penalties under sections 6721 and 6722 for incorrect name and taxpayer identification number (TIN) combinations and missing TINs for Forms 1099–K filed for calendar year 2012 payments; and for incorrect name and TIN combinations for Forms 1099–K required to be filed for calendar year 2013 payments.

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.

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.

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

Section 362.—Basis to Corporations

T.D. 9633

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Limitations on Duplication of Net Built-in Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 362(e)(2) of the Internal Revenue Code of 1986 (Code). The regulations apply to certain nonrecognition transfers of loss property to corporations. The regulations affect all parties to the transaction.

DATES: *Effective Date:* These final regulations are effective on September 3, 2013.

Applicability Date: For dates of applicability see §1.358–2(d), §1.362–4(j).

FOR FURTHER INFORMATION CONTACT: Theresa A. Abell (202) 622–7700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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 OMB control number 1545–2247. The collection of information in these final regulations is in §1.362–4(d). This information is required by the IRS to verify basis of property transferred in certain tax-free transactions when taxpayers make the election provided for under section 362(e)(2)(C).

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

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

Background

Section 362(e)(2) was enacted in the American Jobs Creation Act of 2004 (Public Law 108–357, 188 Stat. 1418 (2004)) in order to prevent the duplication of loss in certain corporate nonrecognition transfers. Section 362(e)(2) applies to corporate acquisitions of property with a net built-in loss in transactions described in section 362(a) (transactions to which section 351 applies and acquisitions of property as paid-in surplus or contributions to capital), but only if the transaction is not described in section 362(e)(1) (transactions in which there is an importation of built-in loss). When a transaction is subject to section 362(e)(2), the acquiring corporation's basis in loss property is reduced by the property's allocable portion of the transferor's net built-in loss. See section 362(e)(2)(B). However, under section 362(e)(2)(C), the parties to the transaction can make an irrevocable election to apply the reduction to the transferor's basis in the stock received in the exchange instead of to the transferee's basis in the property received in the exchange.

Notice 2005–70, 2005–2 C.B. 694, was published on October 11, 2005, to provide interim guidance for making an election to apply section 362(e)(2)(C). See §601.601(d)(2) of this chapter. Under Notice 2005–70, an election would be considered effective once a certification was included by the transferor or, if the transferor is a controlled foreign corporation (CFC), by all of its controlling U.S. shareholders as defined in §1.964–1(c)(5), on a timely filed original Federal income tax return (designated a "U.S. return" under the final regulations) for the year of the transaction. Notice 2005–70 expressly permitted taxpayers to make a protective election that would have no effect on a transaction that is ultimately not subject to section 362(e)(2). The Notice also allowed other statements to be treated as effective elections if sufficient information was provided to the IRS with respect to the transfer and parties.

Proposed regulations under section 362(e)(2) were published in the **Federal Register** (71 FR 62067) on October 23, 2006. Following the publication of the proposed regulations, the IRS received questions concerning the application of section 362(e)(2) to transactions involving S corporations and partnerships and concerning the filing of the section 362(e)(2)(C) election, particularly with respect to transactions between persons outside the United States. The IRS also has become aware of certain ambiguities (described later in this preamble) relating to the proper operation of the statute. Two written comments were submitted; no public hearing was requested or held.

Summary of Proposed Regulations

1. *General Application of Section, Interaction with Other Law*

The proposed regulations included a number of specific provisions regarding the general operation of the statutory framework, such as provisions stating that section 362(e)(2) is to be applied on a transferor-by-transferor basis; that a transaction is treated as subject to section 362(e)(2) to the extent it is not a transfer of net built-in loss property under section 362(e)(1); that gain recognized by the transferor is taken into account in determining the transferee's basis immediately after the transfer; and that section 362(e)(2) applies to any transaction described in section 362(a) without regard to whether the transaction is also described in section 362(b) or any other section. These provisions responded to inquiries from practitioners concerning section 362(e)(2) and its interaction with generally applicable provisions of the Code.

2. *Exceptions From the Application of Section 362(e)(2)*

The proposed regulations included two exceptions under which a transaction would be treated as not subject to section 362(e)(2) notwithstanding that the transaction is generally described in that section.

Under the first exception, if a transfer is not relevant for Federal income tax purposes at the time it occurs and it does not become relevant for Federal income tax purposes at any time within two years of the transfer, then, solely for purposes of determining whether section 362(e)(2) applies to the transaction, the property exchanged would be deemed to have a basis equal to its fair market value (designated value under the final regulations) immediately after the transaction. As a result, the transfer would not be subject to section 362(e)(2). This exception reflected a concern that transferors not anticipating that a transfer would be relevant for Federal income tax purposes would not be likely to undertake the valuation and record-keeping necessary to comply with the statute. However, if a transfer that was not relevant for Federal income tax purposes when it occurred became relevant for Federal income tax purposes at any time within two years of the transfer, the administrative burden of compliance would not be unreasonable, and, if a transaction was undertaken with a view to reducing or avoiding Federal income tax, the transferor must expect the transfer to be relevant for Federal income tax purposes. Because relief would be either unnecessary or inappropriate in either case, relief was not extended to those cases.

Under the second exception, a transaction would not be subject to section 362(e)(2) to the extent that the transferor distributes the stock received in the transaction and, in the distribution, no gain or loss was recognized and no person takes the stock or other property with a basis determined by reference to the transferor's basis in the distributed stock. This relief reflected a determination that, to the extent there is no duplicated loss that could be recognized by any taxpayer, section 362(e)(2) should not apply to the transaction.

3. *Securities received without the recognition of gain or loss*

Section 362(e)(2) is silent with respect to securities received without the recognition of gain or loss in a transaction otherwise subject to section 362(e)(2). However, the IRS and Treasury Department determined that the statutory purpose of preventing loss duplication would be circumvented if section 362(e)(2) did not apply to securities issued in such cases. For example, if loss property is transferred in exchange for stock and securities and any part of the securities are retained following the distribution of the stock under section 355, loss would be duplicated and preserved in the retained securities. To prevent this circumvention of the statutory purpose, the proposed regulations defined the term "stock" to include both stock and securities for purposes of section 362(e)(2).

4. *Liabilities*

In general, as illustrated in *Example 5* in paragraph (d) of §1.362–4 of the proposed regulations, liabilities assumed in the transaction do not affect the application of section 362(e)(2). However, the proposed regulations provided that, if a section 362(e)(2)(C) election is made, the reduction to stock basis is limited to the amount that the transferee would otherwise reduce its basis in the transferred assets. This was intended to prevent the reduction of stock basis attributable to contingent liabilities associated with a trade or business, for which basis is specifically preserved under section 358(h)(2)(A).

5. *The Section 362(e)(2)(C) Election*

The proposed regulations adopted the general approach of Notice 2005–70, treating an election as effective if the transferor files a certification (designated the "election statement" in the proposed regulations) on its U.S. return for the year of the transfer or, if the transferor is a CFC, if the controlling U.S. shareholders all file the election statement on or with their U.S. returns. The proposed regulations also adopted the rule allowing a protective election.

In addition, the proposed regulations substantially expanded the guidance provided in Notice 2005–70. The proposed regulations added an express requirement that the transferor and the transferee execute a written, binding agreement. The proposed regulations also included guidance on the filing of an election statement in circumstances not addressed in the Notice (for example, if the transferor was not required to file a U.S. return and was not a CFC) and provided that the statement must be filed in accordance with the regulations in order for the section 362(e)(2)(C) election to be effective.

In addition, the proposed regulations provided that the basis tracing provisions in §1.358–2 would not apply to transactions in which a section 362(e)(2)(C) election is made. Thus, if A transferred multiple shares of X stock to Y in a transaction subject to section 362(e)(2), the Y shares received in the transaction would each be allocated an equal portion of A's aggregate basis in the X shares transferred, without regard to A's bases in the individual shares of X stock surrendered. As a result, there would be no disparity among A's bases in its Y shares following a section 362(e)(2)(C) election. This rule was intended to prevent a preservation of loss that would be contrary to the objective of section 362(e)(2).

6. *Partnerships and S Corporations*

The proposed regulations confirmed that any reduction under section 362(e)(2)(C) to the basis in stock received by a partnership or S corporation in a transaction subject to section 362(e)(2) is an expenditure or expense of the transferor partnership or S corporation. As a result, the section 362(e)(2)(C) stock basis reduction would cause a reduction to the basis of the partner in its interest in the partnership or the S corporation shareholder's basis in its stock of the S corporation.

Summary of Comments and Guidance

In general, the commenters concurred with the positions taken in the proposed regulations, but requested that the overall operation of the statute be clarified. For example, since the issuance of the proposed regulations, the IRS has become aware of certain questions relating to the allocation of net built-in loss where gain is recognized and multiple properties are transferred in the transaction. In addition, practitioners requested further guidance

on the application of section 362(e)(2) to transactions that are also subject to section 362(e)(1), to transactions involving partnerships and S corporations, and to transactions between persons not connected with the United States, particularly with regard to the making of the section 362(e)(2)(C) election.

Accordingly, these final regulations generally adopt the substantive rules of the proposed regulations. In addition, the final regulations revise the structure of the proposed rules to clarify the application of section 362(e)(2) and to provide a framework that will better coordinate with the provisions of section 362(e)(1) and the regulations that are to be promulgated under that section. These are not substantive changes from the proposed regulations but are solely intended to simplify the application of section 362(e)(2). The material changes and additions to the proposed regulations are as follows:

1. *Clarification of Overall Application of Section 362(e)(2)*

The final regulations adopt a general operative rule and related definitions to facilitate the identification of transactions that are subject to section 362(e)(2) and to then determine the tax treatment required by this section. This approach responds to comments requesting more clarity on the general operation of the provision.

The general operative rule set forth in the final regulations is that whenever a person (Transferor) transfers property to a corporation (Acquiring) in a loss duplication transaction, Acquiring's basis in each loss duplication property (as determined without regard to section 362(e)(2)) is reduced by the property's allocable portion of Transferor's net built-in loss.

The final regulations define the term "loss duplication transaction" as any section 362(a) transfer in which Acquiring's aggregate basis in the property transferred by Transferor would exceed the aggregate value of such property immediately after the transaction. The term "loss duplication property" refers to individual property transferred in the loss duplication transaction that Acquiring would take with a basis that would exceed value immediately after the transfer. Finally, the term "Transferor's net built-in loss" is defined as the excess of Acquiring's aggregate basis in property received from Transferor over the aggregate value of such property immediately after the transaction. For purposes of applying each of these definitions, Acquiring's basis in property is determined immediately after the transfer, disregarding section 362(e)(2) but taking into account all other applicable rules, including section 362(e)(1).

The final regulations thus incorporate in the operative rules and definitions the transferor-by-transferor approach and other general provisions that reflect the statutory construct as implemented by the proposed regulations, including that a transfer can be subject to both section 362(e)(1) and section 362(e)(2) and the priority given to section 362(e)(1) in such cases. These principles are further illustrated in the examples.

2. *Additional Definitions*

Several questions were raised concerning whether certain persons were required to file a U.S. return within the meaning of the regulations. To address these concerns, the final regulations define the term "U.S. return" as a return of income that must be filed under section 6012 or an information return that must be filed under Subtitle F, Chapter 61, Subchapter A, Part III of the Code (sections 6031 and following). The final regulations further provide that the requirement to file the return must be unconditional. Thus, the term does not include forms that are merely elective to receive a particular tax treatment, such as statements filed to make an election or to reduce or avoid withholding by a person not otherwise required to file a U.S. return. These changes are intended to eliminate uncertainty as to whether a person has a filing requirement for purposes of determining whether a transaction qualifies for relief as a transaction outside the United States. The final regulations also clarify the time for filing and the person that must file a statement that the Transferor and Acquiring are making an election under section 362(e)(2)(C) (designated as a "Section 362(e)(2)(C) Statement" under the final regulations). The Section 362(e)(2)(C) Statement is described more fully later in this preamble.

The final regulations modify the definition of the term "controlling U.S. shareholder." Under the final regulations, only persons owning a direct interest in the CFC or an interest treated as owned by reason of an interest in a partnership, estate, trust, or corporation are treated as controlling U.S. shareholders. This change reflects a concern that, for this purpose, a rule treating persons as controlling U.S. shareholders solely by reason of the family attribution rules presents undue administrability concerns and can cause inappropriate results in certain cases.

3. *Exception for Transactions Outside the U.S. Tax System*

The IRS and Treasury Department continue to believe that administrative relief is appropriate when the parties to the transfer do not expect the transfer to be relevant for Federal tax purposes, and in fact the transfer does not become relevant for Federal tax purposes within two years of the transfer. Accordingly, the final regulations retain the rule in the proposed regulations excepting transactions wholly outside the U.S. tax system. However, the final regulations conform the formulation of the rule to the formulation of the exception for transactions in which duplicated loss is eliminated. That is, the rule in the final regulations does not presume that basis and value are equal (with the result that no loss is transferred and so section 362(e)(2) does not apply), as in the proposed regulations, but instead provides simply that section 362(e)(2) will not apply to a qualifying transaction. Like the proposed regulations, the final regulations provide that a transaction will qualify for this exception only if the transaction is between persons not connected to the United States, the transaction does not become relevant for Federal tax purposes within two years of the transfer, and the transaction is not undertaken pursuant to a plan to reduce or avoid Federal taxes.

4. *Controlled Foreign Partnerships (CFPs)*

The IRS and Treasury Department have determined that, for purposes of the administrative relief granted for transactions outside the United States, as well as for purposes of determining the person that must file a Section 362(e)(2)(C) Statement, CFPs should be treated in the same manner as CFCs. First, the reason that

CFCs are ineligible for relief is that a CFC could not reasonably expect a transfer to have no relevance for Federal income tax purposes, and so the administrative relief is not warranted. The same is true with respect to CFPs. Second, with respect to the filing of a Section 362(e)(2)(C) Statement, although a CFP may not be required to file a U.S. return, the reporting U.S. partners of a CFP have a relationship to the CFP, and a filing obligation with respect to the CFP's activities, that is materially the same as that of the controlling U.S. shareholders of a CFC. Thus, the reporting U.S. partners of a CFP have the same reporting requirements under these final regulations as the controlling U.S. shareholders of a CFC. For purposes of these final regulations, a partnership is a CFP if it is treated as such for purposes of section 6038; a CFP's reporting U.S. partners are generally those persons that would be required to file an information return with respect to the CFP under section 6038.

5. *Liabilities*

The final regulations retain the approach in the proposed regulations that generally disregards liability assumptions. *Example 5* in paragraph (d) of the proposed regulations §1.362–4 is expanded, however, to illustrate more fully the application of section 362(e)(2) to transactions in which fixed and contingent liabilities are assumed. See *Example 5* in paragraph (h) of the final regulations §1.362–4.

However, in both written comments and informal inquiries, practitioners have raised concerns about the effect of this rule when the property transferred is an interest in a partnership with liabilities. In particular, practitioners are concerned because partnership liabilities increase each partner's basis in its partnership interest but do not give rise to a corresponding increase in the value of those interests. The result can be the appearance of a built-in loss.

To address this problem, the final regulations generally adopt the approach proposed by commentators, specifically, by modifying the definition of the term "value" (generally, fair market value) to take liabilities into account when determining whether a partnership interest is a loss asset. However, because there can be differences between Transferor's share of partnership liabilities and Acquiring's share of partnership liabilities, the final regulations provide that the value of a partnership interest is the sum of cash that Acquiring would receive for such interest, increased by any §1.752–1 liabilities (as defined in §1.752–1(a)(4)) of the partnership that are allocated to Acquiring with regard to such transferred interest under section 752. The final regulations include an example that illustrates the application and effect of this rule. See *Example 8(ii)* in paragraph (h) of the final regulations §1.362–4. The final regulations also clarify that any section 743(b) adjustment to be made as a result of the transaction is made after any section 362(e) basis adjustment.

6. *Elections under Section 362(e)(2)(C)*

Since the enactment of section 362(e)(2), the questions most frequently asked of the IRS concern the making of the section 362(e)(2)(C) election, notwithstanding the publication of Notice 2005–70 and the proposed regulations. Accordingly, the final regulations not only generally adopt the rules set forth in Notice 2005–70 and in the proposed regulations, but they also expand those rules significantly to address the questions raised.

a. Section 362(e)(2)(C) Statement

To begin, the final regulations retain the fundamental structure of the proposed regulations. Thus, under the final regulations, a written, binding agreement to make a section 362(e)(2)(C) election must be executed by Transferor and Acquiring, and a Section 362(e)(2)(C) Statement must be filed in accordance with the regulations. A section 362(e)(2)(C) election is effective only if both conditions are met. The final regulations do not prescribe a particular form for the agreement to make the section 362(e)(2)(C) election; however, the final regulations do require the written, binding agreement to be in effect prior to the time a Section 362(e)(2)(C) Statement is filed.

The final regulations generally adopt the structure of the proposed regulations regarding the time and manner of filing of the Section 362(e)(2)(C) Statement. Thus, under the final regulations, the statement is filed by Transferor (if Transferor is otherwise required to file a U.S. return for the year of the transaction) or by all of Transferor's controlling U.S. shareholders or reporting U.S. partners (if Transferor is a CFC or CFP at the time of the transaction and is not otherwise required to file a U.S. return). Further, if Transferor is not otherwise required to file a U.S. return and is not a CFC or CFP, then the statement is filed by Acquiring (if Acquiring is otherwise required to file a U.S. return in the year of the transaction) or by all of Acquiring's controlling U.S. shareholders (if Acquiring is a CFC at the time of the transaction and is not otherwise required to file a U.S. return).

Unlike the proposed regulations, the final regulations do not require or permit the filing of the Section 362(e)(2)(C) Statement by a U.S. person (as defined in section 7701(a)(30)) that is not otherwise required to file a U.S. return. This change was made because these regulations do not create an independent filing requirement, and not all U.S. persons would otherwise be required to file a U.S. return.

b. Neither party able to file a Section 362(e)(2)(C) Statement

Like the proposed regulations, the final regulations provide rules regarding the filing of a Section 362(e)(2)(C) Statement if neither Transferor, Acquiring, nor any of their shareholders would be required to file the statement at the time of the transaction but at some later time either Transferor or Acquiring becomes a person required to file a U.S. return or a CFC, or the stock or loss duplication property is acquired by such a person or a CFC in a transferred basis transaction. For this purpose, the final regulations expand the proposed rule to treat CFPs in the same manner as CFCs.

The final regulations expand the proposed rules in two respects. First, the final regulations provide that, if a person holds property received in a transaction with a basis determined directly or indirectly by reference to the basis of loss duplication property or stock received in a loss duplication transaction, the filing requirements will treat such person as Transferor or Acquiring (as applicable) for purposes of determining who must file a Section 362(e)(2)(C) Statement and when.

Second, the final regulations provide that a Section 362(e)(2)(C) Statement must be filed with a U.S. return (or U.S. returns)

for the first taxable year in which property with a basis determined by reference to the basis of loss duplication property or stock received in a loss duplication transaction is acquired by a person required to file a U.S. return, a CFC, or a CFP. If, in the same taxable year, more than one person has an event that causes such basis to become relevant for U.S. tax purposes, the Section 362(e)(2)(C) Statement must be filed by all such persons with their U.S. return for that first year.

These two changes were determined necessary to prevent transactions from qualifying for the two-year exception for transactions outside the U.S. tax system if the basis of property exchanged in a transaction becomes relevant for U.S. tax purposes within two years of the transaction, as it would not be unduly burdensome to require the valuation necessary to comply with section 362(e)(2) in such a case.

These rules are expected to have limited application, inasmuch as they will generally only apply if, within two years of the transaction, a party to the transaction becomes a person required to file a U.S. return, a CFC, or a CFP, or such a person acquires the loss duplication property or stock received in a loss duplication transaction in a transferred basis transaction. These rules will also apply in the limited situations in which Transferor is a U.S. person not otherwise required to file a U.S. return and Acquiring is neither required to file a U.S. return, a CFC, nor a CFP (such a case would not qualify for the two-year exception for transactions outside the U.S. tax system because a U.S. person is a party to the transaction).

7. *Transactions Involving Partnerships and S Corporations*

Like the proposed regulations, the final regulations expressly confirm that any reduction to a transferor's basis in Acquiring stock by reason of a section 362(e)(2)(C) election is an expenditure or expense under section 705(a)(2)(B) (if Transferor is a partnership) and under section 1367(a)(2)(D) (if Transferor is an S corporation). However, in response to questions raised with regard to the proposed regulations, the final regulations provide further guidance on the interaction between section 362(e)(2) and both subchapter K and subchapter S. Specifically, the final regulations clarify that no stock basis reduction is required under section 1367(a)(2)(D) by reason of a reduction to the S corporation's basis in acquired assets if a section 362(e)(2)(C) election is not made. In addition, the final regulations include examples illustrating the consequences of transfers to and by S corporations, as well as transfers by partnerships. For example, practitioners raised concerns that S corporation shareholders electing to reduce the basis of their S corporation stock under section 362(e)(2)(C) may inadvertently eliminate their loss completely when the transferred asset is sold. The IRS and Treasury Department recognize that the elimination of any tax benefit from the economic loss can result in such cases and, to alert taxpayers to the potential elimination of loss, the final regulations include an example to illustrate the application of section 362(e)(2) to transfers made both with and without the election under section 362(e)(2)(C). See *Example 9* in paragraph (h) of the final regulations §1.362–4.

8. *Examples*

The final regulations include revised and expanded examples based on those in the proposed regulations. For example, in response to questions about the scope of the application of section 362(e)(2) to reorganizations, the final regulations include not only examples from the proposed regulations illustrating the application of section 362(e)(2) to transactions qualifying as both section 351 transactions and reorganizations, they also include an example illustrating the nonapplicability of section 362(e)(2) to triangular reorganizations that do not include a transfer to which section 362(a) applies.

9. *Other Requests for Comments in the Proposed Regulations*

Although the preamble to the proposed regulations invited comments concerning whether special rules were needed to address the interaction of section 362(e)(2) and section 336(d) when a section 362(e)(2)(C) election is made, and whether the regulations should deem a section 362(e)(2)(C) election in the case of a section 304 transaction, no comments were received regarding these issues. Accordingly, no special rules addressing these issues are included in the final regulations.

10. *Effective/applicability date*

These final regulations generally adopt the proposed effective date and thus are applicable to transactions occurring after September 3, 2013. However, the final regulations modify the proposed effective date to provide that the final regulations do not apply to transactions after September 3, 2013, that were effected pursuant to a binding agreement that was in effect prior to September 3, 2013, and at all times thereafter. In addition, the final regulations provide that taxpayers may apply these rules to any transaction occurring after October 22, 2004.

11. *Revision of §602.101, Table of OMB Control Numbers*

This Treasury Decision revises §602.101 of this chapter (OMB Control Numbers under Paperwork Reduction Act) to include the OMB control number 1545–2247 issued with respect to the collection of information in this Treasury Decision, as well as OMB control number 1545–2125 issued with respect to the collections of information in §§1.336–2 and 1.336–4 (TD 9619, 78 FR 28467) May 15, 2013.

Effect on Other Documents

The following publication is obsolete as of September 3, 2013:

Notice 2005–70 (2005–2 C.B. 694).

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. Further, it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information in these regulations merely provides a mechanism whereby, once a transferor and transferee have agreed that it would be advantageous to elect the special basis treatment afforded under section 362(e)(2)(C), the transferor

(or in limited cases the transferee) can report the existence of the agreement, and minimal identifying information regarding the transaction and the parties, on its return in order to make the election effective. The minimal identifying information should be readily available to the parties and the professional skills that would be necessary to make the election would be the same as those required to prepare a return for the small business. 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 final regulations, as well as the proposed regulations preceding these final regulations, were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.362–4 to read as follows:

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

Section 1.362–4 also issued under 26 U.S.C. 362(e)(2)(C)(ii). * * *

Par. 2. Section 1.358–2 is amended by revising paragraph (a)(2)(viii) and adding a new sentence at the end of paragraph (d) to read as follows:

§1.358–2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(viii) This paragraph (a)(2) shall not apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and either section 354 or 356, if, in connection with the exchange—

(A) The shareholder or security holder exchanges property for stock or securities in an exchange to which neither section 354 nor section 356 applies;

(B) The shareholder or security holder exchanges property for stock or securities in a transaction for which an election to apply section 362(e)(2)(C) is in effect; or

(C) Liabilities of the shareholder or security holder are assumed.

* * * * *

(d) *Effective/applicability date.* * * * However, paragraph (a)(2)(viii) of this section applies only to exchanges and distributions of stock occurring on or after September 3, 2013; taxpayers may also apply paragraph (a)(2)(viii) of this section to transactions occurring after October 22, 2004.

Par. 3. Section 1.362–4 is amended by revising the section heading and paragraph (a)(1), and adding paragraphs (b) through (j) to read as follows:

§1.362–4 Basis of loss duplication property.

(a) *Purpose and scope*—(1) *In general.* The purpose of section 362(e)(2) and this section is to prevent the duplication of net loss in transfers to which section 351 applies, capital contributions, and paid-in surplus (each, a section 362(a) transaction). See paragraph (g) of this section for definitions of terms used in this section.

(2) * * *

(b) *Basis determinations under section 362(e)(2) and this section.* Notwithstanding section 362(a), if a corporation (Acquiring) receives loss duplication property (as defined in paragraph (g)(1) of this section) from a person (Transferor) in a loss duplication transaction (as defined in paragraph (g)(2) of this section), Acquiring's basis in such property is equal to the basis of the property determined without regard to section 362(e)(2) and this section (as described in paragraph (g)(1)(ii) of this section), reduced by the property's allocable portion of Transferor's net built-in loss (as defined in paragraph (g)(3) of this section). If more than one Transferor transfers property to a corporation in a section 362(a) transaction, whether and the extent to which section 362(e)(2) and this section apply is determined separately for each Transferor.

(c) *Exceptions*—(1) *Transactions in which net built-in loss is eliminated without recognition.* Section 362(e)(2) does not apply to a transaction to the extent that—

(i) Without recognizing gain or loss, Transferor distributes the Acquiring stock received in the transaction; and

(ii) Upon completion of the transaction, no person holds Acquiring stock or any other asset with a basis determined, in whole or in part, by reference to Transferor's basis in the distributed Acquiring stock.

(2) *Certain transactions outside of the United States.* Section 362(e)(2) does not apply to a transaction if—

(i) Neither Transferor nor Acquiring is a U.S. person (as defined in section 7701(a)(30)), a person otherwise required to file a U.S. return for the year of the transaction, a controlled foreign corporation (CFC, as defined in paragraph (g)(7) of this section), or a controlled foreign partnership (CFP, as defined in paragraph (g)(9) of this section) on the date of the transaction;

(ii) The transfer occurs more than two years prior to the date of any event described in paragraph (d)(3)(ii)(E), (F), or (G) of this section; and

(iii) The original transaction and the event or events described in paragraph (d)(3)(ii)(E), (F), or (G) of this section were not entered into with a view to reducing or avoiding the Federal income tax liability of any person by avoiding the application of section 362(e)(2) and this section to the original transaction.

(d) *Election to reduce Transferor's stock basis instead of Acquiring's asset basis*—(1) *In general.* In lieu of making the basis reductions otherwise required under paragraph (b) of this section, Transferor and Acquiring may elect to reduce Transferor's basis in Acquiring stock that is received in the transaction without the recognition of gain or loss (the section 362(e)(2)(C) election). The section 362(e)(2)(C) election may be made protectively and will have no effect to the extent that property transferred in the transaction is determined not to be subject to section 362(e)(2) and this section. However, the election is irrevocable once it is made. A

section 362(e)(2)(C) election is made and effective if—

(i) Prior to the filing of a Section 362(e)(2)(C) Statement (described in paragraph (d)(3)(i) of this section), Transferor and Acquiring enter into a written, binding agreement to elect to apply section 362(e)(2)(C); and

(ii) The Section 362(e)(2)(C) Statement is filed in accordance with the provisions of paragraph (d)(3) of this section.

(2) *Effect of section 362(e)(2)(C) election*. If a section 362(e)(2)(C) election is made and in effect—

(i) An amount equal to the portion of Transferor's net built-in loss (as defined in paragraph (g)(3) of this section) that would otherwise be applied to reduce asset basis under paragraph (b) of this section is allocated among the Acquiring shares received or deemed received in the exchange (in proportion to the value of such shares) and applied to reduce Transferor's basis (determined without regard to section 362(e)(2) and this section) in each such share; and

(ii) Acquiring's basis in loss duplication property received from Transferor in the transaction is not determined under section 362(e)(2) and this section.

(3) *Section 362(e)(2)(C) Statement*—(i) *Form and contents of statement*. The Section 362(e)(2)(C) Statement is to be titled "Section 362(e)(2)(C) Statement." The Section 362(e)(2)(C) Statement must—

(A) Identify (by name and tax identification number, if any) Transferor and Acquiring;

(B) State that Transferor and Acquiring have entered into a written, binding agreement to elect to apply section 362(e)(2)(C) as required in paragraph (d)(1)(i) of this section; and

(C) State the date of the transaction (or, if the transaction includes transfers on more than one date, then the dates of all transfers) to which the election applies.

(ii) *Filing the Section 362(e)(2)(C) Statement*. In general, the Section 362(e)(2)(C) Statement is filed by the person or entity described in the applicable paragraph of this paragraph (d)(3)(ii). Thus, if Transferor is a partnership, S corporation, trust (including a subpart E trust), or other pass-through entity, or Acquiring is an S corporation, the entity (and not the partners, shareholders, or other persons having an interest in the entity or its property) is the person that must file the Section 362(e)(2)(C) Statement, without regard to whether such entity is foreign or domestic. However, in the case of a CFC or CFP, the controlling U.S. shareholders of the CFC or the reporting U.S. partners of the CFP, respectively, file the Section 362(e)(2)(C) Statement.

(A) *Transferor is a person required to file a U.S. return*. If Transferor is a person required to file a U.S. return for the year of the transfer, Transferor must include the Section 362(e)(2)(C) Statement on or with its timely filed (including extensions) original U.S. return for the taxable year in which the transfer occurred.

(B) *Transferor is a CFC or CFP and not required to file a U.S. return*. If paragraph (d)(3)(ii)(A) of this section does not apply and Transferor is either a CFC or a CFP on the date of the transfer, all of Transferor's controlling U.S. shareholders (in the case of a CFC) or all of Transferor's reporting U.S. partners (in the case of a CFP) must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their taxable years in which the transfer occurred.

(C) *Transferor is not a person required to file a U.S. return, a CFC, or a CFP, but Acquiring is required to file U.S. return*. If paragraphs (d)(3)(ii)(A) and (B) of this section do not apply and Acquiring is a person required to file a U.S. return for the year of the transfer, Acquiring must include the Section 362(e)(2)(C) Statement on or with its timely filed (including extensions) original U.S. return for the taxable year in which the transfer occurred.

(D) *Transferor is not a person required to file a U.S. return, a CFC, or a CFP, Acquiring is not required to file a U.S. return, but Acquiring is a CFC*. If paragraphs (d)(3)(ii)(A) through (C) of this section do not apply and Acquiring is a CFC on the date of the transfer, all of Acquiring's controlling U.S. shareholders must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their taxable years in which the transfer occurred.

(E) *Neither Transferor nor Acquiring is a person required to file a U.S. return, a CFC, or a CFP, but Transferor later becomes a person required to file a U.S. return, a CFC, or a CFP*. If paragraphs (d)(3)(ii)(A) through (D) of this section do not apply and Transferor becomes a person required to file a U.S. return, a CFC, or a CFP, Transferor (if required to file a U.S. return), all of Transferor's controlling U.S. shareholders (if Transferor becomes a CFC not otherwise required to file a U.S. return), or all of Transferor's reporting U.S. partners (if Transferor becomes a CFP not otherwise required to file a U.S. return) must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their taxable years in which an event described in this paragraph (d)(3)(ii)(E) first occurs. For purposes of this paragraph (d)(3)(ii)(E), the term Transferor includes any person holding property with a basis determined directly or indirectly by reference to Transferor's basis in the Acquiring stock received in the transaction.

(F) *Transferor is not and does not become a person required to file a U.S. return, a CFC, or a CFP, Acquiring is not, but later becomes either a person required to file a U.S. return, a CFC, or a CFP*. If paragraphs (d)(3)(ii)(A) through (E) of this section do not apply and Acquiring becomes a person required to file a U.S. return, a CFC, or a CFP, Acquiring (if required to file a U.S. return), all of Acquiring's controlling U.S. shareholders (if Acquiring becomes a CFC not otherwise required to file a U.S. return), or all of Acquiring's reporting U.S. partners (if Acquiring becomes a CFP not otherwise required to file a U.S. return) must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their taxable years in which an event described in this paragraph (d)(3)(ii)(F) first occurs. For purposes of this paragraph (d)(3)(ii)(F), the term Acquiring includes any person holding property with a basis determined directly or indirectly by reference to Acquiring's basis in loss duplication property received in the transaction.

(G) *Transferor and Acquiring are not and do not become a person required to file a U.S. return, a CFC, or a CFP, but the basis of the loss duplication property or Acquiring stock later becomes relevant for Federal tax purposes*. If paragraphs (d)(3)(ii)(A) through (F) of this section do not apply and, in a transferred basis transaction, a person required to file a U.S. return, a CFC, or a CFP acquires either

loss duplication property or Acquiring stock that was received in the loss duplication transaction, or any property the basis of which is determined in whole or in part by reference to any such property or stock, all such persons (or, in the case of a CFC or CFP not required to file a U.S. return, all the controlling U.S. shareholders or all the reporting U.S. partners, as applicable) must include the Section 362(e)(2)(C) Statement on or with their timely filed (including extensions) original U.S. returns for their first taxable year(s) in which there occurs an event or events described in this paragraph (d)(3)(ii)(G).

(e) *Transfers by partnerships and S corporations*—(1) *Transfers by partnerships*. If a partnership transfers property in a loss duplication transaction with respect to which a section 362(e)(2)(C) election is made, the resulting reduction to the partnership's basis in the Acquiring stock received in exchange for the loss duplication property is treated as an expenditure of the partnership described in section 705(a)(2)(B).

(2) *Transfers by S corporations*. If an S corporation transfers property in a loss duplication transaction with respect to which a section 362(e)(2)(C) election is made, the resulting reduction to the S corporation's basis in the Acquiring stock received in exchange for the loss duplication property is treated as an expense of the S corporation described in section 1367(a)(2)(D).

(f) *Transfers to S corporations*. If a person transfers property to an S corporation in a loss duplication transaction, any resulting reduction under section 362(e)(2) and this section to the S corporation's basis in the property received is not treated as an expense of the S corporation described in section 1367(a)(2)(D).

(g) *Definitions*. For purposes of section 362(e)(2) and this section—

(1) *Loss duplication property* is any property—

(i) That is transferred by Transferor to Acquiring in a loss duplication transaction (as defined in paragraph (g)(2) of this section); and

(ii) That Acquiring would take with a basis in excess of value immediately after the transaction; for this purpose, the basis Acquiring would take in the property is determined immediately after the transaction and without regard to section 362(e)(2) and this section, but otherwise taking into account all applicable provisions of law, including, without limitation, section 362(e)(1).

(2) A *loss duplication transaction* is a section 362(a) transaction in which Acquiring's aggregate basis in the property received from Transferor would, but for section 362(e)(2) and this section, exceed the aggregate value of such property immediately after the transaction. For this purpose—

(i) A transaction is a section 362(a) transaction if it is described in section 362(a) without regard to whether it is also described in any other provision of the Internal Revenue Code (Code), including, without limitation, section 362(b); and

(ii) Acquiring's aggregate basis in the property received from Transferor is determined immediately after the transaction and without regard to section 362(e)(2) and this section, but otherwise taking into account all applicable provisions of law, including, without limitation, section 362(e)(1).

(3) *Transferor's net built-in loss* is the excess of—

(i) Acquiring's aggregate basis (determined under paragraph (g)(2)(ii) of this section) in all property received from Transferor in a loss duplication transaction, over

(ii) The aggregate value of such property immediately after the transaction.

(4) A property's *built-in loss* is the excess of Acquiring's basis in the property (determined as described in paragraph (g)(1)(ii) of this section) over the property's value (determined immediately after the transaction).

(5) A property's *allocable portion of Transferor's net built-in loss* is the portion of Transferor's net built-in loss that bears the same ratio to Transferor's net built-in loss that the property's built-in loss bears to the aggregate built-in losses reflected in the bases of loss duplication property transferred by Transferor in the transaction.

(6) A *U.S. return* is a return of income under section 6012 or an information return under Subtitle F, Chapter 61, Subchapter A, Part III of the Code (sections 6031 and following) or the regulations thereunder, that the taxpayer is unconditionally required to file. Thus, the term does not include elective forms or statements that are required to be filed only to obtain a particular tax treatment, including forms filed to make an election or to reduce or avoid withholding by a person not otherwise required to file a U.S. return (as described in this paragraph (g)(6)) (for example, a notice of nonrecognition under §1.1445–2(d)).

(7) A *controlled foreign corporation* (CFC) is any corporation described in section 957 or section 953(c).

(8) A *controlling U.S. shareholder* is any person that is treated as a controlling U.S. shareholder under §1.964–1(c)(5) because such person either owns a direct interest in the CFC or is treated as owning an interest in the CFC by reason of section 318(a)(2) (attribution from partnerships, estates, trusts, and corporations).

(9) A *controlled foreign partnership* (CFP) is any partnership treated as a controlled foreign partnership for purposes of section 6038.

(10) A *reporting U.S. partner* is any partner of a CFP that is required to file an information return with respect to the CFP pursuant to section 6038 or the regulations thereunder, without regard to §1.6038–3(c) or (j). In addition, in applying the constructive ownership rules of §1.6038–3(b)(4), the term "nonresident alien" is replaced by the term "individual."

(11) The term *stock* means both Acquiring stock and Acquiring securities received by Transferor in the transaction if gain or loss on the receipt of the stock or securities is not recognized in whole or in part.

(12) *Value*. (i) *General rule*. The term *value* means fair market value.

(ii) *Special rule for transfers of partnership interests*. Notwithstanding the general rule in paragraph (g)(12)(i) of this section, when referring to a partnership interest, for purposes of section 362(e)(2) and this section, the term *value* means the sum of the cash that Acquiring would receive for the interest, assuming an exchange between a willing buyer and a willing seller (neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts), increased by any §1.752–1 liabilities (as defined in §1.752–1(a)(4)) of the partnership allocated to Acquiring with regard to such transferred interest under section 752 immediately after the transfer to Acquiring. See §1.743–1 regarding the

application of section 743(b) following a section 362(e) basis reduction.

(h) *Examples*. The examples in this paragraph (h) illustrate the application of section 362(e)(2) and this section. For purposes of these examples, X, Y, P, S, S1, S2, and DC are domestic corporations; A and B are U.S. individuals; FC1 and FC2 are foreign corporations and, unless otherwise indicated, are not required to file a U.S. return and are not CFCs; and PRS is a domestic partnership. Unless the facts indicate otherwise, all persons and transactions are unrelated; Acquiring's basis in the transferred property is not determined under section 362(e)(1); the property transferred is not described in section 362(e)(1)(B); no election is made under section 362(e)(2)(C), and the transactions are not subject to recharacterization.

Example 1. Transfer described in section 351. (i) *Basic application of section.* (A) *Facts.* A owns Asset 1 (basis $90, value $60) and Asset 2 (basis $110, value $120). In a transaction to which section 351 applies, A transfers Asset 1 and Asset 2 to X in exchange for a single outstanding share of X stock representing all the outstanding X stock immediately after the transaction.

(B) *Analysis.* (*1*) *Loss duplication transaction.* A's transfer of Asset 1 and Asset 2 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's aggregate basis in those assets would be $200 ($90 + $110), which would exceed the aggregate value of the assets $180 ($60 + $120) immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and A has a net built-in loss of $20 ($200 - $180).

(*2*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, X's basis in Asset 1 would be $90, which would exceed Asset 1's $60 value immediately after the transaction. Accordingly, Asset 1 is loss duplication property. But for section 362(e)(2) and this section, X's basis in Asset 2 would be $110, which would not exceed Asset 2's $120 value immediately after the transaction. Accordingly, Asset 2 is not loss duplication property.

(C) *Basis in loss duplication property.* X's basis in Asset 1 is $70, computed as its $90 basis under section 362(a) reduced by A's $20 net built-in loss.

(D) *Basis in other property.* Under section 362(a), X has a transferred basis of $110 in Asset 2. Under section 358(a), A has an exchanged basis of $200 in the X stock it receives in the transaction.

(ii) *Section 362(e)(2)(C) election.* The facts are the same as in paragraph (i)(A) of this *Example 1*, except that A and X make an election under section 362(e)(2)(C). Under paragraph (d)(2)(i) of this section, A reduces its basis in the X stock, as determined without regard to section 362(e)(2) and this section, by the amount of A's net built-in loss that would have been applied to reduce X's basis in Asset 1 had the section 362(e)(2)(C) election not been made. In addition, no reduction is made to X's basis in Asset 1, as determined without regard to section 362(e)(2) and this section. As a result, A's basis in the X stock is $180 ($200 - $20), X's basis in Asset 1 is $90, and X's basis in Asset 2 is $110.

Example 2. Transfer described in both section 351 and section 368(a)(1)(B). (i) *Basic application of section.* (A) *Facts.* P owns the sole outstanding share of S1 stock and the ten outstanding shares of S2 stock. In a transaction to which section 351 applies and that is described in section 368(a)(1)(B), P transfers its ten S2 shares to S1 in exchange for an additional ten shares of S1 voting stock. At the time of the transfer, P has a basis of $10 each in five of its S2 shares (Shares 1 - 5) and a basis of $5 each in its other five S2 shares (Shares 6 - 10), and the value of each share is $7.

(B) *Analysis.* (*1*) *Loss duplication transaction.* P's transfer of the S2 shares is a section 362(a) transaction notwithstanding that it is also a transaction described in section 368(a)(1)(B) and therefore section 362(b). But for section 362(e)(2) and this section, S1's aggregate basis in the S2 shares would be $75 ($10 x 5, or $50, for Shares 1–5 + $5 x 5, or $25, for Shares 6–10). Thus, S1's $75 aggregate basis in the shares would exceed the aggregate value of the shares, $70 ($7 x 10 shares), immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and P has a net built-in loss of $5 ($75 - $70).

(*2*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, S1's basis in each of Shares 1–5 would be $10, which would exceed each share's $7 value immediately after the transaction. Accordingly, Shares 1–5 are each loss duplication property. But for section 362(e)(2) and this section, S1's basis in each of Shares 6–10 would be $5, which would not exceed each share's $7 value immediately after the transaction. Accordingly, Shares 6–10 are not loss duplication property.

(C) *Basis in loss duplication property.* S1's basis in each of Shares 1 - 5 is $9, computed as its $10 basis (determined without regard to section 362(e)(2) and this section) reduced by $1, the share's allocable portion (1/5) of P's net built-in loss ($5).

(D) *Basis in other property.* Under section 362(a), S1 has a transferred basis of $5 in each of Shares 6 - 10. Under section 358(a), P has an exchanged basis in the ten S1 shares it receives in the exchange ($10 in each of the five S1 shares received in exchange for Shares 1–5 and $5 in each of the five S1 shares received in exchange for Shares 5 - 10).

(ii) *Section 362(e)(2)(C) election.* The facts are the same as in paragraph (i)(A) of this *Example 2*, except that an election under section 362(e)(2)(C) is made to reduce P's basis in the shares of S1 stock received in the exchange. Under paragraph (d)(2)(i) of this section, P reduces its basis in the S1 stock by $5, the amount of P's net built-in loss that S1's basis in the S2 shares would have been reduced under section 362(e)(2) and this section had the section 362(e)(2)(C) election not been made, and no reduction is made to S1's basis in the S2 stock (as determined without regard to section 362(e)(2) and this section). Because an election is being made under section 362(e)(2)(C), P's basis in the new S1 shares is not determined under the general rule of §1.358–2(a)(2)(i) (under which P's basis in each new S1 share would be equal to the basis of the S2 share transferred in exchange for the S1 share). Section 1.358–2(a)(2)(viii)(B). Accordingly, P's basis in each new S1 share will be $7, the share's allocable portion of P's $75 aggregate basis in the S2 shares transferred in the transaction (or, $7.50 per share), reduced under paragraph (d)(2)(i) of this section by the $5 that would have been applied to reduce S1's basis in the S2 shares had the section 362(e)(2)(C) election not been made (or $.50 per share). Under paragraph (d)(2)(ii) of this section and section 362(a), S1 receives five shares of the S2 stock with a basis of $10 each and five shares of the S2 stock with a basis of $5 each.

Example 3. Transfer described in both section 351 and section 368(a)(1)(A), multiple transferors, elimination of duplicated loss. (i) *Facts.* A owns Asset 1 (basis $120, value $130) and all the outstanding shares of X stock. B owns all the outstanding shares of Y stock (basis $150). Y owns Asset 2 (basis $250, value $210). Pursuant to a single plan, A transfers Asset 1 to X in exchange for additional X shares and, in a transaction qualifying as a reorganization described in section 368(a)(1)(A), Y merges with and into X. In the merger, B receives X stock with a basis equal to B's basis in its Y stock immediately before the merger. A's transfer of Asset 1 to X in exchange for X stock and Y's transfer of Asset 2 to X in the merger are both transactions to which section 351 applies. Notwithstanding that the transfers by A and Y are pursuant to a single plan forming one transaction, section 362(e)(2) and this section apply to each transferor separately.

(ii) *Application of section to A's transfer of Asset 1.* A's transfer of Asset 1 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $120, which would not exceed Asset 1's $130 value immediately after the transaction. Accordingly, A's transfer of Asset 1 is not a loss duplication transaction notwithstanding that, taking both A's transfer and Y's transfer into account, X has an aggregate net loss in Asset 1 and Asset 2. Because Asset 1 is not received in a loss duplication transaction, it is not loss duplication property and section 362(e)(2) and this section do not apply to A's transfer of Asset 1.

(iii) *Application of section to Y's transfer of Asset 2.* (A) *Analysis.* (*1*) *Loss duplication transaction.* Y's transfer of Asset 2 to X is a section 362(a) transaction, notwithstanding that it is also a transaction described in section 368(a)(1)(A) and therefore section 362(b). But for section 362(e)(2) and this section, X's basis in Asset 2 would be $250, which would exceed Asset 2's $210 value immediately after the transaction. Accordingly, Y's transfer is a loss duplication transaction and Y has a net built-in loss of $40.

(*2*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, X's basis in Asset 2 would be $250, which would exceed Asset 2's $210 value immediately after the transaction. Accordingly, Asset 2 is loss duplication property.

(B) *Basis in loss duplication property.* Although Asset 2 is loss duplication property, section 362(e)(2) does not apply to Y's transfer of Asset 2 to X because Y distributes all of the X stock received in the exchange without recognizing gain or loss, and, upon completion of the transaction, no person will hold the X stock or any other asset with a basis determined in whole or in part by reference to Y's basis in such stock. Accordingly, under paragraph (c)(1) of this section, X's basis in Asset 2 is not determined under section 362(e)(2) and this section. Thus, under section 362(a), X's basis in Asset 2 is $250.

(iv) *Basis in other property*. Under section 358, A's basis in the X stock received in exchange for Asset 1 is $120 and B's basis in the X stock received in the merger is $150. Under section 362(a), X's basis in Asset 1 is $120.

Example 4. Transfer described in both section 351 and section 368(a)(1)(D), followed by a distribution qualifying under section 355. (i) *Basic transaction.* (A) *Facts.* A and B each own one of the two outstanding shares of X common stock. X's assets include Asset 1 (basis $120, value $70), Asset 2 (basis $160, value $110), and Asset 3 (basis $220, value $240). In a transaction to which section 351 applies and that is described in section 368(a)(1)(D), X transfers Asset 1, Asset 2, and Asset 3 to Y in exchange for all the Y stock; then, in a distribution that qualifies under section 355, X distributes all the Y stock received in the exchange to A in exchange for all of A's X stock. Under section 361(c)(1), X does not recognize gain or loss as a result of the distribution of all the Y stock.

(B) *Analysis.* (*1*) *Loss duplication transaction.* X's transfer of Asset 1, Asset 2, and Asset 3 is a section 362(a) transaction. But for section 362(e)(2) and this section, Y's aggregate basis in those assets would be $500 ($120 + $160 + $220). The aggregate value of the assets immediately after the transaction is $420 ($70 + $110 + $240). Thus, Y's aggregate basis in the assets would exceed the aggregate value of the assets immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and X has a net built-in loss of $80 ($500 - $420).

(*2*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, Y's basis in Asset 1 would be $120, which would exceed Asset 1's $70 value immediately after the transaction. Accordingly, Asset 1 is loss duplication property. But for section 362(e)(2) and this section, Y's basis in Asset 2 would be $160, which would exceed Asset 2's $110 value immediately after the transaction. Accordingly, Asset 2 is also loss duplication property. But for section 362(e)(2) and this section, Y's basis in Asset 3 would be $220 and would therefore not exceed Asset 3's $240 value immediately after the transaction. Accordingly, Asset 3 is not loss duplication property.

(C) *Basis in loss duplication property.* Although Asset 1 and Asset 2 are each loss duplication property, X will distribute the Y stock received in exchange for Asset 1 and Asset 2 without recognition of gain or loss, and, upon completion of the transaction, no person will hold the Y stock received by X or any other asset with a basis determined in whole or in part by reference to X's basis in the Y stock received in the exchange. (A's basis in the Y stock will be determined by reference to his basis in his X stock.) Accordingly, under paragraph (c)(1) of this section, Y's bases in Asset 1 and Asset 2 are determined under section 362(a) and not under section 362(e)(2) and this section. Thus, Y's basis in Asset 1 is $120 and Y's basis in Asset 2 is $160.

(D) *Basis in other property.* Under section 358, A's basis in the Y stock received in exchange for his X stock is determined by reference to his basis in his X stock surrendered. Under section 362(a), Y's basis in Asset 3 is $220.

(ii) *Section 355(e).* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that, after the section 355 distribution, Y is acquired pursuant to a plan (within the meaning of §1.355–7), resulting in the application of section 355(e) to the transactions.

(B) *Analysis.* Because section 361(c)(2), and not section 361(c)(1), will apply to X's distribution of Y stock, X will not qualify for nonrecognition treatment on the distribution of the Y stock. As a result, paragraph (c)(1) of this section does not apply to the transaction, and Y's bases in Asset 1 and Asset 2, the loss duplication property, are determined under section 362(e)(2) and this section. Asset 1 has a built-in loss of $50 ($120 - $70), and Asset 2 has a built-in loss of $50 ($160 - $110). Thus, Asset 1's allocable portion of X's net built-in loss is $40 ($50/$100 x $80), and Asset 2's allocable portion of X's net built-in loss is $40 ($50/$100 x $80). Accordingly, Y receives Asset 1 with a basis of $80 ($120 - $40) and Asset 2 with a basis of $120 ($160 - $40).

(iii) *Retained stock and securities.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that X transfers Asset 1, Asset 2, and Asset 3 to Y in exchange for Y stock and Y securities, each constituting half of the consideration. In addition, for a valid business purpose, X retains Y stock and Y securities each worth 1 percent of the total consideration.

(B) *Analysis.* Paragraph (c)(1) of this section applies only to the extent that stock received in a transaction is distributed without recognition of gain or loss. Thus, section 362(e)(2) and this section apply to the extent that property was exchanged for the retained Y stock and Y securities (2 percent of the total). Accordingly, Y reduces its basis in Asset 1 and in Asset 2, the loss duplication property, by $1.60 (two percent of X's $80 net built-in loss). Asset 1 has a built-in loss of $50 ($120 - $70), and Asset 2 has a built-in loss of $50 ($160 - $110). Thus, Asset 1's allocable portion of X's net built-in loss is $.80 ($50/$100 x $1.60), and Asset 2's allocable portion of X's net built-in loss is $.80 ($50/$100 x $1.60). As a result, Y receives Asset 1 with a basis of $119.20 ($120 - $.80) and Asset 2 with a basis of $159.20 ($160 - $.80).

(iv) *Retained stock and securities with a section 362(e)(2)(C) election.* (A) *Facts.* The facts are the same as in paragraph (iii)(A) of this *Example 4*, except that an election under section 362(e)(2)(C) is made to reduce X's bases in its retained Y stock and retained Y securities.

(B) *Analysis.* Under paragraph (d)(2)(i) of this section, X reduces its basis in the retained Y stock and the retained Y securities (determined without regard to section 362(e)(2) and this section) by $1.60, the portion of X's $80 net built-in loss that would have been applied to reduce Y's basis in the transferred assets had the election to apply section 362(e)(2)(C) not been made. (Because the value of the Y stock and the value of the Y securities are equal, X's $500 basis in the transferred property would be allocated equally between the Y stock and the Y securities, $250 to each, under §1.358–2(b)(2), and the retained Y stock and Y securities have a basis of $2.50 each (one percent of $250).) For the reasons set forth in paragraph (iii)(B) of this *Example 4*, Y would have been required to reduce its basis in the transferred assets by $1.60. Accordingly, X must reduce its aggregate basis in the retained Y stock and Y securities by $1.60. Under paragraph (d)(2)(i) of this section, the $1.60 basis reduction is allocated and applied to reduce X's bases in the retained Y stock and Y securities in proportion to the value of each. Because X retained Y stock and Y securities with equal values, X holds each of the retained Y stock and securities with an adjusted basis of $1.70 ($2.50 - $.80). Under paragraph (d)(2)(ii) of this section, Y receives Asset 1 with a basis of $120, Asset 2 with a basis of $160, and Asset 3 with a basis of $220.

Example 5. Transfer of liabilities. (i) *Liabilities described in section 358(d)(1).* (A) *Basic application of section, no section 362(e)(2)(C) election.* (*1*) *Facts.* A owns Asset 1 (basis $800, value $700). A also has a $200 liability that has been taken into account for tax purposes and is thus described in section 358(d)(1), and not in sections 357(c)(3), 358(d)(2), and 358(h)(1). A transfers Asset 1 to X in exchange for a single outstanding share of X stock representing all the outstanding X stock immediately after the transaction and X's assumption of the liability. The transfer is a transaction to which section 351 applies.

(*2*) *Analysis.* (*i*) *Loss duplication transaction.* A's transfer of Asset 1 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $800, which would exceed Asset 1's $700 value immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and A has a net built-in loss of $100 ($800 - $700).

(*ii*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, X's basis in Asset 1 would be $800, which would exceed the $700 value of Asset 1 immediately after the transaction. Accordingly, Asset 1 is loss duplication property.

(*3*) *Basis in loss duplication property.* X's basis in Asset 1 is $700, computed as its $800 basis determined under section 362(a) reduced by A's $100 net built-in loss.

(*4*) *Basis in other property.* Under sections 358(a) and (d)(1), A's basis in the X stock is $600 ($800 basis in property transferred - $200 liability assumed).

(B) *Section 362(e)(2)(C) election.* The facts are the same as in paragraph (i)(A)(*1*) of this *Example 5*, except that A and X make an election under section 362(e)(2)(C). In this case, A's $100 net built-in loss that would have been applied to reduce X's basis in Asset 1 is applied to reduce A's basis in the X stock received. As a result, A's basis in the X stock is $500 ($600, as determined in paragraph (i)(A)(*4*) of this *Example 5*, reduced by $100) and X's basis in Asset 1 is $800.

(ii) *Contingent liabilities described in section 358(h)(1), section 358(h)(2)(A) exception applies.* (A) *Facts.* The facts are the same as in paragraph (i)(A)(*1*) of this *Example 5*, except that A's liability (valued at $200) has not been taken into account for tax purposes and is described in sections 358(d)(2) and 358(h)(1). However, Asset 1 is a trade or business and the liability is associated with the trade or business; as a result, the liability is described in section 358(h)(2)(A) and is excepted from the general rule of section 358(h)(1).

(B) *Analysis.* For the reasons set forth in paragraph (i)(A)(*2*) of this *Example 5*, A's transfer of Asset 1 is a loss duplication transaction, A has a net built-in loss of $100, and Asset 1 is loss duplication property.

(C) *Basis in loss duplication property.* For the reasons set forth in paragraph (i)(A)(*3*) of this *Example 5*, X's basis in Asset 1 is $700.

(D) *Basis in other property*. A's basis in the X stock is $800 under sections 358(a), 358(d)(2), and 358(h)(2)(A).

(E) *Section 362(e)(2)(C) election*. The facts are the same as in paragraph (ii)(A) of this *Example 5*, except that A and X make an election under section 362(e)(2)(C). In this case, A's $100 net built-in loss that would have applied to reduce X's basis in Asset 1 is applied to reduce A's basis in the X stock received. As a result, A's basis in the X stock is $700 ($800, as determined in paragraph (ii)(D) of this *Example 5*, reduced by $100). X's basis in Asset 1 is $800.

Example 6. Section 351 transfer with boot. (i) *Basic transaction*. (A) *Facts*. A owns Asset 1 (basis $80, value $100) and Asset 2 (basis $30, value $25). In a transaction to which section 351 applies, A transfers Asset 1 and Asset 2 to X in exchange for 10 shares of X stock and $25.

(B) *Analysis*. (*1*) *Loss duplication transaction*. A's transfer of Asset 1 and Asset 2 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's aggregate basis in those assets would be $130, computed as follows. Under section 362(a), a corporation's basis in property acquired in a transaction to which section 351 applies is the same as the property's basis in the hands of the transferor, increased by any gain recognized to the transferor on such transfer. Under section 351(b), gain (but not loss) is recognized to the extent a transferor in a section 351 exchange receives other property or money in addition to the stock permitted to be received without the recognition of gain. To determine the amount of gain recognized under section 351(b), the consideration is allocated proportionately (by value) among the transferred properties. A's gain on the transfer is therefore computed as follows: Asset 1 reflects 80 percent of the value transferred ($100/$125) and Asset 2 reflects 20 percent of the value transferred ($25/$125). Thus, 80 percent of the stock (eight shares) and the cash ($20) are treated as being received in exchange for Asset 1 and 20 percent of the stock (two shares) and the cash ($5) are treated as being received in exchange for Asset 2. Thus, under section 351(b), A recognizes $20 of gain for the cash received in exchange for Asset 1, but A recognizes no loss for the amount received for Asset 2. As a result, under section 362(a), X would have a basis of $100 in Asset 1 and $30 in Asset 2. Thus, X's aggregate basis in the assets would be $130, which exceeds the $125 aggregate value of the assets ($100 + $25)). The transfer is a loss duplication transaction and A has a net built-in loss of $5 ($130 - $125).

(*2*) *Identifying loss duplication property*. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $100 (A's $80 basis increased by A's $20 gain recognized), which would not exceed Asset 1's $100 value immediately after the transaction. Accordingly, Asset 1 is not loss duplication property. But for section 362(e)(2) and this section, X's basis in Asset 2 would be $30, which would exceed Asset 2's $25 value immediately after the transaction. Accordingly, Asset 2 is loss duplication property.

(C) *Basis in loss duplication property*. X's basis in Asset 2 is $25, computed as its $30 basis under section 362(a) reduced by A's $5 net built-in loss.

(D) *Basis in other property*. Under section 362(a), X's basis in Asset 1 is $100 (A's $80 basis increased by the $20 gain recognized). Under section 358, A's basis in the X stock is $105 (the sum of its $80 basis in Asset 1, its $30 basis in Asset 2, and its $20 gain recognized, reduced by the $25 cash received in the exchange).

(ii) *Section 362(e)(2)(C) election*. The facts are the same as in paragraph (i)(A) of this *Example 6*, except that A and X elect to reduce A's stock basis under section 362(e)(2)(C). Under paragraph (d)(2)(i) of this section, A reduces its $105 basis in the X stock by $5, the amount of A's net built-in loss of that would have been applied to reduce X's basis in Asset 2 had the section 362(e)(2)(C) election not been made. As a result, A's basis in the X stock is $100, and X's basis in Asset 2 is $30.

Example 7. Section 304 sale of built-in loss stock. (i) *Basic transaction*. (A) *Facts*. A owns all the stock of X (basis $90, value $60) and all the stock of Y. A sells all his X stock to Y for $60. Under section 304, A is treated as though he transferred the X stock to Y in exchange for Y stock in a transaction to which section 351 applies. Then, Y is treated as redeeming the Y stock it was treated as having issued to A in the deemed section 351 transaction.

(B) *Analysis*. (*1*) *Loss duplication transaction*. A's deemed transfer of X stock to Y is a section 362(a) transaction. But for section 362(e)(2) and this section, Y's aggregate basis in the X stock would be $90, which would exceed the X stock's value of $60 immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and A has a net built-in loss of $30.

(*2*) *Identifying loss duplication property*. But for section 362(e)(2) and this section, Y's basis in the X stock would be $90, which would exceed the X stock's $60 value immediately after the transaction. Accordingly, the X stock is loss duplication property.

(C) *Basis in loss duplication property*. Y's basis in the X stock is $60, its $90 basis determined without regard to section 362(e)(2) and this section, reduced by A's $30 net built-in loss.

(D) *Basis in other property*. Under section 358(a), A has an exchanged basis of $90 in the Y stock he is deemed to receive in the exchange; the effect of the deemed redemption of that stock is then determined under section 302.

(ii) *Section 362(e)(2)(C) election*. The facts are the same as in paragraph (i)(A) of this *Example 7*, except that the parties elect to reduce A's stock basis under section 362(e)(2)(C). For the reasons set forth in paragraphs (i)(B) and (C) of this *Example 7*, Y's basis in the X stock would be reduced by $30. Accordingly, A's basis in the deemed-issued Y stock is $60, his $90 basis otherwise determined under section 358(a) reduced by the $30 that would have been applied to reduce Y's basis in the X stock under section 362(e)(2) and this section; the effect of the deemed redemption of that stock is then determined under section 302. Y's basis in the X stock is $90.

Example 8. Transactions involving partnerships. (i) *Transfer by a partnership*. (A) *Basic application of section*. (*1*) *Facts*. PRS owns Asset 1 (basis $100, value $70). PRS contributes Asset 1 to X in a transaction to which section 351 applies.

(*2*) *Analysis*. (*i*) *Loss duplication transaction*. PRS's transfer of Asset 1 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $100, which would exceed Asset 1's $70 value immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and PRS has a net built-in loss of $30 ($100 - $70).

(*ii*) *Identifying loss duplication property*. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $100, which would exceed Asset 1's $70 value immediately after the transaction. Accordingly, Asset 1 is loss duplication property.

(*3*) *Basis in loss duplication property*. X's basis in Asset 1 is $70, computed as its $100 basis under section 362(a) reduced by PRS's $30 net built-in loss.

(*4*) *Basis in other property*. Under section 358(a), PRS has an exchanged basis of $100 in the X stock it receives in the exchange.

(B) *Section 362(e)(2)(C) election*. The facts are the same as in paragraph (i)(A)(*1*) of this *Example 8*, except that PRS and X elect to reduce PRS's stock basis under section 362(e)(2)(C). In this case, PRS's $30 net built-in loss (as determined in paragraph (i)(A)(*2*)(*i*) of this *Example 8*) that would have been applied to reduce X's basis in Asset 1 is applied to reduce PRS's basis in the X stock received. As a result, PRS's basis in the X stock is $70 ($100 - $30) and X's basis in Asset 1 is $100. The $30 reduction to PRS's basis in the X stock is treated as an expenditure of PRS under section 705(a)(2)(B) and paragraph (e)(1) of this section. As a result, the partners of PRS must reduce their bases in their PRS interests.

(ii) *Transfer of interest in partnership with liability*. (A) *Basic application of section*. (*1*) *Facts*. A and two other individuals are equal partners in PRS. A's basis in its partnership interest is $247. A's share of PRS's §1.752–1 liabilities (as defined in §1.752–1(a)(4)) is $145. A transfers his partnership interest to X in a transaction to which section 351 applies. PRS has no election in effect under section 754. If X were to sell the PRS interest immediately after the transfer, X would receive $100 in cash or other property. In addition, assume that, taking into account the rules under §1.752–4, X's share of PRS's §1.752–1 liabilities (as defined in §1.752–1(a)(4)) is $150 immediately after the transfer.

(*2*) *Analysis*. (*i*) *Loss duplication transaction*. A's transfer of its PRS interest is a section 362(a) transaction. But for section 362(e)(2) and this section, X's basis in the PRS interest, would be $252 (A's basis of $247, reduced by A's $145 share of PRS liabilities, increased by X's $150 share of PRS liabilities) and, under paragraph (g)(12)(ii) of this section, the value of the PRS interest would be $250 (the sum of $100, the cash X would receive if X immediately sold the interest, and $150, X's share of the §1.752–1 liabilities (as defined in §1.752–1(a)(4)) under section 752 immediately after the transfer to X). Therefore, the transfer is a loss duplication transaction and A has a net built-in loss of $2 ($252 - $250).

(*ii*) *Identifying loss duplication property*. But for section 362(e)(2) and this section, X's basis in the PRS interest would be $252, which would exceed the PRS interest's $250 value immediately after the transaction. Accordingly, the PRS interest is loss duplication property.

(*3*) *Basis in loss duplication property*. X's basis in the PRS interest is $250, computed as its $252 basis under section 362(a), taking into account the rules under section 752, reduced by A's $2 net built-in loss.

(*4*) *Basis in other property*. Under section 358, taking into account the rules under section 752, A has a basis of $102 ($247 reduced by A's $145 share

of PRS liabilities) in the X stock he receives in the transaction.

(B) *Section 362(e)(2)(C) election.* The facts are the same as in paragraph (i)(A) of this *Example 8*, except that A and X make an election under section 362(e)(2)(C). Under paragraph (d)(2)(i) of this section, A reduces his basis in the X stock, as determined without regard to section 362(e)(2) and this section, by the amount of A's net built-in loss that would have been applied to reduce X's basis in the PRS interest had the section 362(e)(2)(C) election not been made. In addition, no reduction is made to X's basis in the PRS interest, as determined without regard to section 362(e)(2) and this section. As a result, A's basis in the X stock is $100 ($102 - $2) and X's basis in the PRS interest is $252.

(C) *Transfer of partnership interest with liability, not loss duplication transaction.* The facts are the same as in paragraph (ii)(A)(1) of this *Example 8*, except that A's share of PRS's §1.752–1 liabilities (as defined in §1.752–1(a)(4)) is $155. But for section 362(e)(2) and this section, X's basis in the PRS interest would be $242 (A's basis of $247, reduced by A's $155 share of PRS liabilities, increased by X's $150 share of PRS liabilities), which would not exceed the PRS interest's $250 value immediately after the transaction. Accordingly, A's transfer of the PRS interest is not a loss duplication transaction and section 362(e)(2) and this section have no application to the transaction. Under section 362(a), X's basis in the PRS interest is $242 and, under section 358, taking into account the rules under section 752, A has a basis of $92 ($247 reduced by A's $155 share of PRS liabilities) in the X stock he receives in the transaction.

Example 9. Transactions involving S Corporations. (i) *Transfer by S Corporation.* (A) *No section 362(e)(2)(C) election.* (*1*) *Facts.* S, an S corporation as defined in section 1361(a)(1), owns Asset 1 (basis $100, value $70). S transfers Asset 1 to X in exchange for a single outstanding share of X stock representing all the outstanding X stock immediately after the transaction. S does not elect to treat X as a qualified subchapter S subsidiary. The transaction is one to which section 351 applies.

(*2*) *Analysis.* (*i*) *Loss duplication transaction.* S's transfer of Asset 1 is a section 362(a) transaction. But for section 362(e)(2) and this section, X's basis in Asset 1 would be $100, which would exceed Asset 1's $70 value immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and S has a net built-in loss of $30 ($100 - $70).

(*ii*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, X's basis in Asset 1 would be $100, which would exceed Asset 1's $70 value immediately after the transaction. Accordingly, Asset 1 is loss duplication property.

(*iii*) *Basis in loss duplication property.* X's basis in Asset 1 is $70, computed as its $100 basis under section 362(a) reduced by S's $30 net built-in loss.

(*iv*) *Basis in other property.* Under section 358(a), S has an exchanged basis of $100 in the X stock it receives in the exchange.

(B) *Section 362(e)(2)(C) election.* The facts are the same as in paragraph (i)(A)(*1*) of this *Example 9*, except that S and X elect to reduce S's stock basis under section 362(e)(2). In this case, S's $30 built-in loss (as determined in paragraph (i)(A)(*2*)(*i*) of this *Example 9*) that would have been applied to reduce X's basis in Asset 1 is applied to reduce S's basis in the X stock received. As a result, S's basis in the X stock is $70 ($100 - $30) and X's basis in Asset 1 is $100. The $30 reduction to S's basis in the X stock is treated as an expense of S under section 1367(a)(2)(D) and paragraph (e)(2) of this section. As a result, the shareholders of S must reduce their bases in their S stock.

(ii) *Transfer to S Corporation.* (A) *Basic application of section.* (*1*) *Facts.* A owns Asset 1 (basis $90, value $60) and Asset 2 (basis $110, value $120). In a transaction to which section 351 applies, A transfers Asset 1 and Asset 2 to S, an S corporation as defined in section 1361(a)(1), in exchange for a single share of S stock representing all the outstanding S stock immediately after the transaction.

(*2*) *Analysis.* (*i*) *Loss duplication transaction.* A's transfer of Asset 1 and Asset 2 is a section 362(a) transaction. But for section 362(e)(2) and this section, S's aggregate basis in those assets would be $200 ($90 + $110), which would exceed the aggregate value of the assets $180 ($60 + $120) immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and A has a net built-in loss of $20 ($200 - $180).

(*ii*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, S's basis in Asset 1 would be $90, which would exceed Asset 1's $60 value immediately after the transaction. As a result, Asset 1 is loss duplication property. But for section 362(e)(2) and this section, S's basis in Asset 2 would be $110, which would not exceed Asset 2's $120 value immediately after the transaction. As a result, Asset 2 is not loss duplication property.

(*3*) *Basis in loss duplication property.* S's basis in Asset 1 is $70, computed as its $90 basis under section 362(a) reduced by S's $20 net built-in loss. The $20 reduction to S's basis in Asset 1 does not require a reduction to A's basis in its S stock under section 1367(a)(2)(D). See paragraph (f) of this section.

(*4*) *Basis in other property.* Under section 362(a), S has a transferred basis of $110 in Asset 2. Under section 358(a), A has a basis of $200 in the S stock it receives in the exchange.

(B) *Section 362(e)(2)(C) election.* (*1*) *Application of section to transaction.* The facts are the same as in paragraph (ii)(A)(*1*) of this *Example 9*, except that A and S elect to reduce A's stock basis under section 362(e)(2)(C). In this case, A's $20 built-in loss (as determined in paragraph (ii)(A)(*2*) of this *Example 9*) that would have been applied to reduce S's basis in Asset 1 is applied to reduce A's basis in the S stock received. As a result, A's basis in the S stock is $180 ($200 - $20), S's basis in Asset 1 is $90, and S's basis in Asset 2 is $110.

(*2*) *Tax consequences of subsequent disposition of transferred assets.* The facts are the same as in paragraph (ii)(B)(*1*) of this *Example 9* except that, in addition, the year after the transaction, S sells Asset 1 (basis $90, value $60) and Asset 2 (basis $110, value $120) for $180, recognizing the $20 net built-in loss. The loss is allocated to A and reduces A's basis in the S stock from $180 to $160 under section 1367(a)(2)(B). If A then sells its S stock for its $180 value, A will recognize a gain of $20.

Example 10. Triangular reorganizations. (i) *Facts.* P owns all the stock of S1 and X owns all the stock of S2. In a merger described in section 368(a)(2)(D), S2 merges with and into S1, and X receives stock of P in exchange for its S2 stock. S2 has a net built-in loss in its assets acquired by S1 in the transaction.

(ii) *Analysis.* The reorganization is not a section 362(a) transaction, notwithstanding that, under §1.358–6(c), P is treated as acquiring and then transferring S2's assets to S1 for purposes of determining P's adjustment to its basis in its S1 stock. Accordingly, S1's basis in the property acquired in the transaction is not determined under section 362(e)(2) and this section; it is determined under section 362(b).

Example 11. Transfer that includes property described in section 362(e)(1)(B) and property not described in section 362(e)(1)(B). (i) *Facts.* FC1 transfers Asset 1 (basis $80, value $50) and Asset 2 (basis $120, value $110) to DC in a transaction to which section 351 applies. Asset 1 is not property described in section 362(e)(1)(B); Asset 2 is property described in section 362(e)(1)(B).

(ii) *Basis in property described in section 362(e)(1)(B).* Immediately after the transfer and without regard to section 362(e)(1) or section 362(e)(2) and this section, DC's aggregate basis in property described in section 362(e)(1)(B) (Asset 2) would be $120 under section 362(a). However, the aggregate value of such property immediately after the transfer is $110. Accordingly, the transfer of Asset 2 is an importation of net built-in loss within the meaning of section 362(e)(1)(C) and, under section 362(e)(1), X's basis in Asset 2 would be Asset 2's value, $110.

(iii) *Application of section.* (A) *Analysis.* (*1*) *Loss duplication transaction.* FC1's transfer of Asset 1 and Asset 2 is a section 362(a) transaction. But for section 362(e)(2) and this section, DC's aggregate basis in those assets would be $190 (Asset 1's $80 basis under section 362(a) + Asset 2's $110 basis under section 362(e)(1)), which would exceed the aggregate value of the assets $160 ($50 + $110) immediately after the transaction. Accordingly, the transfer is a loss duplication transaction and FC1 has a net built-in loss of $30 ($190 - $160).

(*2*) *Identifying loss duplication property.* But for section 362(e)(2) and this section, DC's basis in Asset 1 would be $80, which would exceed Asset 1's $50 value immediately after the transaction. Accordingly, Asset 1 is loss duplication property. But for section 362(e)(2) and this section, DC's basis in Asset 2 would be $110, which would not exceed Asset 2's $110 value immediately after the transaction. Accordingly, Asset 2 is not loss duplication property.

(B) *Basis in loss duplication property.* DC's basis in Asset 1 is $50, computed as its $80 basis under section 362(a) reduced by FC1's $30 net built-in loss.

(C) *Basis in other property.* Under section 362(e)(1), DC's basis in Asset 2 is $110. Under section 358(a), FC1 has an exchanged basis of $200 in the DC stock it receives in the transaction.

Example 12. Section 362(e)(2)(C) elections with respect to transfers between persons that are not required to file a U.S. return and that are not CFCs or CFPs. (i) *Basic application of section.* On June 30, Year 1, FC1 transfers Asset 1 to FC2 in a transaction to which section 351 applies (the original transfer) and that is therefore a section 362(a) transaction. But for section 362(e)(2) and this section, FC2's basis in Asset 1 (determined immediately after the transfer, taking into account all applicable law, including section 362(e)(1)) exceeds the value of Asset 1 immediately after the transaction. Accordingly,

the transaction is a loss duplication transaction and Asset 1 is loss duplication property. FC1 and FC2 executed a written, binding agreement to apply section 362(e)(2)(C) at some point before any Section 362(e)(2)(C) Statement is filed. However, the transfer was not entered into with a view to reducing or avoiding the Federal income tax liability of any person by avoiding the application of section 362(e)(2) and this section; further, no event described in paragraph (d)(3)(ii)(E), (F), or (G) of this section occurs prior to June 30, Year 3. As a result, under paragraph (c)(2) of this section, section 362(e)(2) and this section do not apply to the transfer. Accordingly, FC2's basis in Asset 1 is determined under section 362(a), no section 362(e)(2)(C) election can be made, and any protective filing of a Section 362(e)(2)(C) Statement will have no effect.

(ii) *Loss duplication property later acquired by a person required to file U.S. return*. The facts are the same as in paragraph (i) of this *Example 12*, except that, in addition, on January 1, Year 2, FC2 transfers Asset 1 to DC in an exchange to which section 351 applies. FC2's transfer is an event described in paragraph (d)(3)(ii)(G) of this section. As a result, paragraph (c)(2) does not except the original transfer from the application of section 362(e)(2) and this section. Under paragraph (d)(3)(ii)(G) of this section, DC must include the Section 362(e)(2)(C) Statement for the original transfer on or with its Year 2 U.S. return in order for that election to be effective. The result would be the same if, instead of FC2 transferring Asset 1 to DC, FC1 transferred its FC2 stock to DC in an exchange to which section 351 applies. (Further, if an asset transferred by FC1 or FC2 to DC is a loss asset immediately after its transfer to DC, DC's basis in that asset may be subject to section 362(e)(1).)

(iii) *Party to exchange later becomes a person required to file U.S. return*. The facts are the same as in paragraph (i) of this *Example 12*, except that, in addition, on January 1, Year 2, FC2 becomes engaged in a U.S. business. FC2's becoming engaged in a U.S. business is an event described in paragraph (d)(3)(ii)(F) of this section because it will cause FC2 to become a person required to file a U.S. return. As a result, paragraph (c)(2) of this section does not except the transfer from the application of section 362(e)(2) and this section. Under paragraph (d)(3)(ii)(F) of this section, FC2 must include the Section 362(e)(2)(C) Statement for the original transfer on or with its Year 2 U.S. return in order for the section 362(e)(2)(C) election for the original transfer to be effective.

(iv) *Statement not filed with respect to designated event*. The facts are the same as in paragraph (iii) of this *Example 12*, except that, in addition, FC1 became engaged in a U.S. trade or business on October 31, Year 1 and as a result became a person required to file a U.S. return, an event described in paragraph (d)(3)(ii)(E) of this section. As a result, paragraph (c)(2) of this section does not except the transfer from the application of section 362(e)(2) and this section. Further, in order for the election to be effective, FC1 must file the Section 362(e)(2)(C) Statement on or with its Year 1 U.S. return. See paragraph (d)(3)(ii)(E) of this section. A statement filed by FC2 on or with its Year 2 U.S. return has no effect. Thus, if FC1 does not file the statement, the election does not become effective and basis is determined under the general rule of section 362(e)(2).

(v) *Nonrecognition transfer of loss duplication property outside United States, transferee later becomes engaged in U.S. trade or business*. The facts are the same as in paragraph (i) of this *Example 12*, except that, in addition, on December 31, Year 1, FC2 transfers Asset 1 to FC3 in a transferred basis transaction. In Year 2, FC3 becomes engaged in a U.S. trade or business and as a result becomes a person required to file a U.S. return; Asset 1 is not used in or connected with the U.S. trade or business or otherwise subject to Federal income tax. FC3's becoming engaged in a U.S. trade or business is an event described in paragraph (d)(3)(ii)(F) of this section because FC3, a person who holds loss duplication property with a basis determined by FC2's basis in the property, will be required to file a U.S. return as a result of its becoming engaged in a U.S. business. As a result, paragraph (c)(2) of this section does not except the transfer from the application of section 362(e)(2) and this section. Under paragraph (d)(3)(ii)(F) of this section, FC3 must include the Section 362(e)(2)(C) Statement for the original transfer on or with its Year 2 U.S. return in order for the section 362(e)(2)(C) election for the original transfer to be effective.

(i) [Reserved].

(j) *Effective/applicability date*. This section applies to transactions occurring after September 3, 2013, unless effected pursuant to a binding agreement that was in effect prior to September 3, 2013, and at all times thereafter. In addition, taxpayers may apply these regulations to transactions occurring after October 22, 2004.

Par. 4. In §1.705–1, paragraph (a)(9) is added to read as follows:

§1.705–1 Determination of basis of partner's interest.

(a) * * *

(9) For basis adjustments necessary to coordinate sections 705 and 362(e)(2), see §1.362–4(f)(i).

* * * * *

Par. 5. In §1.1367–1, a new sentence is added at the end of paragraph (c)(2) to read as follows:

§1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(c) * * *

(2) * * * For basis adjustments necessary to coordinate sections 1367 and 362(e)(2), see §1.362–4(f)(ii).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 7. In §602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.336–2	1545–2125
1.336–4	1545–2125
* * * * *	
1.362–4	1545–2247
* * * * *	

Beth Tucker,
Deputy Commissioner for Operations Support.

Approved August 23, 2013

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

(Filed by the Office of the Federal Register on August 30, 2013, 8:45 a.m., and published in the issue of the Federal Register for September 3, 2013, 78 F.R. 54156)

Section 2032A.—Valuation of Certain Farm, etc., Real Property

26 CFR 20.2032A–4: Method of valuing farm real property.

Special Use Value; Farms; Interest Rates. The 2013 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2013–19

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in Table 1 of this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2013.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A–4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Territory are set forth in the accompanying Table of Farm Credit System Bank Territories (Table 2).

Rev. Rul. 81–170, 1981–1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2012 are in Rev. Rul. 2012–26, 2012–39 I.R.B. 358. For rate information for years prior to 2012, see Rev. Rul. 2011–17, 2011–33 I.R.B. 160, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 622–3090 (not a toll-free call).

REV. RUL. 2013–19 TABLE 1

TABLE OF INTEREST RATES
(Year of Valuation 2013)

Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB	5.49
AgriBank, FCB	5.03
CoBank, ACB	4.56
Texas, FCB	4.99

REV. RUL. 2013–19 TABLE 2

TABLE OF FARM CREDIT SYSTEM BANK TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB	Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.

Section 5000A.—Requirement to Maintain Minimum Essential Coverage

T.D. 9632

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111–173. These final regulations provide guidance to individual taxpayers on the liability under section 5000A of the Internal Revenue Code for the shared responsibility payment for not maintaining minimum essential coverage and largely finalize the rules in the notice of proposed rulemaking (REG–148500–12) published in the **Federal Register** (78 FR 7314) on February 1, 2013.

DATES: *Effective Date:* These regulations are effective on August 30, 2013.

Applicability Date: For date of applicability, see §1.5000A–5(c).

FOR FURTHER INFORMATION CONTACT: Sue-Jean Kim or John B. Lovelace at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork and Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0074. The collection of information in these final regulations is in §1.5000A–3 and §1.5000A–4. The information is necessary to determine whether the shared responsibility payment provision applies to a taxpayer, and, if it applies, the amount of the penalty. The likely respondents are individuals required to file Federal income tax returns under section 6012(a)(1).

Estimated total annual reporting burden: 7,500,000 hours.

Estimated annual burden hours per respondent varies from .1 to .5 hours, depending on individual circumstances, with an estimated average of .21 hours.

Estimated number of respondents: 36,000,000.

Estimated frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Book or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

Background

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 5000A on the individual shared responsibility provision. Section 5000A was enacted by the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). On February 1, 2013, a notice of proposed rulemaking (REG–148500–12) was published in the **Federal Register** (78 FR 7314).

Written comments responding to the notice of proposed rulemaking of February 1, 2013, were received. The comments are available for public inspection at *www.regulations.gov* or on request. A public hearing was held on May 29, 2013. After considering all the comments, the proposed regulations are adopted as revised by this Treasury decision. The comments and revisions are discussed in the preamble.

In related rulemaking, on July 1, 2013, the Department of Health and Human Services (HHS) promulgated final regulations implementing certain functions of the Affordable Insurance Exchanges (Exchanges) to determine eligibility for and grant certain exemptions from the shared responsibility payment under section 5000A, and implementing the responsibilities of the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage under section 5000A(f)(1)(E). Patient Protection and Affordable Care Act: Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions, 78 FR 39494 (codified at 45 CFR pts. 155 and 156) (the HHS MEC regulations). The HHS MEC regulations provide, among other things, eligibility standards for the hardship exemption, setting forth both general and specific descriptions of the circumstances in which an Exchange will grant a hardship exemption certification as well as those in which a hardship exemption may be claimed on a Federal income tax return. The HHS MEC regulations also designate certain coverage as minimum essential coverage and outline substantive and procedural requirements for other types of coverage to be recognized as minimum essential coverage.

Summary of Comments and Explanation of Revisions

I. *Maintenance of Minimum Essential Coverage*

A. *Coverage for a month*

The proposed regulations provide that, for any calendar month, an individual has minimum essential coverage if the individual is enrolled in and entitled to receive benefits under a program or plan that is minimum essential coverage for at least one day during the month.

A commentator recommended that an individual be covered for a month if the individual is enrolled in and entitled to receive benefits under a plan or program identified as minimum essential coverage for a majority of the days in the month.

The commentator asserted that allowing one day of enrollment in a month to satisfy the coverage requirement would permit individuals to obtain minimum essential coverage for only one day and then forgo it for the rest of the month without any adverse consequence under section 5000A.

The Treasury Department and the IRS considered a rule requiring coverage for a majority of days in a month but chose the one-day rule because it provides administrative convenience for both taxpayers and the IRS. Without the one-day rule, taxpayers and the IRS would need to determine the number of days each person in a shared responsibility family is covered in each month of a taxable year. Accordingly, the final regulations do not adopt this recommendation. The Treasury Department and the IRS will reconsider this rule if future developments indicate that the rule is being abused, for example, if individuals obtain coverage for a single day in a month over the course of several months in a year.

A commentator requested that the final regulations provide that an individual who has submitted an application for Medicaid but is awaiting approval for enrollment have minimum essential coverage while the application is pending approval. In general, Medicaid coverage is granted retroactively to the date the application is filed. Section 5000A(a) requires that an individual have minimum essential coverage for a month. If retroactive coverage is granted, an applicant has minimum essential coverage. If the application is denied, the applicant does not have minimum essential coverage. Accordingly, the final regulations do not adopt this recommendation. However, an individual without coverage may be eligible for an exemption, such as a short coverage gap exemption. See §1.5000A–3 and 45 CFR 155.605.

B. *Liability for shared responsibility payment*

1. Liability for Dependents

In general, section 151 allows individual taxpayers a deduction for personal exemptions for the taxpayer, the taxpayer's spouse, and any dependents (as defined in section 152) of the taxpayer for the taxable year. Section 152 defines dependent to include a taxpayer's qualifying children and qualifying relatives. Although a section 151 deduction is allowable to a taxpayer for the taxpayer's dependents (as defined in section 152), a deduction is allowed to a taxpayer under section 151 only if the taxpayer properly claims the dependent. Consistent with section 5000A(b)(3), the proposed regulations provide that a taxpayer is liable for the shared responsibility payment imposed for any individual for a month in a taxable year for which the individual is the taxpayer's dependent (as defined in section 152) for that taxable year. Whether the taxpayer actually claims the individual as a dependent for the taxable year does not affect the taxpayer's liability for the shared responsibility payment for the individual.

Several commentators recommended modifications to the section 5000A rule addressing liability for dependents. Some commentators recommended that a taxpayer's liability for the shared responsibility payment be limited to individuals eligible for the same minimum essential coverage for which the taxpayer is eligible. The commentators stated that many taxpayers are unable to enroll their qualifying children in their employer-provided plans. Other commentators recommended that a taxpayer's liability under section 5000A extend solely to those dependents who meet the requirements to be a qualifying child under section 152, so that a taxpayer's qualifying relatives would be disregarded. In addition, commentators requested that section 5000A liability extend only to those dependents who are actually claimed by the taxpayer. They stated that the complexity in identifying a potential dependent before the taxable year begins, particularly a qualifying relative, would prevent them from making informed coverage decisions. The commentators claimed that, unless the rule is revised, those taxpayers may unexpectedly be liable for shared responsibility payments for dependents for whom a deduction under section 151 is not claimed.

Section 5000A(b)(3) provides that a taxpayer is liable for the shared responsibility payment for an individual without minimum essential coverage if the individual is the taxpayer's dependent as defined in section 152. While the definition of family size in section 5000A(c)(4)(A) refers to dependents for whom a taxpayer claims a deduction under section 151, section 5000A(b)(3) refers to section 152, and section 152 defines dependent based on status as a qualifying child or qualifying relative. Accordingly, the final regulations retain the rule imposing liability on the taxpayer who may claim an individual as a dependent.

Other commentators recommended that a non-custodial parent who must provide the health care of a child under a separation agreement, divorce decree, court order, or other similar legal obligation and who fails to provide that health care be liable for the shared responsibility payment attributable to that child even if the child is the custodial parent's dependent under section 152.

Section 5000A places liability for a dependent's lack of minimum essential coverage on the taxpayer who may claim the individual as a dependent. Section 5000A does not provide that this liability may be assigned to another taxpayer, even if the other taxpayer has a legal obligation to provide the child's health care. Accordingly, the final regulations do not adopt this recommendation. However, HHS has addressed the situation described in the comments in recently issued guidance, permitting Exchanges to grant a hardship exemption under 45 CFR 155.605(g)(1) to the custodial parent for a child in this situation if the child is ineligible for coverage under Medicaid or the Children's Health Insurance Program (CHIP). See HHS Center for Consumer Information & Insurance Oversight, Guidance on Hardship Exemption Criteria and Special Enrollment Periods (June 26, 2013).

2. Special Rule for Adopted Children

The proposed regulations provide special rules for determining liability for the shared responsibility payment attributable to children adopted or placed in foster care during a taxable year. If a taxpayer legally adopts a child and is entitled to claim the child as a dependent for the taxable year when the adoption occurs, the taxpayer is not liable for a shared responsibility payment attributable to the child for the month of the adoption and any preceding month. Conversely, if a taxpayer who is entitled to claim a child as a dependent for the taxable year places the child for adoption during the year, the taxpayer is not liable for a shared responsibility payment attributable

to the child for the month of the adoption and any following month.

Similar to the comment on a custodial parent's liability, commentators recommended that a taxpayer's liability for shared responsibility payment for an adopted child be based on the state law assigning responsibility for the child's health care, not when a child is adopted or placed for foster care.

As explained previously in section I.B.1. of this preamble, section 5000A(b)(3) provides that a taxpayer is liable for the shared responsibility payment for an individual without minimum essential coverage if the individual is the taxpayer's dependent as defined in section 152. Determining when a taxpayer is liable for an adopted child's health care under numerous and varying state laws would introduce considerable administrative difficulty and uncertainty into the implementation and administration of section 5000A. Accordingly, the final regulations do not modify the rule for determining liability for the shared responsibility payment attributable to children adopted or placed in foster care during a taxable year.

C. *Definitions of terms*

1. Insurance-related Terms

Section 5000A(f)(5) provides that any term used in section 5000A that is also used in Title I of the Affordable Care Act has the same meaning as when used in that Title. To provide additional guidance and clarity, the final regulations specifically identify the terms used in section 5000A that also are used in Title I of the Affordable Care Act. The additional terms defined include health insurance coverage, individual health insurance coverage, individual market, and state.

2. Household Income

Section 5000A(c)(4)(B) provides that the term *household income* means the modified adjusted gross income of the taxpayer plus the modified adjusted gross income of all members of the taxpayer's family required to file a tax return under section 1 for the taxable year. The proposed regulations provide that the determination of whether a family member is required to file a return is made without regard to section 1(g)(7). Under section 1(g)(7), a parent may, if certain requirements are met, elect to include in the parent's gross income, the gross income of his or her child. If the parent makes the election, the child is treated as having no gross income for the taxable year. The final regulations remove "without regard to section 1(g)(7)." The proposed regulations' use of the phrase "without regard to section 1(g)(7)" implies that the child's gross income is included in both the parent's adjusted gross income and the child's adjusted gross income in determining household income. The final regulations remove the phrase to clarify that if a parent makes an election under section 1(g)(7), household income includes the child's gross income included on the parent's return and the child is treated as having no gross income.

II. *Minimum Essential Coverage*

A. *Government-sponsored programs*

1. Medicaid Coverage for Pregnant Women

The proposed regulations exclude Medicaid coverage for pregnant women under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)) ("pregnancy-related Medicaid") from government-sponsored programs constituting minimum essential coverage. Some commentators commended this treatment of pregnancy-related Medicaid. Other commentators expressed concern that women who have pregnancy-related Medicaid and who do not have any form of minimum essential coverage would, under the proposed regulations, be subject to a shared responsibility payment. The commentators recommended that pregnancy-related Medicaid be considered minimum essential coverage solely for section 5000A (and not section 36B). In the alternative, they recommended that women enrolled in pregnancy-related Medicaid who are not also enrolled in services providing minimum essential coverage be granted a hardship exemption from the shared responsibility payment.

The final regulations do not adopt the recommendation to treat pregnancy-related Medicaid as minimum essential coverage solely for section 5000A. As explained in the preamble to the proposed regulations, states have the option to provide pregnant women with full Medicaid coverage as pregnancy-related Medicaid. Some states adopt this option. Other states do not provide full Medicaid coverage as pregnancy-related Medicaid. The final regulations continue to provide that pregnancy-related Medicaid is not minimum essential coverage.

In addition, the final regulations do not adopt the recommendation that women with pregnancy-related Medicaid be granted a hardship exemption because rules regarding eligibility for the hardship exemption fall under the jurisdiction of HHS. See section 5000A(e)(5).

However, individuals who are eligible for pregnancy-related Medicaid may not know at open enrollment for the 2014 coverage year that such coverage is not minimum essential coverage. Accordingly, the Treasury Department and the IRS anticipate issuing guidance providing that women covered with pregnancy-related Medicaid for a month in 2014 will not be liable for the shared responsibility payment for that month.

2. Section 1115 Demonstration Projects

Section 1115 of the Social Security Act (42 U.S.C. 1315) authorizes the Secretary of HHS to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid program (Section 1115 demonstration projects). These projects give states flexibility to test new or existing approaches to financing and delivering Medicaid. Some Section 1115 demonstration projects provide full Medicaid benefits, while others provide a specific and narrow set of benefits similar to the optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI)) or the optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII)).

The proposed regulations do not specifically address whether Section 1115 demonstration projects constitute Medicaid coverage under Title XIX of the Social Security Act for purposes of section 5000A. A number of commentators

recommended against considering as minimum essential coverage Section 1115 demonstration projects that provide a specific and narrow set of benefits.

The final regulations reserve on addressing the status of Section 1115 demonstration projects as minimum essential coverage and, accordingly, do not address the commentators' recommendation that a specific and narrow set of benefits provided under a Section 1115 demonstration project be excluded from the definition of minimum essential coverage. It is anticipated that future regulations that will be effective starting January 1, 2014 will provide that coverage authorized under a Section 1115 demonstration project is not government-sponsored minimum essential coverage. However, certain coverage may be recognized as minimum essential coverage by the Secretary of HHS, in consultation with the Secretary of the Treasury, under section 5000A(f)(1)(E).

Finally, it is anticipated that to the extent future guidance excludes benefits provided under certain Section 1115 demonstration projects from minimum essential coverage, the guidance also will provide that individuals who are enrolled in a Section 1115 demonstration project that is not minimum essential coverage for a month in 2014 will not be liable for the shared responsibility payment for that month.

3. Medicaid Premium Assistance Programs

The proposed regulations do not specifically address whether and to what extent Medicaid premium assistance programs are minimum essential coverage. Commentators recommended that, to preserve affected Medicaid beneficiaries' ability to receive the premium tax credit under section 36B, Medicaid premium assistance programs, which are intended to supplement comprehensive coverage, be excluded from the definition of minimum essential coverage. Commentators referred to, in particular, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) state plan option (commonly referred to as the "Katie Beckett option"), coverage under an optional Medicaid coverage group authorized by the Family Opportunity Act of 2006 (FOA), home and community based services waivers, and "Katie Beckett" waivers.

Medicaid premium assistance programs function as a service delivery mechanism for benefits covered under the Medicaid program and do not solely supplement a private health insurance plan. In general, Medicaid premium assistance programs are provided under the authority of sections 1905, 1906, and 1906A of the Social Security Act (42 U.S.C. 1396d, 1396e, and 1396e–1) to individuals described in section 1902 of the Social Security Act (42 U.S.C. 1396a) who are eligible for full Medicaid benefits.

Under section 1906 or 1906A of the Social Security Act, states may use Medicaid funds to pay premiums and cost sharing incurred by Medicaid-eligible individuals to enroll in employer-sponsored coverage if it is cost-effective for the state to do so (as compared to the cost of providing covered services through a standard service delivery mechanism, such as fee-for-service or per-patient payments to a managed care organization). States exercising this option must provide "wrap around" coverage to ensure individuals can access benefits covered under the state's Medicaid program that are not covered under the employer-sponsored insurance. Authority for states to create similar premium assistance programs for individuals to enroll in private coverage in the individual market is provided in regulations under the authority of section 1905(a)(29) of the Social Security Act published by HHS on July 15, 2013, at 42 CFR 435.1015. Individuals enrolled in the premium assistance programs are eligible for full Medicaid benefits. Accordingly, the final regulations do not adopt the commentators' recommendation. Instead, coverage under a Medicaid premium assistance program under the authority of section 1905, 1906, or 1906A of the Social Security Act to individuals described in section 1902 is minimum essential coverage.

Section 134(a) of TEFRA (Public Law 97–248) added section 1902(e)(3) of the Social Security Act (42 U.S.C. 1396a(e)(3)), under which states may provide Medicaid to a disabled child who requires an institutional level of care (such as that provided in a nursing facility) without regard to the income of the child's parent(s). A child eligible under this option is eligible for full Medicaid benefits. Enrollment of the child in private health insurance is not required as a condition of eligibility under the TEFRA option. Whenever a Medicaid beneficiary is enrolled in other coverage, Medicaid serves as the secondary payer. Thus, if a child enrolled in Medicaid under this option also has other coverage, Medicaid will serve as the secondary payer, and in that sense will wrap around the child's private insurance coverage. Because an eligible child receives full Medicaid benefits, the coverage provided is minimum essential coverage.

Sections 6062(a)(1)(A)(iii) and 6062(a)(1)(B) of FOA (Public Law 109–171) added sections 1902(a)(10)(A)(ii)(XIX) and 1902(cc) of the Social Security Act, under which states may provide Medicaid to disabled children who are not otherwise eligible for Medicaid because their income is too high. Children eligible for Medicaid under this option are entitled to the full Medicaid benefits provided to all other children enrolled in Medicaid. However, under section 1902(cc)(2)(A) of the Social Security Act, if the child's parents have access to employer-sponsored coverage in which the child can enroll and the employer pays at least 50 percent of the annual premium for coverage of the child under the employer plan, the family is required to enroll the child in the employer-sponsored coverage, and Medicaid will wrap around that coverage, providing services not covered under the employer plan. If the parents do not have access to employer-sponsored coverage for the child or if the employer does not contribute at least the minimum amount required, the family is not required to enroll the child in the coverage, and the Medicaid program will cover all Medicaid benefits. In either situation, the child is eligible for all Medicaid benefits. Therefore, coverage under this option is minimum essential coverage.

In addition, under Section 1915(c) of the Social Security Act (42. U.S.C. 1396n(c)) states have the authority to provide home and community based services to certain individuals covered under the Medicaid state plan in addition to the full Medicaid benefit package. Because these individuals receive comprehensive Medicaid benefits, coverage under a home and community based services waiver authorized under section 1915(c) of the Social

Security Act is minimum essential coverage.

The treatment of Medicaid coverage provided through a "Katie Beckett" waiver referred to by the commentators is addressed in section II.A.2. of this preamble, discussing Section 1115 demonstration projects.

4. Medicaid for the Medically Needy

The Social Security Act provides states with flexibility to extend Medicaid eligibility to individuals with high medical expenses who would otherwise be eligible for Medicaid but for their income level (medically needy individuals). See section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)) and 42 CFR §435.300 and following (Subpart D). Over half of the states have opted to provide coverage to medically needy individuals. In general, individuals whose income is in excess of the maximum allowed for Medicaid eligibility but who are otherwise eligible for Medicaid may "spend down" their income, based on incurred medical expenses, and thereby become eligible for the benefits provided for medically needy individuals in the state. States providing coverage to medically needy individuals must establish a "budget period" of between one and six months. Eligibility for coverage as a medically needy individual, which must be determined each budget period, is provided only after an individual incurs sufficient medical expenses to "spend down" to the qualifying income level. Thus, depending on an individual's medical needs and the options exercised by the state program, eligibility may be assessed as frequently as every month, and an individual may move in and out of Medicaid coverage multiple times in a year. States are permitted, and some have adopted the option, to offer benefits to the medically needy that are more limited than the benefits generally provided to Medicaid beneficiaries.

Commentators requested excluding Medicaid coverage provided to medically needy individuals from the definition of minimum essential coverage because the benefits available may be limited. In addition, treating Medicaid coverage for the medically needy as minimum essential coverage can lead those individuals to experience multiple changes in premium tax credit eligibility throughout a year, creating administrative complexity.

The final regulations reserve on whether Medicaid coverage provided to a medically needy individual is minimum essential coverage. It is anticipated that future regulations that will be effective starting in 2014 will provide that Medicaid coverage provided to a medically needy individual is not government-sponsored minimum essential coverage. However, certain coverage of this type may be recognized as minimum essential coverage by the HHS Secretary, in consultation with the Treasury Secretary, under section 5000A(f)(1)(E).

To the extent that future guidance excludes certain Medicaid coverage provided to medically needy individuals from the definition of minimum essential coverage, it is anticipated that the guidance also will provide that individuals receiving Medicaid coverage provided to medically needy individuals for a month in 2014 will not be liable for the shared responsibility payment for that month.

5. TRICARE

In accordance with section 5000A(f)(1)(A)(v), the proposed regulations provide that minimum essential coverage under government-sponsored programs includes medical coverage under chapter 55 of Title 10, U.S.C., including coverage under the TRICARE program. However, after publishing the proposed regulations, the Treasury Department and the IRS identified two programs under chapter 55 of Title 10, U.S.C., as providing benefits and services that are limited either in availability or in scope: (1) the program providing care limited to the space available in a facility for the uniformed services for individuals excluded from TRICARE coverage under section 1079(a), 1086(c)(1), or 1086(d)(1) of Title 10, U.S.C.; and (2) the program for individuals not on active duty for an injury, illness, or disease, incurred or aggravated in the line of duty under sections 1074a and 1074b of Title 10, U.S.C.

The proposed regulations exclude certain government-provided health care programs from the definition of minimum essential coverage because they do not provide a comprehensive level of benefits. Similarly, certain limited benefit TRICARE programs do not provide a comprehensive level of benefits. It is anticipated that future regulations that will be effective starting in 2014 will provide that coverage under a limited benefit TRICARE program is not minimum essential coverage. However, the final regulations reserve on the status of these programs as minimum essential coverage.

It is anticipated that if future guidance excludes the limited-availability TRICARE program under section 1079(a), 1086(c)(1), or 1086(d)(1) of Title 10, U.S.C., and the limited-scope line-of-duty TRICARE program under sections 1074a and 1074b of Title 10, U.S.C., from the definition of minimum essential coverage, the guidance also will provide that individuals enrolled in either TRICARE program for any month in 2014 will not be liable for a shared responsibility payment for that month.

B. *Eligible employer-sponsored coverage*

1. Self-Insured Group Health Plans

The preamble to the proposed regulations explains that a self-insured group health plan is an eligible employer-sponsored plan. Several commentators requested additional clarification concerning the treatment of a self-insured group health plan because these plans are not offered in a large or small group market within a state. The rule in the proposed regulations is revised to clarify that a self-insured group health plan is an eligible employer-sponsored plan, regardless of whether the plan could be offered in the large or small group market in a state.

2. Arrangements to Provide Employer-Subsidized Coverage under Plans in the Individual Market

The proposed regulations do not specifically address arrangements in which an employer provides subsidies or funds a pre-tax arrangement for employees to use to obtain coverage under plans offered in the individual market (as defined in section 5000A(f)(1)(C)). The Treasury Department and the IRS received several comments on arrangements of this type. One commentator suggested that certain arrangements of this type be treated as eligible employer-sponsored plans, arguing that treating these arrangements as eligible

employer-sponsored plans would increase flexibility for employers and employees in satisfying their respective shared responsibility requirements.

The final regulations do not specifically address these arrangements. It is anticipated that future guidance will address the application of section 5000A and the ACA's insurance market reforms to these types of arrangements.

3. Former Employees

The proposed regulations provide that the term *employee* includes former employees and, as a result, treat coverage provided by an employer to former employees as coverage under an eligible employer-sponsored plan. Commentators noted that retiree coverage may be unlike coverage offered to current employees in terms of cost, scope of benefits, and enrollment opportunities and, therefore, should be treated differently from other employer-provided coverage.

Employer-sponsored group health plans offered to former employees are treated similarly for purposes of the Public Health Service Act, the Employee Retirement Income Security Act, and other provisions of the Code. Therefore, the final regulations do not adopt this suggestion, and retiree coverage under a group health plan is minimum essential coverage. However, the final regulations provide that, for the lack of affordable coverage exemption, an individual will not be eligible for retiree coverage unless the individual enrolls. Therefore, an individual who is eligible for retiree coverage but does not enroll disregards that eligibility in determining qualification for the lack of affordable coverage exemption.

4. Plans Offered on Behalf of Employers

The Treasury Department and the IRS received comments asking whether medical coverage offered to employees by an organization acting on behalf of an employer qualifies as an eligible employer-sponsored plan. For example, commentators asked whether a multiemployer plan or a single employer collectively-bargained plan is an eligible employer-sponsored plan for the employees covered by the collective bargaining arrangement and eligible to participate in the plan. In addition, commentators asked whether a plan offered to an employer's employees by a third party, such as a professional employer organization or leasing company, is an eligible employer-sponsored plan for the employees eligible to participate in the plan. The final regulations are revised to provide that a plan offered by an employer to an employee includes a plan offered to an employee on behalf of an employer. No inference is intended from this treatment that the third party is the employer for this or any other provision of the Code or related laws.

5. Government-sponsored programs that are eligible employer-sponsored plans

The proposed regulations provide that a government-sponsored program (as described in §1.5000A–2(b)(2) of the proposed regulations) is not an eligible employer-sponsored plan. However, some individuals are eligible for minimum essential coverage under government-sponsored plans by reason of employment with the United States government. For example, the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note), is offered by an instrumentality of the Department of Defense to its employees. Accordingly, the final regulations provide that the Nonappropriated Fund Health Benefits Program is a government-sponsored program and an eligible employer-sponsored plan. The Treasury Department and the IRS are considering whether other government-sponsored programs are eligible employer-sponsored plans.

C. *Plan in the individual market*

The proposed regulations provide that a *plan in the individual market* means health insurance coverage offered to individuals not in connection with a group health plan, including a qualified health plan offered by an Exchange. Commentators stated that this definition is ambiguous about whether qualified health plans are plans in the individual market. The final regulations clarify that qualified health plans offered through Exchanges are plans in the individual market.

Another commentator asked whether a plan offered to one specific individual is a plan in the individual market. A plan offered to one specific individual is a plan in the individual market only if the plan is health insurance coverage under section 2791(b)(1) of the Public Health Service Act, is not short-term limited duration coverage, and is offered in the individual market within a state. The final regulations clarify the meaning of the term plan in the individual market by restating definitions of other essential terms.

D. *Foreign issuer coverage*

1. In General

Under section 5000A(f)(4) and §1.5000A–1(b)(2) of the final regulations, an individual is treated as having minimum essential coverage for a month if the individual is a bona fide resident of a United States possession for the month, or if the month occurs during any period described in section 911(d)(1)(A) or section 911(d)(1)(B) that is applicable to the individual. Section 911(d)(1)(A) is applicable to a citizen of the United States who has a tax home outside the United States and is a bona fide resident of a foreign country or countries during an uninterrupted period that includes an entire taxable year. Section 911(d)(1)(B) is applicable to a U.S. citizen or U.S. resident (as defined in section 7701(b)) who has a tax home outside the United States and is present in a foreign country or countries for at least 330 full days during a period of 12 consecutive months.

A commentator expressed a concern that a United States citizen or national who resides outside the United States may be subject to the shared responsibility penalty even if the individual has health care coverage provided by a foreign health insurance issuer (sometimes referred to as a form of expatriate coverage) or the government of the foreign country where the individual resides. The commentator requested that individuals in this situation be exempt from section 5000A.

Under section 5000A(f)(4), a United States citizen or national satisfying the requirements of section 911(d)(1) is deemed to have minimum essential coverage. If the individual does not satisfy those requirements, the remaining provisions of

section 5000A apply. Accordingly, the final regulations do not adopt the recommendation.

The same commentator and another commentator asked whether expatriate coverage or coverage provided by a foreign insurance issuer to foreign nationals lawfully present in the United States for an extended period of time is minimum essential coverage. The commentators acknowledged that some coverage provided by a foreign health insurance issuer is not offered in the small or large group market, or the individual market, within a state. However, the commentators noted that the foreign health care coverage may be substantially similar to other types of plans recognized as minimum essential coverage.

Under section 1304(d) of the Affordable Care Act (42 U.S.C. 18024(d)) and the final regulations, the term *state* means each of the 50 states and the District of Columbia. Coverage or a plan provided by an issuer that is not offered within a state is neither an eligible employer-sponsored plan nor a plan in the individual market. Accordingly, the final regulations do not adopt this recommendation.

However, to provide relief in the situations that the two commentators described, the HHS MEC regulations provide a process by which a sponsor of a health plan, whether domestic or foreign, may apply for recognition as minimum essential coverage under section 5000A(f)(1)(E). See 45 CFR 156.604.

2. Territory of the United States

A commentator questioned whether coverage offered by issuers located in territories of the United States is minimum essential coverage. Insured plans must be offered within a state to be treated as an eligible employer-sponsored plan or as a plan in the individual market. Section 1304(d) of the Affordable Care Act (42 U.S.C. 18024(d)) and the final regulations provide that the term *state* means each of the 50 states and the District of Columbia. Consequently, in general, health insurance coverage and insured group health plans that are not offered within one of the 50 states or the District of Columbia are neither eligible employer-sponsored plans nor plans in the individual market.

However, section 1323(a)(1) of the Affordable Care Act (42 U.S.C. 18043(a)(1)) provides that a territory electing to establish an Exchange in accordance with part II of subtitle D of the Affordable Care Act is treated as a state for applying basic rules governing qualified health plans offered through Exchanges. As discussed earlier in this preamble, a qualified health plan offered through an Exchange is a plan in the individual market within a state. Accordingly, the final regulations clarify that a qualified health plan offered through an Exchange established by and within a territory of the United States under section 1323(a)(1) of the Affordable Care Act is a plan in the individual market within a state.

III. *Exempt Individuals*

A. *Members of recognized religious sects or divisions*

Consistent with section 5000A(d)(2)(A), the proposed regulations provide that individuals who are members of a recognized religious sect or division of the sect described in section 1402(g)(1) and who are adherents of the established tenets or teachings of the sect or division are eligible to receive a religious conscience exemption certification from an Exchange. Commentators recommended that section 5000A(d)(2)(A) be narrowly construed to limit the ability of parents who qualify for this religious conscience exemption to apply for a religious conscience exemption on behalf of any minor children who, owing to their youth, should not be considered full members of a recognized religious sect or division of the sect.

Section 5000A(d)(2)(A) does not make a distinction between full and less than full membership in a sect or division. Accordingly, the final regulations do not adopt this recommendation. However, as explained in the preamble to the proposed regulations, the section 5000A religious conscience exemption is administered by HHS through Exchanges. The HHS MEC regulations permit adult members of a sect or division to apply for the exemption on behalf of their minor children. *See* 45 CFR 155.600 (definitions of applicant and application filer); 45 CFR 155.605(c)(1) (eligibility standards for religious conscience exemption). Those regulations further provide, however, that once a child turns 21 years of age, to maintain the religious conscience exemption the child must reapply for the exemption and attest to membership individually. See 45 CFR 155.605(c)(2).

B. *Members of health care sharing ministries*

The proposed regulations provide an exemption for members of health care sharing ministries as defined in section 5000A(d)(2)(B)(ii). Commentators recommended that individuals seeking the exemption based on their membership in health care sharing ministries be required to demonstrate membership for every month of the taxable year for which they seek the exemption. The proposed regulations provide that eligibility for the exemption for members of a health care sharing ministry is determined monthly, and the final regulations retain this rule.

C. *Exempt noncitizens*

Section 5000A(d)(3) and the proposed regulations provide that an individual who is not a citizen or national of the United States is exempt for a month if the individual is not lawfully present in the United States in that month. The proposed regulations provide that, for this exemption, an individual who is not a citizen or national of the United States is treated as not lawfully present in the United States for a month in a taxable year if the individual is either (1) a nonresident alien as defined in section 7701(b)(1)(B) for that taxable year or (2) does not have lawful immigration status in the United States (within the meaning of 45 CFR 155.20) for any day in the month.

Many commentators requested guidance on how individuals claim the exemption for being not lawfully present in the United States and recommended several reporting methods for this exemption. The final regulations do not adopt any of the recommended reporting methods. However, guidance on claiming exemptions will be provided in forms, instructions, publications, or other guidance published by the IRS, and these comments will be considered in developing that guidance.

Commentators also requested that the exemption for individuals not lawfully present in the United States apply to all

members of a taxpayer's family if the taxpayer qualifies for the exemption. Section 5000A applies its coverage requirement and exemptions on an individual basis, which is inconsistent with the commentators' recommendation. Accordingly, the final regulations do not adopt this suggestion.

D. *Incarcerated individuals*

Section 5000A(d)(4) provides that an individual is exempt for a month for which the individual is incarcerated (other than incarceration pending the disposition of charges). The proposed regulations clarify that an individual confined for at least one day in a jail, prison, or similar penal institution or correctional facility after the disposition of charges is exempt for the month that includes the day of confinement.

A commentator urged that those incarcerated while awaiting the final disposition of charges also be given an exemption on account of their incarceration. This recommendation is inconsistent with section 5000A(d)(4), which distinguishes between individuals incarcerated while awaiting final disposition of charges and those incarcerated after the final disposition of charges. Accordingly, the final regulations do not adopt this suggestion.

In the alternative, the commentator requested treating incarcerated individuals whose Medicaid benefits have been suspended as having minimum essential coverage. An individual incarcerated pending disposition of charges whose Medicaid benefits have been suspended remains enrolled in Medicaid, is entitled to receive benefits for healthcare provided outside the state prison system, and is not required to re-enroll in Medicaid at the end of incarceration. Thus, treating the individual as covered under Medicaid is consistent with §1.5000A–1(b)(1), which provides that an individual has minimum essential coverage for the month when the individual is enrolled in and entitled to receive benefits under a program or plan identified as minimum essential coverage in §1.5000A–2 for at least one day in the month. Accordingly, an individual incarcerated pending disposition of charges whose Medicaid benefits have been suspended is covered under minimum essential coverage, and no revision to the regulations is necessary to address the commentator's concern.

E. *Individuals who cannot afford coverage*

1. Household Income

To determine affordability of coverage, section 5000A(e)(1)(A) and the proposed regulations require taxpayers to increase household income by the portion of the required contribution made through a salary reduction arrangement and excluded from gross income. The preamble to the proposed regulations notes that the information necessary to make the required adjustment may not be readily available to the employee or the IRS and requests comments on practicable ways, if any, for making the adjustment.

A commentator stated that the information required is not readily available. The commentator recommended that, considering the limited effect of the required adjustment, the IRS postpone enforcement of the adjustment until a later year when the necessary information may become more readily available and when the effect of the adjustment may be accurately assessed.

The portion of the required contribution made through a salary reduction arrangement that is excluded from gross income includes amounts that an employee pays out of the employee's salary on a pre-tax basis for minimum essential coverage under a cafeteria plan that is an eligible employer-sponsored plan. Although the information may not be readily available, generally it is possible for an employee to identify amounts paid through a salary reduction arrangement that are excluded from the individual's gross income. In addition, under the HHS MEC regulations, a hardship exemption is available for an individual who lacks access to affordable minimum essential coverage based on projected household income. An individual seeking this exemption must adjust projected household income by the amount paid through a salary reduction arrangement for minimum essential coverage that is excluded in the prior year. Accordingly, the final regulations do not adopt this recommendation.

Several commentators suggested allowing an exemption or safe harbor for individuals whose income early in the taxable year appears to entitle them to the lack of affordable coverage exemption and who, as a result, do not obtain minimum essential coverage. If these individuals have large increases in income later in the year, they may be liable for the shared responsibility payment if no other exemption applies. The final regulations do not adopt this recommendation because it is not administrable. The IRS does not have the monthly income data necessary to verify eligibility for the proposed safe harbor or exemption. However, as explained in this preamble, the HHS MEC regulations provide for a prospective hardship exemption based on a lack of affordable coverage determined on the basis of projected household income. Individuals may mitigate potential adverse consequences of mid-year increases in household income by applying for this hardship exemption prospectively.

2. Required Contribution Percentage

One commentator requested a special rule for determining the inflation adjustment of the required contribution percentage for low- income taxpayers to provide relief if health care expenses grow more rapidly than incomes. Section 5000A(e)(1)(D) provides specific rules for annually calculating a uniform required contribution inflation adjustment. Accordingly, the final regulations do not adopt this suggestion.

The commentator also requested a special rule to avoid requiring individuals to visit Exchanges to apply for a hardship exemption. Under section 5000A(e)(5), the authority to prescribe the procedures for applying for exemptions resides with the Secretary of HHS. Based on this authorization, the HHS MEC regulations provide guidance addressing which hardship exemptions must be acquired through an Exchange and which may be claimed directly on a Federal income tax return.

3. Required Contribution

a. In general

A commentator recommended that individuals who are eligible for unaffordable coverage under an eligible employer-sponsored plan qualify for the lack of affordable coverage exemption only if coverage purchased through an Exchange would also be unaffordable. The commentator noted that those individuals might find affordable coverage under plans in the individual market and that, if so, they should be encouraged to enroll in them. Section

5000A(e)(1)(B) defines the required contribution for two discrete groups based on whether an individual is eligible for coverage under eligible employer-sponsored plans. An individual cannot be described in both groups. Thus, section 5000A does not require an individual to test the affordability of coverage under both an eligible employer-sponsored plan and a plan in the individual market. Accordingly, the final regulations do not adopt this suggestion.

b. Required contribution for individuals eligible for coverage under eligible employer-sponsored plans

The proposed regulations under section 36B published on May 3, 2013 (78 FR 25909) (the proposed minimum value regulations) provide that amounts newly made available for the current plan year under a health reimbursement arrangement (HRA) that is integrated with an eligible employer-sponsored plan are counted toward the employee's required contribution in determining the affordability of the coverage if the employee may use the amounts only for premiums or may choose to use the amounts for either premiums or cost sharing. The preamble to the proposed minimum value regulations states that regulations under section 5000A will provide a similar rule for determining the effect of amounts newly made available under an HRA for each plan year on the determination of affordability of minimum essential coverage. It is anticipated that future guidance under section 5000A will address the treatment of employer contributions to HRAs in determining the required contribution in a manner consistent with the treatment of these contributions in final rulemaking under section 36B.

The proposed regulations provide that a former employee eligible to enroll in continuation coverage is eligible for coverage under an eligible employer-sponsored plan only if the former employee enrolls in it. In addition to extending this rule to retiree coverage, the final regulations clarify that an individual eligible for continuation or retiree coverage because of a relationship to a former employee is treated in the same manner as the former employee. Therefore, individuals eligible for continuation or retiree coverage who do not enroll in it, and who are not eligible for coverage under another eligible employer-sponsored plan, determine qualification for the lack of affordable coverage exemption under the rules that apply to individuals ineligible for coverage for eligible employer-sponsored plans.

c. Required contribution for individuals ineligible for coverage under eligible employer-sponsored plans

To determine the required contribution for individuals who are ineligible for coverage under eligible employer-sponsored plans, the proposed regulations provide that the required contribution is the premium for the applicable plan reduced by the amount of the credit allowable under section 36B. The proposed regulations further provide that, in general, the applicable plan is the lowest cost bronze plan available in the Exchange serving the rating area where the individual resides that would cover all members of the individual's nonexempt family taking into account the rating factors (for example, an individual's age) that an Exchange would use to determine the cost of coverage. The proposed regulations allow taxpayers to make an irrevocable election to use a simplified method to determine the premium for the applicable plan.

One commentator requested that the election to use the simplified method to determine the premium for the applicable plan, when a plan is not offered that covers members of the entire tax household, be revocable. The Treasury Department and the IRS are considering the comment, as well as alternative simplified methods of identifying the premium for the applicable plan. Accordingly, the final regulations remove the simplified method rule that was included in the proposed regulations and reserve on providing simplified methods for identifying the premium for the applicable plan.

A commentator asked that characteristics of individuals in a taxpayer's nonexempt family taken into account in identifying the applicable plan expressly include tobacco use. The rule is intended to reflect as accurately as possible a taxpayer's actual premium amount. Therefore, the final regulations clarify that the characteristics used to identify the applicable plan include tobacco use.

It is anticipated that future HHS guidance will specify that when determining eligibility for the hardship exemption for individuals who lack affordable coverage based on projected income described in 45 CFR 155.605(g)(2), the Exchange will calculate advance payments of the premium tax credit using the rules specified in the regulations under section 36B, providing that individuals who have minimum essential coverage are excluded from the computation of the applicable benchmark plan. This treatment will ensure that Exchanges can reuse existing advance payment functionality instead of having to develop additional functionality for the sole purpose of supporting this exemption.

d. Wellness program incentives

The proposed regulations do not address wellness program incentives. Commentators recommended determining an individual's required contribution without regard to any wellness program incentives that, if received, would lower premiums. A commentator asked that premiums for the applicable plan for an individual residing in a rating area in a state participating in the Individual Market Wellness Program Demonstration Project described in section 2705(l) of the Public Health Service Act (42 U.S.C. 300gg–4(l)) disregard any premium-based wellness incentive requirements, including incentives relating to tobacco use. The proposed minimum value regulations disregard wellness program incentives, except those related to tobacco use, in determining an employee's required contribution under section 36B(c)(2)(C)(i). It is anticipated that future guidance under section 5000A will address the treatment of wellness program incentives in determining the required contribution in a manner consistent with the treatment of these incentives in final rulemaking under section 36B.

F. *Household income below the return filing threshold*

The proposed regulations exempt an individual for a month in a calendar year if the individual's household income for the taxable year is less than the applicable filing threshold. The proposed regulations provide that this below filing threshold exemption may be claimed on an income tax return. Under the proposed regulations an individual is not required to

file an income tax return to claim this exemption. One commentator requested that a taxpayer with household income below the applicable filing threshold who files a return remain eligible for this exemption. The final regulations retain the rule that an individual is not required to file a Federal income tax return to claim this exemption and clarify that a taxpayer with household income below the applicable filing threshold who files a Federal income tax return may claim the exemption on the filed return.

The same commentator inquired whether the filing threshold rule for dependents in §1.5000A–3(f)(2)(ii) of the proposed regulations affects the definition of household income in §1.5000A–1(d)(7). Under §1.5000A–3(f)(2)(ii) a dependent's applicable filing threshold is the same as the threshold for the taxpayer claiming the dependent. Section 5000A(e)(2) allows an exemption for an individual whose household income is less than the amount of gross income specified in section 6012(a)(1) *with respect to the taxpayer*. The taxpayer referred to in section 5000A(e)(2) is the taxpayer claiming the dependent. Accordingly, a dependent claimed for an exemption deduction uses the family's household income and the taxpayer's applicable filing threshold in determining eligibility for the below filing threshold exemption. This treatment has no effect on the household income definition.

G. *Members of Indian tribes*

The proposed regulations provide an exemption for individuals who are members of federally-recognized Indian tribes. Many commentators were concerned that this exemption was overly restrictive and recommended that the final regulations broaden the exemption to include all individuals who are eligible to receive services through the Indian Health Service, a tribe or tribal organization clinic, or an urban Indian organization (collectively referred to as I/T/U services). Alternatively, commentators asked that coverage under I/T/U services be recognized as minimum essential coverage solely for section 5000A or that these individuals be eligible for a hardship exemption from Exchanges.

The final regulations do not define coverage under I/T/U services as minimum essential coverage because section 5000A does not specifically identify I/T/U services as minimum essential coverage. However, following consultation among HHS, tribal groups, and the Treasury Department and the IRS, the HHS MEC regulations provide a hardship exemption for an individual who is not a member of a federally-recognized Indian tribe, but who is eligible for services through an Indian health care provider, as defined in 42 CFR 447.50, or is eligible for services through Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3). See 45 CFR 155.605(g)(6).

Several commentators also requested that individuals be allowed to claim the hardship exemption for those eligible for I/T/U services on their income tax returns. The final regulations do not adopt this suggestion because section 5000A(e)(5) provides HHS, through Exchanges, with the authority to grant hardship exemptions not delegated to the IRS.

H. *Short coverage gap*

The proposed regulations provide that an individual qualifies for the short coverage gap exemption if the continuous period without minimum essential coverage is less than three full calendar months and is the first short coverage gap in the individual's taxable year. Further, in determining whether a gap in coverage qualifies as a short coverage gap, the length of the period without minimum essential coverage is measured by reference to calendar months (for example, January or February) in conjunction with the one day rule in §1.5000A–1(b). Therefore, if an individual is enrolled in and entitled to receive benefits under a plan identified as minimum essential coverage for one day in a calendar month, the month is not included in the continuous period when applying the short coverage gap exemption.

Some commentators recommended making the short coverage gap exemption available to cover an aggregate period of coverage of less than three months, regardless of whether the period was continuous. The commentators noted that those who switched jobs frequently might have numerous short gaps in coverage throughout the year. The commentators' recommendation is inconsistent with section 5000A(e)(4)(B)(iii), which limits the short coverage gap exemption to one continuous period of less than three months. Accordingly, the final regulations do not adopt this suggestion. However, if a taxpayer has multiple short coverage gaps due to extended waiting periods after switching employment or because of other circumstances that prevent the taxpayer from obtaining coverage, the taxpayer may be eligible for a hardship or other exemption available through an Exchange. See 45 CFR 155.605.

Section 5000A(e)(4)(B)(i) provides that, in general, the length of a continuous period without coverage is determined without regard to the calendar years in which the period occurs. However, section 5000A(e)(4) expressly authorizes the Secretary of the Treasury to prescribe rules for the collection of the shared responsibility payment in cases in which a continuous period includes months in more than one taxable year. The proposed regulations provide rules for a coverage gap that straddles two taxable years. For the earlier taxable year, the coverage gap terminates at the end of the earlier taxable year. For the later taxable year, the coverage gap continues from the earlier taxable year and terminates when the individual no longer lacks minimum essential coverage. Thus, a taxpayer who lacked minimum essential coverage in November and December of one year and January and February of the following year has a coverage gap of two months in the earlier taxable year and four months in the later taxable year.

Some commentators stated that the coverage gap in the earlier year should include months in the later year in which an individual has no minimum essential coverage. Other commentators recommended that all continuous periods in a year begin no earlier than January 1, thereby ignoring any gaps in coverage in the preceding year. The final regulations adopt neither suggestion. To assist taxpayers in timely filing returns and in the interests of efficient tax administration, the final regulations provide that a continuous period terminates no later than the last day of a taxable year. In addition, for the later year when the same administrative concerns do not apply, consistent with section 5000A(e)(4)(B)(i), the final regulations provide that a continuous period may include months in an earlier year.

Under the proposed regulations an individual has minimum essential coverage for a month in which the individual is otherwise exempt from section 5000A for the short coverage gap exemption. One commentator asked whether gaps in coverage in 2013 affect the measurement of gaps in coverage beginning in January 2014. Section 5000A is effective for months beginning on or after January 1, 2014. Accordingly, the final regulations provide that gaps in coverage prior to January 1, 2014, are not taken into account when measuring the length of a coverage gap in 2014.

A commentator requested that any probationary period during which an individual is enrolled in minimum essential coverage but not yet entitled to benefits under the plan not be taken into account in determining the length of a continuous period for the short coverage gap exemption. As discussed in this preamble with regard to a similar comment concerning a taxpayer who submitted an application for Medicaid but is awaiting approval for enrollment, section 5000A(a) requires that an individual have minimum essential coverage for the month. Unless retroactive coverage is provided, an applicant awaiting approval for enrollment is not covered until approval of the application. Therefore, the final regulations do not adopt this recommendation. However, an individual who is unable to obtain coverage in a timely manner because of a lengthy approval process may be otherwise eligible for a hardship or other exemption through an Exchange. See 45 CFR 155.605.

I. *Additional hardship exemptions*

A number of commentators proposed that the IRS adopt additional hardship exemptions to address specific situations. Authority to define circumstances giving rise to a hardship exemption, as well as authority to grant hardship exemptions in individual cases, resides with HHS. HHS has provided guidance on the hardship exemption in the HHS MEC regulations.

Section 155.605(g)(3) of the HHS MEC regulations provides that the IRS may allow a taxpayer to claim a hardship exemption for a calendar year if the taxpayer was not required to file an income tax return because the taxpayer's gross income was below the applicable return filing threshold but nevertheless filed a return, claimed a dependent with a return filing requirement and, as a result, had household income that exceeds the applicable filing threshold.

Section 155.605(g)(5) of the HHS MEC regulations provides that the IRS may allow a taxpayer to claim a hardship exemption for employed family members who are eligible for affordable employer-sponsored self-only coverage, but for whom the aggregate cost of employer-sponsored coverage for all employed members of the family is unaffordable.

The information required to determine eligibility for these hardship exemptions is available only at the time of tax filing. Accordingly, the final regulations provide that eligible taxpayers may claim these two hardship exemptions on a Federal income tax return.

J. *Claiming exemptions from the shared responsibility payment*

Section 1.5000A–3(k) of the proposed regulations addresses which exemptions may be certified by an Exchange or claimed on a return, and how to claim exemptions. The HHS MEC regulations address how to request certification for an exemption from an Exchange. The manner for claiming an exemption on a return is more appropriately addressed through IRS forms, instructions, or other publications. Therefore, the final regulations do not provide information on how to claim an exemption on a Federal income tax return.

IV. *Accuracy-Related Penalties*

One commentator expressed concern that taxpayers would have difficulty accurately calculating the shared responsibility payment. Emphasizing the complexity of the calculation, the commentator requested that the IRS not impose accuracy-related penalties under section 6662 for underpayments caused by erroneous section 5000A computations.

Section 6662 does not apply to a section 5000A shared responsibility payment. The accuracy-related penalty of section 6662(a) applies only to underpayments of tax, defined in section 6664. The section 5000A shared responsibility payment is not taken into consideration in determining whether there is an underpayment of tax under section 6664. Therefore, the shared responsibility payment is not taken into account under section 6662. Forms, instructions, publications, or other guidance to be published by the IRS are anticipated to assist taxpayers in determining the amount of an applicable shared responsibility payment.

V. *Effective/Applicability Date*

These final regulations apply to taxable years ending after December 31, 2013.

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. 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 requirement 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 notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these final regulations are Sue-Jean Kim and John B. Lovelace of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.5000A–4 also issued under 26 U.S.C. 5000A(e)(4).

Par 2. Sections 1.5000A–0 through 1.5000A–5 are added to read as follows:

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§1.5000A–1 Maintenance of minimum essential coverage and liability for the shared responsibility payment.

(a) *In general.* For each month during the taxable year, a nonexempt individual must have minimum essential coverage or pay the shared responsibility payment. For a month, a nonexempt individual is an individual in existence for the entire month who is not an exempt individual described in §1.5000A–3.

(b) *Coverage under minimum essential coverage*—(1) *In general.* An individual has minimum essential coverage for a month in which the individual is enrolled in and entitled to receive benefits under a program or plan identified as minimum essential coverage in §1.5000A–2 for at least one day in the month.

(2) *Special rule for United States citizens or residents residing outside the United States or residents of territories.* An individual is treated as having minimum essential coverage for a month—

(i) If the month occurs during any period described in section 911(d)(1)(A) or section 911(d)(1)(B) that is applicable to the individual; or

(ii) If, for the month, the individual is a bona fide resident of a possession of the United States (as determined under section 937(a)).

(c) *Liability for shared responsibility payment*—(1) *In general.* A taxpayer is liable for the shared responsibility payment for a month for which—

(i) The taxpayer is a nonexempt individual without minimum essential coverage; or

(ii) A nonexempt individual for whom the taxpayer is liable under paragraph (c)(2) or (c)(3) of this section does not have minimum essential coverage.

(2) *Liability for dependents*—(i) *In general.* For a month when a nonexempt individual does not have minimum essential coverage, if the nonexempt individual is a dependent (as defined in section 152) of another individual for the other individual's taxable year including that month, the other individual is liable for the shared responsibility payment attributable to the dependent's lack of coverage. An individual is a dependent of a taxpayer for a taxable year if the individual satisfies the definition of dependent under section 152, regardless of whether the taxpayer claims the individual as a dependent on a Federal income tax return for the taxable year. If an individual may be claimed as a dependent by more than one taxpayer in the same calendar year, the taxpayer who properly claims the individual as a dependent for the taxable year is liable for the shared responsibility payment attributable to the individual. If more than one taxpayer may claim an individual as a dependent in the same calendar year but no one claims the individual as a dependent, the taxpayer with priority under the rules of section 152 to claim the individual as a dependent is liable for the shared responsibility payment for the individual.

(ii) *Special rules for dependents adopted or placed in foster care during the taxable year*—(A) *Taxpayers adopting an individual.* If a taxpayer adopts a nonexempt dependent (or accepts a nonexempt dependent who is an eligible foster child as defined in section 152(f)(1)(C)) during the taxable year and is otherwise liable for the nonexempt dependent under paragraph (c)(2)(i) of this section, the taxpayer is liable under paragraph (c)(2)(i) of this section for the nonexempt dependent only for the full months in the taxable year that follow the month in which the adoption or acceptance occurs.

(B) *Taxpayers placing an individual for adoption.* If a taxpayer who is otherwise liable for a nonexempt dependent under paragraph (c)(2)(i) of this section places (or, by operation of law, must place) the nonexempt dependent for adoption or foster care during the taxable year, the taxpayer is liable under paragraph (c)(2)(i) of this section for the nonexempt dependent only for the full months in the taxable year that precede the month in which the adoption or foster care placement occurs.

(C) *Examples.* The following examples illustrate the provisions of this paragraph (c)(2)(ii). In each example the taxpayer's taxable year is a calendar year.

Example 1. Taxpayers adopting a child. (i) E and F, married individuals filing a joint return, initiate proceedings for the legal adoption of a 2-year old child, G, in January 2016. On May 15, 2016, G becomes the adopted child (within the meaning of section 152(f)(1)(B)) of E and F, and resides with them for the remainder of 2016. Prior to the adoption, G resides with H, an unmarried individual, with H providing all of G's support. For 2016 G meets all requirements under section 152 to be E and F's dependent, and not H's dependent.

(ii) Under paragraph (c)(2) of this section, E and F are not liable for a shared responsibility payment attributable to G for January through May of 2016, but are liable for a shared responsibility payment attributable to G, if any, for June through December of 2016. H is not liable for a shared responsibility payment attributable to G for any month in 2016, because G is not H's dependent for 2016 under section 152.

Example 2. Taxpayers placing a child for adoption. (i) The facts are the same as *Example 1*, except the legal adoption occurs on August 15, 2016, and, for 2016, G meets all requirements under section 152 to be H's dependent, and not E and F's dependent.

(ii) Under paragraph (c)(2) of this section, H is liable for a shared responsibility payment attributable to G, if any, for January through July of 2016, but is not liable for a shared responsibility payment attributable to G for August through December of 2016. E and F are not liable for a shared responsibility payment attributable to G for any month in 2016, because G is not E and F's dependent for 2016 under section 152.

(3) *Liability of individuals filing a joint return.* Married individuals (within the meaning of section 7703) who file a joint

return for a taxable year are jointly liable for any shared responsibility payment for a month included in the taxable year.

(d) *Definitions*. The definitions in this paragraph (d) apply to this section and §§1.5000A–2 through 1.5000A–5.

(1) *Affordable Care Act*. *Affordable Care Act* refers to the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), as amended.

(2) *Employee*. *Employee* includes former employees.

(3) *Exchange*. *Exchange* has the same meaning as in 45 CFR 155.20.

(4) *Family*. A taxpayer's family means the individuals for whom the taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year.

(5) *Family coverage*. *Family coverage* means health insurance that covers more than one individual.

(6) *Group health insurance coverage*. *Group health insurance coverage* has the same meaning as in section 2791(b) of the Public Health Service Act (42 U.S.C. 300gg–91(b)(4)).

(7) *Group health plan*. *Group health plan* has the same meaning as in section 2791(a) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1)).

(8) *Health insurance coverage*. *Health insurance coverage* has the same meaning as in section 2791(b)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(b)(1)).

(9) *Health insurance issuer*. *Health insurance issuer* has the same meaning as in section 2791(b)(2) of the Public Health Service Act (42 U.S.C. 300gg–91(b)(2)).

(10) *Household income*—(i) *In general*. *Household income* means the sum of—

(A) A taxpayer's modified adjusted gross income; and

(B) The aggregate modified adjusted gross income of all other individuals who—

(*1*) Are included in the taxpayer's family under paragraph (d)(4) of this section; and

(*2*) Are required to file a Federal income tax return for the taxable year.

(ii) *Modified adjusted gross income*. *Modified adjusted gross income* means adjusted gross income (within the meaning of section 62) increased by—

(A) Amounts excluded from gross income under section 911; and

(B) Tax-exempt interest the taxpayer receives or accrues during the taxable year.

(11) *Individual market*. *Individual market* has the same meaning as in section 1304(a)(2) of the Affordable Care Act (42 U.S.C. 18024(a)(2)).

(12) *Large and small group market*. *Large group market* and *small group market* have the same meanings as in section 1304(a)(3) of the Affordable Care Act (42 U.S.C. 18024(a)(3)).

(13) *Month*. *Month* means calendar month.

(14) *Qualified health plan*. *Qualified health plan* has the same meaning as in section 1301(a) of the Affordable Care Act (42 U.S.C. 18021(a)).

(15) *Rating area*. *Rating area* has the same meaning as in §1.36B–1(n).

(16) *Self-only coverage*. *Self-only coverage* means health insurance that covers one individual.

(17) *Shared responsibility family*. *Shared responsibility family* means, for a month, all nonexempt individuals for whom the taxpayer (and the taxpayer's spouse, if the taxpayer is married and files a joint return with the spouse) is liable for the shared responsibility payment under paragraph (c) of this section.

(18) *State*. *State* means each of the 50 states and the District of Columbia.

§1.5000A–2 Minimum essential coverage.

(a) *In general*. *Minimum essential coverage* means coverage under a government-sponsored program (described in paragraph (b) of this section), an eligible employer-sponsored plan (described in paragraph (c) of this section), a plan in the individual market (described in paragraph (d) of this section), a grandfathered health plan (described in paragraph (e) of this section), or other health benefits coverage (described in paragraph (f) of this section). Minimum essential coverage does not include coverage described in paragraph (g) of this section. All terms defined in this section apply for purposes of this section and §1.5000A–1 and §§1.5000A–3 through 1.5000A–5.

(b) *Government-sponsored program*—(1) *In general*. Except as provided in paragraph (2), *government-sponsored program* means any of the following:

(i) *Medicare*. The Medicare program under part A of Title XVIII of the Social Security Act (42 U.S.C.1395c and following sections);

(ii) *Medicaid*. The Medicaid program under Title XIX of the Social Security Act (42 U.S.C. 1396 and following sections), other than—

(A) Optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI));

(B) Optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII));

(C) Coverage of pregnancy-related services under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)); or

(D) Coverage limited to treatment of emergency medical conditions in accordance with 8 U.S.C. 1611(b)(1)(A), as authorized by section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)).

(iii) *Children's Health Insurance Program*. The Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act (42 U.S.C 1397aa and following sections);

(iv) *TRICARE*. Medical coverage under chapter 55 of Title 10, U.S.C., including coverage under the TRICARE program.

(v) *Veterans programs*. The following health care programs under chapter 17 or 18 of Title 38, U.S.C.:

(A) The medical benefits package authorized for eligible veterans under 38 U.S.C. 1710 and 38 U.S.C. 1705;

(B) The Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) authorized under 38 U.S.C. 1781; and

(C) The comprehensive health care program authorized under 38 U.S.C. 1803 and 38 U.S.C. 1821 for certain children of Vietnam Veterans and Veterans of covered service in Korea who are suffering from spina bifida.

(vi) *Peace Corp program*. A health plan under section 2504(e) of Title 22, U.S.C. (relating to Peace Corps volunteers); and

(vii) *Nonappropriated Fund Health Benefits Program*. The Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law No. 103–337; 10 U.S.C. 1587 note).

(2) *Government-sponsored program special rules*—(i) *Coverage authorized under Section 1115 of the Social Security Act*. [Reserved]

(ii) *Medicaid for the medically needy programs*. [Reserved]

(iii) *Limited benefits TRICARE programs*. [Reserved]

(c) *Eligible employer-sponsored plan*—(1) *In general*. *Eligible employer-sponsored plan* means, with respect to any employee:

(i) Group health insurance coverage offered by, or on behalf of, an employer to the employee that is—

(A) A governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C.300gg–91(d)(8)));

(B) Any other plan or coverage offered in the small or large group market within a State;

(C) A grandfathered health plan (within the meaning of paragraph (e) of this section) offered in a group market; or

(ii) A self-insured group health plan under which coverage is offered by, or on behalf of, an employer to the employee.

(2) *Government-sponsored program generally not an eligible employer-sponsored plan*. Except for the program identified in paragraph (b)(7) of this section, a government-sponsored program described in paragraph (b) of this section is not an eligible employer-sponsored plan.

(d) *Plan in the individual market*—(1) *In general*. *Plan in the individual market* means health insurance coverage offered to individuals in the individual market within a state, other than short-term limited duration insurance within the meaning of section 2791(b)(5) of the Public Health Service Act (42 U.S.C. 300gg–91(b)(5)).

(2) *Qualified health plan offered by an Exchange*. A qualified health plan offered by an Exchange is a plan in the individual market. If a territory of the United States elects to establish an Exchange under section 1323(a) and (b) of the Affordable Care Act (42 U.S.C. 18043(a)(1), (b)), a qualified health plan offered by that Exchange is a plan in the individual market.

(e) *Grandfathered health plan*. *Grandfathered health plan* means any group health plan or group health insurance coverage to which section 1251 of the Affordable Care Act (42 U.S.C. 18011) applies.

(f) *Other coverage that qualifies as minimum essential coverage*. Minimum essential coverage includes any plan or arrangement recognized by the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, as minimum essential coverage.

(g) *Excepted benefits not minimum essential coverage*. Minimum essential coverage does not include any health insurance coverage that consists solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (42 U.S.C. §300gg–91(c)).

§1.5000A–3 Exempt individuals.

(a) *Members of recognized religious sects*—(1) *In general*. An individual is an exempt individual for a month that includes a day on which the individual has in effect a religious conscience exemption certification described in paragraph (a)(2) of this section.

(2) *Exemption certification*. A religious conscience exemption certification is issued by an Exchange in accordance with the requirements of section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)), 45 CFR 155.605(c), and 45 CFR 155.615(b) and certifies that an individual is—

(i) A member of a recognized religious sect or division of the sect that is described in section 1402(g)(1); and

(ii) An adherent of established tenets or teachings of the sect or division as described in that section.

(b) *Member of health care sharing ministries*—(1) *In general*. An individual is an exempt individual for a month that includes a day on which the individual is a member of a health care sharing ministry.

(2) *Health care sharing ministry*. For purposes of this section, *health care sharing ministry* means an organization—

(i) That is described in section 501(c)(3) and is exempt from tax under section 501(a);

(ii) Members of which share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs and without regard to the state in which a member resides or is employed;

(iii) Members of which retain membership even after they develop a medical condition;

(iv) That (or a predecessor of which) has been in existence at all times since December 31, 1999;

(v) Members of which have shared medical expenses continuously and without interruption since at least December 31, 1999; and

(vi) That conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and makes the annual audit report available to the public upon request.

(c) *Exempt noncitizens*—(1) *In general*. An individual is an exempt individual for a month that the individual is an exempt noncitizen.

(2) *Exempt noncitizens*. For purposes of this section, an individual is an exempt noncitizen for a month if the individual—

(i) Is not a U.S. citizen or U.S. national for any day during the month; and

(ii) Is either—

(A) A nonresident alien (within the meaning of section 7701(b)(1)(B)) for the taxable year that includes the month; or

(B) An individual who is not lawfully present (within the meaning of 45 CFR 155.20) on any day in the month.

(d) *Incarcerated individuals*—(1) *In general*. An individual is an exempt individual for a month that includes a day on which the individual is incarcerated.

(2) *Incarcerated*. For purposes of this section, the term *incarcerated* means confined, after the disposition of charges, in a jail, prison, or similar penal institution or correctional facility.

(e) *Individuals with no affordable coverage*—(1) *In general*. An individual is an exempt individual for a month in which the individual lacks affordable coverage. For purposes of this paragraph (e), an individual lacks affordable coverage in a month if the individual's required contribution (determined on an annual basis) for minimum essential coverage for the month exceeds the required contribution percentage (as defined in paragraph (e)(2) of this sec-

tion) of the individual's household income. For purposes of this paragraph (e), an individual's household income is increased by any amount of the required contribution made through a salary reduction arrangement that is excluded from gross income.

(2) *Required contribution percentage*—(i) *In general*. Except as provided in paragraph (e)(2)(ii) of this section, the required contribution percentage is 8 percent.

(ii) *Indexing*. For plan years beginning in any calendar year after 2014, the required contribution percentage is the percentage determined by the Department of Health and Human Services that reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for the period.

(iii) *Plan year*. For purposes of this paragraph (e), *plan year* means the eligible employer-sponsored plan's regular 12-month coverage period, or for a new employee or an individual who enrolls during a special enrollment period, the remainder of a 12-month coverage period.

(3) *Individuals eligible for coverage under eligible employer-sponsored plans*—(i) *Eligibility*—(A) *In general*. Except as provided in paragraph (e)(3)(i)(B) of this section, an employee or related individual (as defined in paragraph (e)(3)(ii)(B) of this section) is treated as eligible for coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for any day in that month during an open or special enrollment period, regardless of whether the employee or related individual is eligible for any other type of minimum essential coverage.

(B) *Multiple eligibility*. For purposes of this paragraph (e)(3), an employee eligible for coverage under an eligible employer-sponsored plan offered by the employee's employer is not treated as eligible as a related individual for coverage under an eligible employer-sponsored plan (for example, an eligible employer-sponsored plan offered by the employer of the employee's spouse) for any month included in the plan year of the eligible employer-sponsored plan offered by the employee's employer.

(C) *Special rule for post-employment coverage*. A former employee or an individual related to a former employee, who may enroll in continuation coverage required under Federal law or a state law that provides comparable continuation coverage, or in retiree coverage under an eligible employer-sponsored plan, is eligible for coverage under an eligible employer-sponsored plan only if the individual enrolls in the coverage.

(ii) *Required contribution for individuals eligible for coverage under an eligible employer-sponsored plan*—(A) *Employees*. In the case of an employee who is eligible to purchase coverage under an eligible employer-sponsored plan sponsored by the employee's employer, the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost self-only coverage.

(B) *Individuals related to employees*. In the case of an individual who is eligible for coverage under an eligible employer-sponsored plan because of a relationship to an employee and for whom a personal exemption deduction under section 151 is claimed on the employee's Federal income tax return (related individual), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all related individuals who are included in the employee's family and are not otherwise exempt under §1.5000A–3.

(C) *Required contribution for part-year period*. For each individual described in paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this section, affordability under this paragraph (e)(3) is determined separately for each employment period that is less than a full calendar year or for the portions of an employer's plan year that fall in different taxable years of the individual. Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage (in the case of the employee) or family coverage (in the case of a related individual) under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the taxable year. The annualized required contribution is the required contribution determined under paragraph (e)(3)(ii)(A) or (e)(3)(ii)(B) of this section for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of months in the part-year period during the individual's taxable year. Only full calendar months are included in the computation under this paragraph (e)(3)(ii)(C).

(D) *Employer contributions to health reimbursement arrangements*. [Reserved]

(E) *Wellness program incentives*. [Reserved]

(iii) *Examples*. The following examples illustrate the application of this paragraph (e)(3). Unless stated otherwise, in each example, each individual's taxable year is a calendar year, the individual is ineligible for any other exemptions described in this section for a month, the rate of premium growth has not exceeded the rate of income growth since 2013, and the individual's employer offers a single plan that uses a calendar plan year and is an eligible employer-sponsored plan as described in §1.5000A–2(c).

Example 1. Unmarried employee with no dependents. Taxpayer A is an unmarried individual with no dependents. In November 2015, A is eligible to enroll in self-only coverage under a plan offered by A's employer for calendar year 2016. If A enrolls in the coverage, A is required to pay $5,000 of the total annual premium. In 2016, A's household income is $60,000. Under paragraph (e)(3)(ii)(A) of this section, A's required contribution is $5,000, the portion of the annual premium A pays for self-only coverage. Under paragraph (e)(1) of this section, A lacks affordable coverage for 2016 because A's required contribution ($5,000) is greater than 8% of A's household income ($4,800).

Example 2. Married employee with dependents. Taxpayers B and C are married and file a joint return for 2016. B and C have two children, D and E. In November 2015, B is eligible to enroll in self-only coverage under a plan offered by B's employer for calendar year 2016 at a cost of $5,000 to B. C, D, and E are eligible to enroll in family coverage under the same plan for 2016 at a cost of $20,000 to B. B, C, D, and E's household income for 2016 is $90,000. Under paragraph (e)(3)(ii)(A) of this section, B's required contribution is B's share of the cost for self-only coverage, $5,000. Under paragraph (e)(1) of this section, B has affordable coverage for 2016 because B's required contribution ($5,000) does not exceed 8% of B's household income ($7,200). Under paragraph (e)(3)(ii)(B) of this section, the required contribution for C, D, and E is B's share of the cost for family coverage, $20,000. Under paragraph (e)(1) of this section, C, D, and E lack affordable coverage for 2016 because their required contribution ($20,000) exceeds 8% of their household income ($7,200).

Example 3. *Plan year is a fiscal year*. (i) Taxpayer F is an unmarried individual with no dependents. In June 2015, F is eligible to enroll in self-only coverage under a plan offered by F's employer for

the period July 2015 through June 2016 at a cost to F of $4,750. In June 2016, F is eligible to enroll in self-only coverage under a plan offered by F's employer for the period July 2016 through June 2017 at a cost to F of $5,000. In 2016, F's household income is $60,000.

(ii) Under paragraph (e)(3)(ii)(C) of this section, F's annualized required contribution for the period January 2016 through June 2016 is $4,750 ($2,375 paid for premiums in 2016 x 12/6). Under paragraph (e)(1) of this section, F has affordable coverage for January 2016 through June 2016 because F's annualized required contribution ($4,750) does not exceed 8% of F's household income ($4,800).

(iii) Under paragraph (e)(3)(ii)(C) of this section, F's annualized required contribution for the period July 2016 to December 2016 is $5,000 ($2,500 paid for premiums in 2016 x 12/6). Under paragraph (e)(1) of this section, F lacks affordable coverage for July 2016 through December 2016 because F's annualized required contribution ($5,000) exceeds 8% of F's household income ($4,800).

Example 4. *Eligibility for coverage under an eligible employer-sponsored plan and under government sponsored coverage*. Taxpayer G is unmarried and has one child, H. In November 2015, H is eligible to enroll in family coverage under a plan offered by G's employer for 2016. H is also eligible to enroll in the CHIP program for 2016. Under paragraph (e)(3)(i) of this section, H is treated as eligible for coverage under an eligible employer-sponsored plan for each month in 2016, notwithstanding that H is eligible to enroll in government sponsored coverage for the same period.

(4) *Individuals ineligible for coverage under eligible employer-sponsored plans*—(i) *Eligibility for coverage other than an eligible employer-sponsored plan*. An individual is treated as ineligible for coverage under an eligible employer-sponsored plan for a month that is not described in paragraph (e)(3)(i) of this section.

(ii) *Required contribution for individuals ineligible for coverage under eligible employer-sponsored plans*—(A) *In general*. In the case of an individual who is ineligible for coverage under an eligible employer-sponsored plan, the required contribution is the premium for the applicable plan, reduced by the maximum amount of any credit allowable under section 36B for the taxable year, determined as if the individual was covered for the entire taxable year by a qualified health plan offered through the Exchange serving the rating area where the individual resides.

(B) *Applicable plan*—(*1*) *In general*. Except as provided in paragraph (e)(4)(ii)(B)(*2*) of this section, *applicable plan* means the single lowest cost bronze plan available in the individual market through the Exchange serving the rating area in which the individual resides (without regard to whether the individual purchased a qualified health plan through the Exchange) that would cover all individuals in the individual's nonexempt family. For purposes of this paragraph (e)(4), an individual's *nonexempt family* means the family (as defined in §1.5000A–1(d)(4)) that includes the individual, excluding any family members who are otherwise exempt under section 1.5000A–3 or are treated as eligible for coverage under an eligible employer-sponsored plan under paragraph (e)(3)(i) of this section. The premium for the applicable plan takes into account rating factors (for example, an individual's age or tobacco use) that an Exchange would use to determine the cost of coverage.

(*2*) *Lowest cost bronze plan does not cover all individuals included in the taxpayer's nonexempt family*—(*i*) *In general*. If the Exchange serving the rating area where the individual resides does not offer a single bronze plan covering all individuals included in the individual's nonexempt family, the premium for the applicable plan is the sum of the premiums for the lowest cost bronze plans that are offered through the Exchanges serving the rating areas where one or more of the individuals reside that would cover in the aggregate all the individuals in the individual's nonexempt family. For instance, coverage offered through the Exchange in a rating area might not cover a family member living in different rating area or a single policy might not cover all the members in a taxpayer's household.

(*ii*) *Optional simplified method for applicable plan identification*. [Reserved]

(C) *Credit allowable under section 36B*. For purposes of paragraph (e)(4)(ii)(A) of this section, *maximum amount of any credit allowable under section 36B* means the maximum amount of the credit that would be allowable to the individual, or to the taxpayer who can properly claim the individual as a dependent, under section 36B if all members of the individual's nonexempt family enrolled in a qualified health plan through the Exchange serving the rating area where the individual resides.

(D) *Required contribution for part-year period*. For each individual described in paragraph (e)(4)(ii)(A) of this section, affordability under paragraph (e)(4) of this section is determined separately for each period described in paragraph (e)(4)(ii)(E) of this section that is less than a 12-month period. Coverage under a plan is affordable for a part-year period if the annualized required contribution for coverage under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the taxable year. The annualized required contribution is the required contribution determined under paragraph (e)(4)(ii)(A) of this section for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of months in the part-year period during the individual's taxable year. Only full calendar months are included in the computation under this paragraph (e)(4)(ii)(D).

(iii) *Examples*. The following examples illustrate the provisions of this paragraph (e)(4). Unless stated otherwise, in each example the taxpayer's taxable year is a calendar year, the rate of premium growth has not exceeded the rate of income growth since 2013, and the taxpayer is ineligible for any of the exemptions described in paragraphs (b) through (i) of this section for a month.

Example 1. Unmarried employee with no dependents. (i) Taxpayer G is an unmarried individual with no dependents. G is ineligible to enroll in any minimum essential coverage other than coverage in the individual market for all months in 2016. The annual premium for the lowest cost bronze self-only plan in G's rating area (G's applicable plan) is $5,000. The adjusted annual premium for the second lowest cost silver self-only plan in G's rating area (G's applicable benchmark plan within the meaning of §1.36B–3(f)) is $5,500. In 2016 G's household income is $40,000, which is 358% of the Federal poverty line for G's family size for the taxable year.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 358% of the Federal poverty line, G's applicable percentage is 9.5. Because each month in 2016 is a coverage month (within the meaning of §1.36B–3(c)), G's maximum credit allowable under section 36B is the excess of G's premium for the applicable benchmark plan over the product of G's household income and G's applicable percentage ($1,700). Therefore, under paragraph (e)(4)(ii)(A) of this section, G's required contribution is $3,300. Under paragraph (e)(1) of this section, G lacks affordable coverage for 2016 because G's required contribution ($3,300) exceeds 8% of G's household income ($3,200).

Example 2. Family. (i) In 2016 Taxpayers M and N are married and file a joint return. M and N have two children, P and Q. M, N, P, and Q are ineligible to enroll in minimum essential coverage other than coverage in the individual market for a month in 2016. The annual premium for M, N, P, and Q's applicable

plan is $20,000. The adjusted annual premium for M, N, P, and Q's applicable benchmark plan (within the meaning of §1.36B–3(f)) is $25,000. M and N's household income is $80,000, which is 347% of the Federal poverty line for a family size of 4 for the taxable year.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 347% of the Federal poverty line, the applicable percentage is 9.5. Because each month in 2016 is a coverage month (within the meaning of §1.36B–3(c)), the maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage ($17,400). Therefore, under paragraph (e)(4)(ii)(A) of this section, the required contribution for M, N, P, and Q is $2,600. Under paragraph (e)(1) of this section, M, N, P, and Q have affordable coverage for 2016 because their required contribution ($2,600) does not exceed 8% of their household income ($6,400).

Example 3. Family with some members eligible for government-sponsored coverage. (i) In 2016 Taxpayers U and V are married and file a joint return. U and V have two children, W and X. U and V are ineligible to enroll in minimum essential coverage other than coverage in the individual market for all months in 2016; however, W and X are eligible for coverage under CHIP for 2016. The annual premium for U, V, W, and X's applicable plan is $20,000. The adjusted annual premium for the second lowest cost silver plan that would cover U and V (the applicable benchmark plan within the meaning of §1.36B–3(f)) is $12,500. U and V's household income is $50,000, which is 217% of the Federal poverty line for a family size of 4 for the taxable year. W and X do not enroll in CHIP coverage.

(ii) Under paragraph (e)(4)(ii)(C) of this section, the credit allowable under section 36B is determined pursuant to section 36B. With household income at 217% of the Federal poverty line, the applicable percentage is 6.89. Each month in 2016 is a coverage month (within the meaning of §1.36B–3(c)) for U and V, but no months in 2016 are coverage months for W and X because they are eligible for CHIP coverage. The maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage ($9,055). Therefore, under paragraph (e)(4)(ii)(A) of this section, the required contribution is $10,945. Under paragraph (e)(1) of this section, U, V, W, and X lack affordable coverage for 2016 because their required contribution ($10,945) exceeds 8% of their household income ($4,000).

Example 4. Family with some members enrolled in government-sponsored minimum essential coverage. The facts are the same as *Example 3*, except W and X enroll in CHIP coverage on January 1, 2016. Under paragraph (e)(4)(ii)(B), U, V, W, and X are members of U and V's nonexempt family for 2016. Therefore, the annual premium for the applicable plan is the same as in *Example 3* ($20,000). The maximum credit allowable under section 36B is also the same as in *Example 3* ($9,055). Under paragraph (e)(4)(ii)(A) of this section, the required contribution is $10,945. Under paragraph (e)(1) of this section, U and V lack affordable coverage for 2016 because their required contribution ($10,945) exceeds 8% of their household income ($4,000).

(f) *Household income below filing threshold*—(1) *In general.* An individual is an exempt individual for any taxable year for which the individual's household income is less than the applicable filing threshold.

(2) *Applicable filing threshold*—(i) *In general.* For purposes of this section, *applicable filing threshold* means the amount of gross income that would trigger an individual's requirement to file a Federal income tax return under section 6012(a)(1).

(ii) *Certain dependents.* The applicable filing threshold for an individual who is properly claimed as a dependent by another taxpayer is equal to the other taxpayer's applicable filing threshold.

(3) *Manner of claiming the exemption.* A taxpayer is not required to file a Federal income tax return solely to claim the exemption described in this paragraph (f). If a taxpayer has a household income below the applicable filing threshold and nevertheless files a Federal income tax return, the taxpayer may claim the exemption described in this paragraph (f) on the return.

(g) *Members of Indian tribes.* An individual is an exempt individual for a month that includes a day on which the individual is a member of an Indian tribe. For purposes of this section, *Indian tribe* means a group or community described in section 45A(c)(6).

(h) *Individuals with hardship exemption certification*—(1) *In general.* An individual is an exempt individual for a month that includes a day on which the individual has in effect a hardship exemption certification described in paragraph (h)(2) of this section.

(2) *Hardship exemption certification.* A hardship exemption certification is issued by an Exchange under section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)), 45 CFR 155.605(g)(1), (g)(2), (g)(4) and (g)(6), 45 CFR 155.610(i), and 45 CFR 155.615(f), and certifies that an individual has suffered a hardship (as that term is defined in 45 CFR 155.605(g)) affecting the capability to obtain minimum essential coverage.

(3) *Hardship exemptions that may be claimed on a return.* A taxpayer who meets the requirements of 45 CFR 155.605(g)(3) or 45 CFR 155.605(g)(5) may claim a hardship exemption for a calendar year on a Federal income tax return.

(i) [Reserved]

(j) *Individuals with certain short coverage gaps*—(1) *In general.* An individual is an exempt individual for a month the last day of which is included in a short coverage gap.

(2) *Short coverage gap*—(i) *In general. Short coverage gap* means a continuous period of less than three months in which the individual is not covered under minimum essential coverage. If the individual does not have minimum essential coverage for a continuous period of three or more months, none of the months included in the continuous period are treated as included in a short coverage gap.

(ii) *Coordination with other exemptions.* For purposes of this paragraph (j), an individual is treated as having minimum essential coverage for a month in which an individual is exempt under any of paragraphs (a) through (h) of this section.

(iii) *More than one short coverage gap during calendar year.* If a calendar year includes more than one short coverage gap, the exemption provided by this paragraph (j) only applies to the earliest short coverage gap.

(3) *Continuous period*—(i) *In general.* Except as provided in paragraph (j)(3)(ii) of this section, the number of months included in a continuous period is determined without regard to the calendar years in which months included in that period occur. For purposes of paragraph (j) of this section, a continuous period begins no earlier than January 1, 2014.

(ii) *Continuous period straddling more than one taxable year.* If an individual does not have minimum essential coverage for a continuous period that begins in one taxable year and ends in the next, for purposes of applying this paragraph (j) to the first taxable year, the months in the second taxable year included in the continuous period are disregarded. For purposes of applying this paragraph (j) to the second taxable year, the months in the first taxable year included in the continuous period are taken into account.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (j). Unless stated otherwise, in each example the taxpayer's taxable year is a calendar year and the taxpayer is ineligible for any

of the exemptions described in paragraphs (a) through (h) of this section for a month.

Example 1. Short coverage gap. Taxpayer D has minimum essential coverage in 2016 from January 1 through March 2. After March 2, D does not have minimum essential coverage until D enrolls in an eligible employer-sponsored plan effective June 15. Under §1.5000A–1(b), for purposes of section 5000A, D has minimum essential coverage for January, February, March, and June through December. D's continuous period without coverage is 2 months, April and May. April and May constitute a short coverage gap under paragraph (j)(2)(i) of this section.

Example 2. Continuous period of 3 months or more. The facts are the same as in *Example 1*, except D's coverage is not effective until July 1. D's continuous period without coverage is 3 months, April, May, and June. Under paragraph (j)(2)(i) of this section, April, May, and June are not included in a short coverage gap.

Example 3. Short coverage gap following exempt period. Taxpayer E is incarcerated from January 1 through June 2. E enrolls in an eligible employer-sponsored plan effective September 15. Under paragraph (d) of this section, E is exempt for the period January through June. Under paragraph (j)(2)(ii) of this section, E is treated as having minimum essential coverage for this period, and E's continuous period without minimum essential coverage is 2 months, July and August. July and August constitute a short coverage gap under paragraph (j)(2)(i) of this section.

Example 4. Continuous period covering more than one taxable year. Taxpayer F, an unmarried individual with no dependents, has minimum essential coverage for the period January 1 through October 15, 2016. F is without coverage until February 15, 2017. F files his Federal income tax return for 2016 on March 10, 2017. Under paragraph (j)(3)(ii) of this section, November and December of 2016 are treated as a short coverage gap. However, November and December of 2016 are included in the continuous period that includes January 2017. The continuous period for 2017 is not less than 3 months and, therefore, January is not a part of a short coverage gap.

Example 5. Enrollment following loss of coverage. The facts are the same as in *Example 4* except F loses coverage on June 15, 2017. F enrolls in minimum essential coverage effective September 15, 2017. The continuous period without minimum essential coverage in July and August of 2017 is two months and, therefore, is a short coverage gap. Because January 2017 was not part of a short coverage gap, the earliest short coverage gap occurring in 2017 is the gap that includes July and August.

Example 6. Multiple coverage gaps. (i) The facts are the same as in *Example 5* except F has minimum essential coverage for November 2016. Under paragraph (j)(3)(ii) of this section, December 2016 is treated as a short coverage gap.

(ii) December 2016 is included in the continuous period that includes January 2017. This continuous period is two months and, therefore, January 2017 is the earliest month in 2017 that is included in a short coverage gap. Under paragraph (j)(2)(iii) of this section, the exemption under this paragraph (j) applies only to January 2017. Thus, the continuous period without minimum essential coverage in July and August of 2017 is not a short coverage gap.

§1.5000A–4 Computation of shared responsibility payment.

(a) *In general.* For each taxable year the shared responsibility payment is the lesser of—

(1) The sum of the monthly penalty amounts for each individual in the shared responsibility family; or

(2) The sum of the monthly national average bronze plan premiums for the shared responsibility family.

(b) *Monthly penalty amount*—(1) *In general. Monthly penalty amount* means, for a month that a nonexempt individual is not covered under minimum essential coverage, 1/12 multiplied by the greater of—

(i) The flat dollar amount; or

(ii) The excess income amount.

(2) *Flat dollar amount*—(i) *In general. Flat dollar amount* means the lesser of—

(A) The sum of the applicable dollar amounts for all individuals included in the taxpayer's shared responsibility family; or

(B) 300 percent of the applicable dollar amount (determined without regard to paragraph (b)(2)(iii) of this section) for the calendar year with or within which the taxable year ends.

(ii) *Applicable dollar amount.* Except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, the applicable dollar amount is—

(A) $95 in 2014;

(B) $325 in 2015; or

(C) $695 in 2016.

(iii) *Special applicable dollar amount for individuals under age 18.* If an individual has not attained the age of 18 before the first day of a month, the applicable dollar amount for the individual is equal to one-half of the applicable dollar amount (as expressed in paragraph (b)(2)(ii) of this section) for the calendar year in which the month occurs. For purposes of this paragraph (b)(2)(iii), an individual attains the age of 18 on the anniversary of the date when the individual was born. For example, an individual born on March 1, 1999, attains the age of 18 on March 1, 2017.

(iv) *Indexing of applicable dollar amount.* In any calendar year after 2016, the applicable dollar amount is $695 as increased by the product of $695 and the cost-of-living adjustment determined under section 1(f)(3) for the calendar year. For purposes of this paragraph (b)(2)(iv), the cost-of-living adjustment is determined by substituting "calendar year 2015" for "calendar year 1992" in section 1(f)(3)(B). If any increase under this paragraph (b)(2)(iv) is not a multiple of $50, the increase is rounded down to the next lowest multiple of $50.

(3) *Excess income amount*—(i) *In general. Excess income amount* means the product of—

(A) The excess of the taxpayer's household income over the taxpayer's applicable filing threshold (as defined in §1.5000A–3(f)(2)); and

(B) The income percentage.

(ii) *Income percentage.* For purposes of this section, *income percentage* means—

(A) 1.0 percent for taxable years beginning in 2013;

(B) 1.0 percent for taxable years beginning in 2014;

(C) 2.0 percent for taxable years beginning in 2015; or

(D) 2.5 percent for taxable years beginning after 2015.

(c) *Monthly national average bronze plan premium. Monthly national average bronze plan premium* means, for a month for which a shared responsibility payment is imposed, 1/12 of the annual national average premium for qualified health plans that have a bronze level of coverage, would provide coverage for the taxpayer's shared responsibility family members who do not have minimum essential coverage for the month, and are offered through Exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

(d) *Examples.* The following examples illustrate the provisions of this section. In each example the taxpayer's taxable year is a calendar year and all members of the taxpayer's shared responsibility family are ineligible for any of the exemptions described in §1.5000A–3 for a month.

Example 1. Unmarried taxpayer without minimum essential coverage. (i) In 2016, Taxpayer G is an unmarried individual with no dependents. G does not have minimum essential coverage for any month in 2016. G's household income is $120,000. G's applicable filing threshold is $12,000. The annual national average bronze plan premium for G is $5,000.

(ii) For each month in 2016, under paragraph (b)(2)(ii) of this section, G's applicable dollar amount is $695. Under paragraph (b)(2) of this section, G's flat dollar amount is $695 (the lesser of $695 and $2,085 ($695 x 3)). Under paragraph (b)(3) of this section, G's excess income amount is $2,700 (($120,000 - $12,000) x 0.025). Therefore, under

paragraph (b)(1) of this section, the monthly penalty amount is $225 (the greater of $58 ($695/12) or $225 ($2,700/12)).

(iii) The sum of the monthly penalty amounts is $2,700 ($225 x 12). The sum of the monthly national average bronze plan premiums is $5,000 ($5,000/12 x 12). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on G for 2016 is $2,700 (the lesser of $2,700 or $5,000).

Example 2. Part-year coverage. The facts are the same as in *Example 1*, except G has minimum essential coverage for January through June. The sum of the monthly penalty amounts is $1,350 ($225 x 6). The sum of the monthly national average bronze plan premiums is $2,500 ($5,000/12 x 6). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on G for 2016 is $1,350 (the lesser of $1,350 or $2,500).

Example 3. Family without minimum essential coverage. (i) In 2016, Taxpayers H and J are married and file a joint return. H and J have three children: K, age 21, L, age 15, and M, age 10. No member of the family has minimum essential coverage for any month in 2016. H and J's household income is $250,000. H and J's applicable filing threshold is $24,000. The annual national average bronze plan premium for a family of 5 (3 adults, 2 children) is $15,000.

(ii) For each month in 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicable dollar amount is $2,780 (($695 x 3 adults) + (($695/2) x 2 children)). Under paragraph (b)(2)(i) of this section, the flat dollar amount is $2,085 (the lesser of $2,780 and $2,085 ($695 x 3)). Under paragraph (b)(3) of this section, the excess income amount is $5,650 (($250,000 - $24,000) x 0.025). Therefore, under paragraph (b)(1) of this section, the monthly penalty amount is $470.83 (the greater of $173.75 ($2,085/12) or $470.83 ($5,650/12)).

(iii) The sum of the monthly penalty amounts is $5,650 ($470.83 x 12). The sum of the monthly national average bronze plan premiums is $15,000 ($15,000/12 x 12). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is $5,650 (the lesser of $5,650 or $15,000).

Example 4. Change in shared responsibility family during the year. (i) The facts are the same as in *Example 3*, except J has minimum essential coverage for January through June. The annual national average bronze plan premium for a family of 4 (2 adults, 2 children) is $10,000.

(ii) For the period January through June 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section the applicable dollar amount is $2,085 (($695 x 2 adults) + (($695/2) x 2 children)). Under paragraph (b)(2)(i) of this section, the flat dollar amount is $2,085 (the lesser of $2,085 or $2,085 ($695 x 3)).

(iii) For the period July through December 2016, the applicable dollar amount is $2,780 (($695 x 3 adults) + (($695/2) x 2 children)). Under paragraph (b)(2) of this section, the flat dollar amount is $2,085 (the lesser of $2,780 or $2,085 ($695 x 3)). Under paragraph (b)(3) of this section, the excess income amount is $5,650 (($250,000 - $24,000) x 0.025). Therefore, under paragraph (b)(1) of this section, for January through June the monthly penalty amount is $470.83 (the greater of $173.75 ($2,085/12) or $470.83 ($5,650/12)). The monthly penalty amount for July through December is $470.83 (the greater of $173.75 ($2,085/12) or $470.83 ($5,650/12)).

(iv) The sum of the monthly penalty amounts is $5,650 ($470.83 x 12). The sum of the monthly national average bronze plan premiums is $12,500 ((($10,000/12) x 6) + ((($15,000/12) x 6))). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is $5,650 (the lesser of $5,650 or $12,500).

Example 5. Eighteenth birthday during the year. (i) In 2016 Taxpayers S and T are married and file a joint return. S and T have one child, U, who turns 18 years old on June 28. S, T, and U do not enroll in, and as a result are not eligible to receive benefits under, affordable employer-sponsored coverage offered by T's employer for 2016. S and T's household income is $60,000. S and T's applicable filing threshold is $24,000. The annual national average bronze plan premium for a family of 3 (2 adults, 1 child) is $11,000.

(ii) For the period January through June 2016, under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicable dollar amount is $1,737.50 (($695 x 2 adults) + ($695/2) x 1 child)). Under paragraph (b)(2) of this section, the flat dollar amount is $1,737.50 (the lesser of $1,737.50 or $2,085 ($695 x 3)).

(iii) For the period July through December 2016, the applicable dollar amount is $2,085 ($695 x 3). Under paragraph (b)(2) of this section, the flat dollar amount is $2,085 (the lesser of $2,085 or $2,085 ($695 x 3)). Under paragraph (b)(3) of this section, the excess income amount is $900 (($60,000 - $24,000) x 0.025). Therefore, under paragraph (b)(1) of this section, for January through June the monthly penalty amount is $144.79 (the greater of $144.79 ($1,737.50/12) or $75 ($900/12)). The monthly penalty amount for July through December is $173.75 (the greater of $173.75 ($2,085/12) or $75 ($900/12)).

(iv) The sum of the monthly penalty amounts is $1,911.24 (($144.79 x 6) + ($173.75 x 6)). The sum of the monthly national average bronze plan premiums is $11,000 ($11,000/12 x 12). Therefore, under paragraph (a) of this section, the shared responsibility payment imposed on H and J for 2016 is $1,911.24 (the lesser of $1,911.24 or $11,000).

§1.5000A–5 Administration and procedure.

(a) *In general.* A taxpayer's liability for the shared responsibility payment for a month must be reported on the taxpayer's Federal income tax return for the taxable year that includes the month. The period of limitations for assessing the shared responsibility payment is the same as that prescribed by section 6501 for the taxable year to which the Federal income tax return on which the shared responsibility payment is to be reported relates. The shared responsibility payment is payable upon notice and demand by the Secretary, and except as provided in paragraph (b) of this section, is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Internal Revenue Code. The shared responsibility payment is not subject to deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. Interest on this payment accrues in accordance with the rules in section 6601.

(b) *Special rules.* Notwithstanding any other provision of law—

(1) *Waiver of criminal penalties.* In the case of a failure by a taxpayer to timely pay the shared responsibility payment, the taxpayer is not subject to criminal prosecution or penalty for the failure.

(2) *Limitations on liens and levies.* If a taxpayer fails to pay the shared responsibility payment imposed by this section and §§1.5000A–1 through 1.5000A–4, the Secretary will not file notice of lien on any property of the taxpayer, or levy on any property of the taxpayer for the failure.

(3) *Authority to offset against overpayment.* Nothing in this section prohibits the Secretary from offsetting any liability for the shared responsibility payment against any overpayment due the taxpayer, in accordance with section 6402(a) and its corresponding regulations.

(c) *Effective/applicability date.* This section and §§1.5000A–1 through 1.5000A–4 apply for months beginning after December 31, 2013.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described		Current OMB Control No.
* * * * *		
1.5000A–3	.....	1545–0074
1.5000A–4	.....	1545–0074
* * * * *		

Heather C. Maloy,
Acting Deputy Commissioner for Services and Enforcement.

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

(Filed by the Office of the Federal Register on August 27, 2013, 11:15 a.m., and published in the issue of the Federal Register for August 30, 2013, 78 F.R. 53646)

Approved August 26, 2013

Part III. Administrative, Procedural, and Miscellaneous

Transitional Penalty Relief and Schedule for Notices of Incorrect Name/TIN Combinations for Information Returns Relating to Payment Card and Third Party Network Transactions

Notice 2013–56

PURPOSE

This notice provides transitional relief from penalties for a section 6050W filer reporting incorrect taxpayer identification number (TIN) information on information returns (Form 1099–K) and payee statements filed under section 6050W of the Internal Revenue Code. The relief provided by this notice is available for certain errors on information returns and payee statements required to be filed or furnished in 2013, based on payments made in calendar year 2012, as well as certain returns and statements that are required to be filed or furnished in 2014, based on payments made in calendar year 2013, provided that the section 6050W filer makes a good faith effort to accurately file the appropriate information return and the accompanying payee statement.

In addition, this notice informs section 6050W filers that Internal Revenue Service (IRS) notices informing payors that payee name and TIN combinations are incorrect (CP2100/CP2100A Notices) will not be sent based on incorrect name and TIN combinations on Forms 1099–K due before January 1, 2014. The first CP2100 and CP2100A Notices with respect to payments subject to section 6050W will be sent in late 2014 based on incorrect name and TIN combinations on Forms 1099–K filed in 2014 for calendar year 2013 payments.

BACKGROUND

Section 6050W, added by section 3091 of the Housing Assistance Tax Act of 2008, Div. C of Pub. L. No. 110–289, 122 Stat. 2653 (the Act), requires that a payment settlement entity ("payor") making payment to a participating payee ("payee") in settlement of reportable payment transactions must make an information return for each calendar year to be filed with the IRS setting forth the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the payee. A similar statement must be furnished to the payee setting forth the gross amount of such reportable payment transactions, as well as the name, address and phone number of the information contact of the person required to make such return.

Section 6050W applies to two types of transactions: (1) payment card transactions and (2) third party network transactions. All payments made in settlement of payment card transactions must be reported in the manner described above. Payments made in settlement of third party network transactions need be reported only if gross payments to a payee exceed $20,000 and the number of such transactions exceeds 200 with respect to the participating payee. The information is to be reported to the IRS on Form 1099–K, *Payment Card and Third Party Network Payments*.

Section 6721 imposes penalties on a person for, among other things, failing to include all required information or including incorrect information on an information return. Section 6722 imposes penalties on a person for, among other things, failing to include all required information or including incorrect information on a payee statement. Notice 2011–89, 2011–46 I.R.B. 748, provided transitional penalty relief from penalties for a section 6050W filer reporting incorrect information on information returns (Form 1099–K) and payee statements filed under section 6050W of the Code. This relief was available for information returns and payee statements to be filed in 2012, based on payments made in calendar year 2011, provided that the section 6050W filer made a good faith effort to accurately file the appropriate information return and the accompanying payee statement.

Pursuant to section 3406 and the regulations thereunder, a payor must backup withhold from reportable payments made to a payee that has provided an incorrect name and TIN combination with respect to an account for which an information return was filed. Section 3406(a)(1)(B) requires that the IRS notify the payor that the payee has provided an incorrect name and TIN combination. The IRS notifies a payor of an incorrect name and TIN combination by sending the payor a CP2100 Notice or a CP2100A Notice, listing the incorrect name and TIN combinations reported on information returns filed by the payor. Upon receiving a CP2100 Notice or a CP2100A Notice, payors must send a copy of the notice identifying the TIN mismatch to the payee and attempt to obtain a correct TIN before beginning backup withholding ("B Notice procedures"). *See* Treas. Reg. § 31.3406(d)–5 (describing the B Notice procedures).

The Act amended section 3406(b)(3) by including payments required to be reported under section 6050W as reportable payments potentially subject to backup withholding. Treas. Reg. § 31.3406(b)(3)–5(e) requires that backup withholding apply to section 6050W payments made after December 31, 2011, if a payee has not furnished a correct TIN to a section 6050W payor.

Notice 2011–88, 2011–46 I.R.B. 748, postponed for one year the effective date for potential backup withholding obligations imposed under section 3406 for section 6050W payments. Accordingly, the backup withholding requirements of section 3406 apply to section 6050W payments made after December 31, 2012.

DISCUSSION

1. *Penalty Relief*

Sections 6721 and 6722 are applicable to section 6050W payors that must file information returns for payments made in settlement of reportable payment transactions. Prior to the enactment of section 6050W, payors were not required to file the specific type of information return or to furnish the specific type of payee statement now required by section 6050W. In order to provide additional time to develop appropriate procedures for compliance with these new reporting requirements, Notice 2011–89 provided that the IRS would not impose penalties under sections 6721 and 6722 on payors that must file information returns and furnish payee

statements in 2012 based on payments made in calendar year 2011, provided that they make good-faith efforts in filing accurate Forms 1099–K and furnishing the accompanying payee statements. Since that time, the IRS has been made aware that payors subject to section 6050W reporting continue to experience greater than usual difficulty in obtaining correct name and TIN information from payees and in resolving name and TIN mismatches. Payors have requested additional transition penalty relief in order to enable them to resolve these issues.

After careful consideration of these comments, the Treasury Department and the IRS have decided to extend the penalty relief provided in Notice 2011–89 to certain errors on information returns and payee statements required to be filed and furnished in 2013 and 2014. Specifically, this notice provides relief from penalties under sections 6721 and 6722 for returns and statements required to be filed and furnished in 2013 based on payments made in calendar year 2012 if they have missing TINs, obviously incorrect TINs (as described in section 3406(h)(1))[1], and incorrect name and TIN combinations. In addition, this notice provides relief from penalties under sections 6721 and 6722 for returns and statements required to be filed and furnished in 2014 based on payments made in 2013, but only in cases where the 2013 Form 1099–K contains an incorrect name and TIN combination. Limiting penalty relief for 2013 Forms 1099–K to incorrect name and TIN combinations is warranted because more expansive penalty relief (*i.e.*, relief from penalties for missing or obviously incorrect TINs) would be inconsistent with the payor's backup withholding obligations, which were first effective for payments made on or after January 1, 2013.

This notice does not apply to a payor who erroneously fails to file an information return or payee statement.

2. *Schedule for CP2100/CP2100A Notices*

Payors have asked for guidance regarding when the IRS will begin sending CP2100/CP2100A Notices with respect to Forms 1099–K. This notice informs payors that the IRS will not issue CP2100/CP2100A Notices based on incorrect name and TIN combinations reported on Forms 1099–K due before 2014. The IRS will begin sending CP2100/CP2100A Notices with respect to Forms 1099–K in late 2014. These CP2100/CP2100A Notices will be based on incorrect name and TIN combinations reported on Forms 1099–K required to be filed in 2014 for calendar year 2013 payments.

CP2100/CP 2100A Notices are not necessary to trigger backup withholding if the payee either did not provide a TIN or provided an obviously incorrect TIN. Payors should continue to backup withhold on calendar year 2013 payments to payees who failed to provide a TIN or who provided an obviously incorrect TIN.

DRAFTING INFORMATION

The principal authors of this notice are Adrienne Griffin and Girish Prasad of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Adrienne Griffin or Girish Prasad at (202) 622–4910 (not a toll-free call).

[1] An obviously incorrect TIN is a TIN that has more or less than nine numbers, or has an alpha character as one of the nine positions.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

User Fees for Processing Installment Agreements and Offers in Compromise

REG–144990–12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations that provide user fees for installment agreements and offers in compromise. The proposed amendments affect taxpayers who wish to pay their liabilities through installment agreements and offers in compromise. This document also provides a notice of public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by September 30, 2013. Outlines of topics to be discussed at the public hearing scheduled for October 1, 2013, at 10 a.m. must be received by September 30, 2013.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–144990–12), Room 5203, Post Office 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–144990–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20044, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–144990–12). The public hearing will be held in the IRS Auditorium beginning at 10 a.m. at the Internal Revenue Service Building, 1111 Constitution Avenue, N.W., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning submissions and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180; concerning cost methodology, Eva Williams, at (202) 435–5514; concerning the proposed regulations, Girish Prasad, at (202) 622–3620 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agencies (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages agencies to charge user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the service, unless OMB grants an exception.

Installment Agreements

Section 6159 of the Internal Revenue Code (Code) authorizes the IRS to enter into an agreement with any taxpayer for the payment of tax in installments. 26 CFR 301.6159–1. Before entering into an installment agreement, the IRS may examine the taxpayer's financial position to determine whether such an agreement is appropriate. Once the agreement is in effect, the IRS must process the payments and monitor compliance. Section 6331(k)(2) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an installment agreement is pending, and if rejected for 30 days thereafter, and, if a timely appeal of rejection is filed, for the duration of the appeal. Section 6331(k)(2) of the Code also generally prohibits the IRS from levying to collect taxes while an installment agreement is in effect. A taxpayer that enters into an installment agreement therefore receives a special benefit of being allowed to pay an outstanding tax obligation over time.

Under sections 300.1 and 300.2 of the Treasury Regulations, the IRS currently charges $105 for entering into an installment agreement, except that the fee is $52 for a direct debit installment agreement, which is an agreement whereby the taxpayer authorizes the IRS to request the monthly electronic transfer of funds from the taxpayer's bank account to the IRS, and the fee is $43 if the taxpayer is a low-income taxpayer (notwithstanding the method of payment). Also, the IRS currently charges $45 for restructuring or reinstating an installment agreement that is in default. The amount of the fees has not changed since 2007. As required by the OMB Circular, the IRS recently completed a routine review of the installment agreement program and determined that the full cost of an installment agreement is $282, except that the cost is only $122 for a direct debit installment agreement. The IRS also determined that the full cost of restructuring or reinstating an installment agreement is $85.

In accordance with the OMB Circular, these proposed amendments to the regulations increase the installment agreement fees to recover more of the costs associated with such agreements. The proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits exceptions to this requirement when the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head or his designee, justifies an exception. OMB has granted an exception to the full cost requirement of the OMB Circular. After discussions with OMB, the proposed fee

for entering into an installment agreement is $120, and the proposed fee for restructuring or reinstating an installment agreement is $50. The fee for a direct debit installment agreement remains $52, and low income taxpayers, as defined in 26 CFR 300.1(b)(2), would continue to pay $43 for any new installment agreement, including a direct debit installment agreement. The proposed regulations do not increase the fee for direct debit installment agreements because these agreements have a significantly higher completion rate. The proposed fees balance the need to recover costs with the goals of encouraging the use of installment agreements in general and direct debit installment agreements in particular.

Offers in Compromise

Section 7122 of the Internal Revenue Code gives the Secretary the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. An offer to compromise may be accepted if there is doubt as to liability, if there is doubt as to collectibility, or if acceptance will promote effective tax administration. 26 CFR 301.7122–1(b). Before accepting an offer to compromise, the IRS must examine the taxpayer's financial position to determine whether such a compromise is appropriate unless it is an offer under section 7122(d)(3)(B) (regarding offers relating only to issues of liability). Once the IRS accepts an offer to compromise, the IRS must process the payments and monitor compliance. When the IRS accepts an offer to compromise, the taxpayer receives the benefit of resolving its tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the compromise agreement. Further, section 6331(k)(1) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an offer to compromise is pending, and if rejected for 30 days thereafter, and, if a timely appeal of a rejection is filed, for the duration of the appeal.

Under section 300.3 of the Treasury Regulations, the IRS currently charges $150 for processing an offer to compromise, except that no fee is charged if an offer is based solely on doubt as to liability, or made by a low income taxpayer, as defined in 26 CFR 300.3(b)(1)(ii). Also, the fee is generally applied to the unpaid taxes if the offer is accepted to promote effective tax administration or accepted based on doubt as to collectibility (in this latter case, a determination must be made that collection of an amount greater than the amount offered would create economic hardship). The amount of the fee has not changed since 2003. As required by the OMB Circular, the IRS recently completed a routine review of the offer to compromise program and determined that the full cost of an offer to compromise is $2,718.

In accordance with the OMB Circular, this proposed amendment to the regulations increases the offer to compromise fee to recover more of the costs associated with such offers. These proposed regulations propose to charge less than full cost. While agencies are generally required to charge full cost, the OMB Circular permits exceptions to this requirement when the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head or his designee, justifies an exception. As with the installment agreement fees, OMB has granted an exception to the full cost requirement of the OMB Circular. After discussions with OMB, the proposed fee for processing an offer to compromise is $186. Low-income taxpayers and taxpayers making offers based solely on doubt as to liability will continue to pay no fee. Also, as now, the fee is generally applied to the unpaid taxes if the offer is accepted to promote effective tax administration or accepted based on doubt as to collectibility (in this latter case, a determination must be made that collection of an amount greater than the amount offered would create economic hardship). The proposed fee balances the need to recover costs with the goal of encouraging offers in compromise.

The new fee rate for both installment agreements and offers in compromise will be effective January 1, 2014.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for October 1, 2013, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue N.W., Washington, D.C. 20044. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by September

30, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kimberly Barsa of the Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. In §300.1, paragraphs (b) introductory text and (d) are revised to read as follows:

§300.1 Installment agreement fee.

* * * * *

(b) *Fee.* The fee for entering into an installment agreement before January 1, 2014, is $105. The fee for entering into an installment agreement on or after January 1, 2014, is $120. A reduced fee applies in the following situations:

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

Par. 3. In §300.2, paragraphs (b) and (d) are revised to read as follows:

§300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) *Fee.* The fee for restructuring or reinstating an installment agreement before January 1, 2014, is $45. The fee for restructuring or reinstating an installment agreement on or after January 1, 2014, is $50.

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

Par. 4. In §300.3, paragraphs (b)(1) introductory text and (d) are revised to read as follows:

§300.3 Offer to compromise fee.

* * * * *

(b) *Fee.* (1) The fee for processing an offer to compromise before January 1, 2014, is $150. The fee for processing an offer to compromise on or after January 1, 2014, is $186. No fee will be charged if an offer is—

* * * * *

(d) *Effective/applicability date.* This section is applicable beginning January 1, 2014.

Beth Tucker,
Deputy Commissioner for Operations Support.

(Filed by the Office of the Federal Register on August 29, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 30, 2013, 78 F.R. 53702)

Notice of Proposed Rulemaking

Employee Retirement Benefit Plan Returns Required on Magnetic Media

REG–111837–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. These regulations would affect plan administrators and employers maintaining retirement plans that are subject to various employee benefit reporting requirements under the Internal Revenue Code (Code).

DATES: Comments and requests for a public hearing must be received by October 29, 2013.

ADDRESSES: Send submissions relating to the proposed regulations to: CC:PA:LPD:PR (REG–111837–13), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC, 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–111837–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternately, taxpayers may submit comments relating to the proposed regulations electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–111837–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Gibbs or Pamela Kinard at (202) 622–6060; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Electronic filing of tax returns benefits taxpayers and the IRS by reducing errors that are more likely to occur during the manual preparation and processing of paper returns. Electronic filing results in faster settling of accounts and better customer service. Requiring that employee retirement benefit plan statements, returns, and reports be filed electronically improves the timeliness and accuracy of the information for both the public and the employee retirement benefit plan community.

Section 6011(e)(1) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(2)(A) provides that the Secretary may not require any person to file returns

on magnetic media unless the person is required to file at least 250 returns during the calendar year. Section 6011(e)(2)(B) requires that the Secretary, prior to issuing regulations requiring these entities to file returns on magnetic media, take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

A statement, return, or report filed electronically with an electronic return transmitter in the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark given by the return transmitter (that is, a record of the date and time that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system). Accordingly, if the electronic postmark is timely, the document is considered filed timely although it is received by the IRS after the last date prescribed for filing. See §301.7502–1(d).

Section 414(g) defines a plan administrator as a person specifically so designated by the terms of the plan or, in the event no one is designated: (a) an employer for a single employer plan; (b) an association, committee, joint board of trustees, or other similar group of representatives for a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations; or (c) such other person as the Secretary of Treasury may prescribe in regulations.

Section 6057(a) requires the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (ERISA) applies for a plan year to file, within the time prescribed by regulations, a registration statement with the Secretary of the Treasury. The registration statement must set forth the following information relating to the plan: (1) the name of the plan; (2) the name and address of the plan administrator; (3) the name and identifying information of plan participants who separated from service covered by the plan and are entitled to deferred vested retirement benefits; and (4) the nature, amount, and form of deferred vested retirement benefits to which the plan participants are entitled. The form used to file this registration statement is Form 8955–SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*. Section 6057(b) requires that the plan administrator notify the Secretary of certain changes in the plan, including the name of the plan, the name and address of the plan administrator, the termination of the plan, or any merger or consolidation of the plan with another plan (or the plan's division into two or more plans).

Section 6058(a) generally requires that every employer maintaining a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation, or the plan administrator within the meaning of section 414(g) of the plan, file an annual return stating such information as the Secretary may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan. The reporting requirement under section 6058(a) is satisfied by filing a return on the Form 5500 series. The Form 5500, *Annual Return/Report of Employee Benefit Plan*, the Form 5500–SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, and Form 5500–EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, make up the Form 5500 series.

Section 6059(a) generally requires that a plan administrator of each defined benefit plan to which section 412 applies file the actuarial report described in section 6059(b) for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary determines that more frequent reports are necessary). The schedules used to file these actuarial reports are the Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*, and the Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*, which are required to be filed as part of the Form 5500 or Form 5500–SF.

On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359) requiring electronic filing of the Form 5500 and Form 5500–SF for plans covered by Title I of ERISA for plan years beginning on or after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710) postponing the effective date of the electronic filing mandate so that the mandate applies to plan years beginning on or after January 1, 2009. See 29 CFR §2520.104a–2. The electronic filing system mandated by DOL is the computerized ERISA Filing Acceptance System (EFAST2).

Filers of the Form 5500 and Form 5500–SF are required to file electronically through EFAST2. Currently, electronic filing is not available for the Form 5500–EZ. However, certain filers that would otherwise file the Form 5500–EZ on paper may instead file the Form 5500–SF electronically through EFAST2. Under the current requirements, plans that are eligible to use the Form 5500–SF to file electronically include plans that cover fewer than 100 participants at the beginning of the plan year and satisfy certain other requirements. See the Instructions to the Form 5500–EZ for information about filing the Form 5500–EZ.

In order to implement DOL's mandate for electronic filing of the Form 5500 and Form 5500–SF, certain items on these forms that relate solely to Code requirements were eliminated. Information on the forms, schedules, and attachments that were eliminated was used by the IRS for compliance purposes. By mandating electronic filing of information, the IRS can obtain valuable plan information that is not currently required to be filed through EFAST2.[1] In coordination with DOL, the IRS anticipates adding items on the Form 5500 and Form 5500–SF relating solely to Code requirements. For those filers that are not subject to IRS electronic filing requirements, the IRS plans to provide a paper-only form containing those Code-related items and an alternative method of filing with the IRS.

[1] In its published report on September 20, 2011, the Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS explore regulatory options for mandating electronic filings of annual employee benefit returns for employee benefit retirement plans. TIGTA believed that this would assist the IRS in satisfying its tax administration responsibilities. See "The Employee Plans Function Should Continue Its Efforts to Obtain Needed Retirement Plan Information," Reference Number 2011–10–108 (September 20, 2011).

Explanation of Provisions

I. *In General*

These regulations provide that a plan administrator (or, in certain situations, an employer maintaining a plan) required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year must use magnetic media to file certain statements, returns, and reports under sections 6057, 6058, and 6059. Magnetic media is defined as electronic filing or other media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

Filers of the Form 5500 and Form 5500–SF are already required to file the returns electronically through EFAST2. In addition, many filers of the Form 8955–SSA already voluntarily file electronically with the IRS and also are required to file the Form 5500 and Form 5500–SF electronically through EFAST2. The IRS and the Treasury Department have determined that taxpayers should be able to comply at a reasonable cost with the requirement to file statements, returns, and reports on magnetic media.

The determination of whether a filer is required to file at least 250 returns is made by aggregating all returns, regardless of type, that the filer is required to file, including for example, income tax returns, returns required under section 6033, information returns, excise tax returns, and employment tax returns.

II. *Registration Statements and Notifications Required Under Section 6057(a) and (b)*

The proposed regulations under section 6057 provide that a registration statement under section 6057(a) or notification required under section 6057(b) must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For purposes of the regulations under section 6057, the term filer means the plan administrator within the meaning of section 414(g).

The proposed regulations under section 6057 provide that if a filer that is required to file electronically fails to do so, the filer is deemed to have failed to file the registration statement or other notification required under section 6057. Section 6652(d)(1) imposes a penalty on the plan administrator for the failure to file a registration statement required under section 6057(a). Section 6652(d)(2) imposes a penalty on the plan administrator for the failure to file a notification required under section 6057(b). The proposed regulations under section 6057 provide that rules under §301.6652–3(b) apply for purposes of determining whether there is reasonable cause for failure to file a registration statement required under section 6057(a) or notification required under section 6057(b). In addition, rules similar to the rules in §301.6724–1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

III. *Form 5500 Series*

The proposed regulations under section 6058 provide that a return required under section 6058 must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. The term filer means the employer or employers maintaining the plan and the plan administrator within the meaning of section 414(g). Thus, in applying the 250-return requirement, the returns of the employer or employers maintaining the plan and of the plan administrator are aggregated.

The proposed regulations under section 6058 also provide that, in determining the 250-return requirement, the aggregation rules of section 414(b), (c), (m), and (o) apply to a filer that is, or includes, an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series on magnetic media if the aggregate number of returns required to be filed by the controlled group of corporations is at least 250. These aggregation rules also apply to the regulations under sections 6057 and 6059 if the plan administrator is the employer.

The proposed regulations under section 6058 provide that if the filer is required to file electronically but fails to do so, the filer is deemed to have failed to file the Form 5500 series. For a failure to file the Form 5500 series, a penalty under section 6652(e) applies. The proposed regulations under section 6058 provide that rules under §301.6652–3(b) apply for purposes of determining whether there is reasonable cause for failure to file a return. In addition, rules similar to the rules in §301.6724–1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

IV. *Actuarial Reports*

The proposed regulations under section 6059 provide that an actuarial report required under section 6059 must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For purposes of the regulations under section 6059, the term filer means the plan administrator within the meaning of section 414(g).

The proposed regulations under section 6059 provide that if a filer that is required to file electronically fails to do so, the filer is deemed to have failed to file the actuarial report required under section 6059. Section 6692 provides that a plan administrator that fails to file the report required under section 6059 shall pay a penalty for each such failure, unless it is shown that there is reasonable cause for the failure. The proposed regulations under section 6059 provide that rules under §301.6692–1(c) apply for purposes of determining whether there is reasonable cause for failure to file an actuarial report. In addition, rules similar to the rules in §301.6724–1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

V. *Economic Hardship Waiver*

These proposed regulations also provide that the Commissioner may waive the requirement to file electronically in cases of undue economic hardship. Because the Treasury Department and the IRS believe that electronic filing will not impose significant burdens on the taxpayers covered by these regulations, the Commissioner anticipates granting waivers of the electronic filing requirement in only exceptional cases. Waivers are anticipated to be particularly rare for the filers of Form

5500 and Form 5500–SF (as well as the schedules attached to those forms), because these filers are already required to file electronically under EFAST2.

Proposed Effective Date

These regulations are proposed to apply for employee retirement benefit plan statements, notifications, returns, and reports required to be filed under sections 6057, 6058, and 6059 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, it is hereby certified that any collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities, and therefore no flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

The certification is based on the fact that §§301.6057–1, 301.6058–1, and 301.6059–1 currently require filing with the IRS of information under sections 6057, 6058, and 6059 in accordance with applicable forms, schedules, and accompanying instructions. These proposed regulations merely require that this information be filed electronically by persons required to file at least 250 returns for the calendar year, consistent with section 6011(e)(2)(A), which provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Many small entities are unlikely to file 250 returns or more during the calendar year. Filers of the Form 5500 and Form 5500–SF are already required to file the returns electronically through EFAST2 pursuant to DOL regulations. In addition, many filers of the Form 8955–SSA already voluntarily file electronically with the IRS.

Further, if a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. The IRS and the Treasury Department have determined that taxpayers should be able to comply at a reasonable cost with the requirement in these regulations to file employee retirement statements, returns, and reports on magnetic media. In addition, the proposed regulations provide that the IRS may waive the electronic filing requirements upon a showing of hardship.

Comments and Requests for Public Hearing

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

Drafting Information

The principal authors of these regulations are William Gibbs and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

Part 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority for part 301 continues to read in part as follows: Authority: 26 U.S.C. 7508***

Par. 2. Section 301.6057–3 is added to read as follows:

§301.6057–3 Required use of magnetic media for filing requirements relating to deferred vested retirement benefit.

(a) *Magnetic media filing requirements under section 6057.* A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(b) *Economic hardship waiver.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the registration statements or notifications on magnetic media in accordance with this section exceeds the cost of filing the registration statements or notifications on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.) The waiver will specify the type of filing (that is, a registration statement or notification under section 6057), and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file*. If a filer required to file a registration statement or other notification under section 6057 fails to file the statement or other notification on magnetic media when required to do so by this section, the filer is deemed to have failed to file the statement or other notification. See section 6652(d) for the amount imposed for the failure to file a registration statement or other notification under section 6057. In determining whether there is reasonable cause for the failure to file the registration statement or notification under section 6057, §301.6652–3(b) and rules similar to the rules in §301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(2) *Registration statement required under section 6057(a)*. The term *registration statement required under section 6057(a)* means a Form 8955–SSA (or its successor).

(3) *Notification required under section 6057(b)*. The term *notification required under section 6057(b)* means either a Form 8955–SSA (or its successor) or a Form 5500 series (or its successor).

(4) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in §1.6058–2(d)(3)(iii) will apply.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(4) of this section:

Example. In 2014, P, the plan administrator of Plan B, is required to file 252 returns (including Forms 1099–R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, Form 8955–SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*, Form 5500, *Annual Return/Report of Employee Benefit Plan*, and Form 945, *Annual Return of Withheld Federal Income Tax*). Plan B's plan year is the calendar year. Because P is required to file at least 250 returns during the 2014 calendar year, P must file the 2014 Form 8955–SSA for Plan B electronically.

(f) *Effective/applicability date*. This section is applicable for registration statements and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Par. 3. Section 301.6058–2 is added to read as follows:

§301.6058–2 Required use of magnetic media for filing requirements relating to information required in connection with certain plans of deferred compensation.

(a) *Magnetic media filing requirements under section 6058*. A return required under section 6058 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, and instructions, or other guidance on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(b) *Economic hardship waiver*. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return on magnetic media in accordance with this section exceeds the cost of filing the returns on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.) The waiver will specify the type of filing (that is, a return required under section 6058) and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file*. If a filer required to file a return under section 6058 fails to file the return on magnetic media when required to do so by this section, the filer is deemed to have failed to file the return. See section 6652(e) for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652–3(b) and rules similar to the rules in §301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(2) *Return required under section 6058*. The term *return required under section 6058* means the Form 5500 series (or its successor).

(3) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the employer or employers maintaining the plan and the plan administrator within the meaning of section 414(g).

(iii) *Special rules relating to determining 250 returns*. For purposes of applying paragraph (d)(3)(ii) of this section, the ag-

gregation rules of section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series on magnetic media if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 250.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2014, Employer X (the plan sponsor of Plan A) and P (the plan administrator of Plan A) are required to file 267 returns. Employer X is required to file the following: one Form 1120, *U.S. Corporation Income Tax Return*, 195 Forms W–2, *Wage and Tax Statement*, 25 Forms 1099–DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. P is required to file 40 Forms 1099–R, *Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc*. P and Employer X are jointly required to file one Form 5500 series. Plan A's plan year is the calendar year. Because P and Employer X, in the aggregate, are required to file at least 250 returns during the calendar year, the 2014 Form 5500 for Plan A must be filed electronically.

(f) *Effective/applicability date*. This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Par. 4. Section 301.6059–2 is added to read as follows:

§301.6059–2 Required use of magnetic media for filing requirements relating to periodic report of actuary.

(a) *Magnetic media filing requirements under section 6059*. An actuarial report required under section 6059 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. Actuarial reports filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(b) *Economic hardship waiver*. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports on magnetic media in accordance with this section exceeds the cost of filing the reports on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.) The waiver will specify the type of filing (that is, an actuarial report required under section 6059) and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to File*. If a filer required to file an actuarial report under section 6059 fails to file the report on magnetic media when required to do so by this section, the filer is deemed to have failed to file the report. See section 6692 for the penalty for the failure to file an actuarial report. In determining whether there is reasonable cause for failure to file the report, §301.6692–1(c) and rules similar to the rules in §301.6724–1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) *Meaning of terms*. The following definitions apply for purposes of this section.

(1) *Magnetic media*. The term *magnetic media* means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(*b*) of this chapter.)

(2) *Actuarial report required under section 6059*—(i) *Single employer plans*. For a single employer plan, the term *actuarial report required under section 6059* means the Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*, of the Form 5500 series (or its successor).

(ii) *Multiemployer and certain money purchase plans*. For multiemployer and certain money purchase plans, the term *actuarial report required under section 6059* means the Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*, of the Form 5500 series (or its successor).

(3) *Determination of 250 returns*—(i) *In general*. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W–2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer*. For purposes of this section, the term *filer* means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in §1.6058–2(d)(3)(iii) will apply.

(e) *Example*. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2014, P, the plan administrator of Plan B (a single employer defined benefit plan), is required to file 266 returns (including Forms 1099–R, *Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* and one Form 5500 series). Plan B's plan year is the calendar year. Because P is required to file at least 250 returns during the calendar year, P must file the 2014 Schedule SB of the Form 5500 series for Plan B electronically.

(f) *Effective/ applicability date*. This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Beth Tucker,
Deputy Commissioner for Operations Support.

(Filed by the Office of the Federal Register on August 29, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 30, 2013, 78 F.R. 53704)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008–2 edition.

INTERNAL REVENUE BULLETINS ON CD-ROM

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