INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017–38
September 18, 2017

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.

EXEMPT ORGANIZATIONS

Announcement 2017–12, page 238.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

EMPLOYEE PLANS

Notice 2017–45, page 232.

The notice extends temporary relief under Notice 2014–5 from section 401(a)(4) nondiscrimination testing for closed defined benefit plans through plan years beginning before 2019, and provides that taxpayers may continue to rely on the proposed regulations for the same period.

ADMINISTRATIVE

Notice 2017–47, page 232.

Notice 2017–47 provides penalty relief to partnerships and REMICs that filed certain untimely returns or untimely requests for extension of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year.

INCOME TAX

Notice 2017–47, page 232.

Notice 2017–47 provides penalty relief to partnerships and REMICs that filed certain untimely returns or untimely requests for extension of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year.

Rev. Proc. 2017–47, page 233.

Safe Harbor for Inadvertent Normalization Violations. This revenue procedure provides a safe harbor concerning inadvertent or unintentional uses of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Internal Revenue Code of 1986, as amended, which require the use of the Normalization Rules. If the safe harbor provided in this revenue procedure applies, the Internal Revenue Service will not assert that a taxpayer's inadvertent or unintentional use of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) constitutes a violation of the Normalization Rules. This revenue procedure does not limit or change the process by which a taxpayer may request a letter ruling or a referral for a technical advice memorandum that the taxpayer's proposed practice or procedure is consistent or inconsistent with the Normalization Rules.

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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 III. Administrative, Procedural, and Miscellaneous

Notice 2017–45

Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2018

I. PURPOSE

This notice extends the temporary nondiscrimination relief for closed defined benefit plans that is provided in Notice 2014–5, 2014–2 I.R.B. 276, by making that relief available for plan years beginning before 2019 if the conditions of Notice 2014–5 are satisfied.

II. BACKGROUND

Notice 2014–5 provides temporary nondiscrimination relief for certain "closed" defined benefit pension plans (i.e., defined benefit plans that provide ongoing accruals but that have been amended to limit those accruals to some or all of the employees who participated in the plan on a specified date). Specifically, for plan years beginning before 2016, Section III.B of Notice 2014–5 permits a DB/DC plan that includes a closed defined benefit plan (that was closed before December 13, 2013) and that satisfies certain conditions set forth in the notice to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of equivalent benefits even if the DB/DC plan does not meet any of the existing eligibility conditions for testing on that basis under § 1.401(a)(4)–9(b)(2)(v).

Notice 2015–28, 2015–14 I.R.B. 848, and Notice 2016–57, 2016–40 I.R.B. 432, extend the temporary nondiscrimination relief provided in Notice 2014–5 by applying that relief to plan years beginning before 2018 if the conditions of Notice 2014–5 are satisfied. Notice 2015–28 further provides that, during the period for which the extension applies, the remaining provisions of the nondiscrimination regulations under § 401(a)(4) continue to apply.

Proposed regulations relating to nondiscrimination requirements for closed plans were published in the Federal Register on January 29, 2016 (81 FR 4976). The proposed regulations set forth relief for closed plans under §§ 1.401(a)(4)–4, 1.401(a)(4)–8, and 1.401(a)(4)–9 (subject to satisfaction of certain conditions set forth in the regulations), and contain other proposed nondiscrimination rules. The regulations are proposed to apply generally to plan years beginning on or after the date of publication of the final regulations. The proposed regulations provide that taxpayers are permitted to apply certain provisions of the proposed regulations (including all of the provisions that apply specifically to closed plans) for certain plan years beginning before the proposed applicability date.

Many comments have been submitted on the proposed regulations, including oral comments at a public hearing held on May 19, 2016. The Internal Revenue Service (IRS) and the Treasury Department expect that the final regulations will include a number of significant changes in response to those comments. However, it is anticipated that the final regulations will not be published in time for plan sponsors to make plan design decisions based on the final regulations before expiration of the relief provided under Notice 2014–5 (as last extended by Notice 2016–57). Accordingly, the IRS and the Treasury Department have determined that it is appropriate to extend the relief provided under Notice 2014–5 for an additional year.

III. EXTENSION OF RELIEF FOR CLOSED PLANS

The temporary nondiscrimination relief for closed plans that is provided in Notice 2014–5 is hereby extended to plan years beginning before 2019 if the conditions of Notice 2014–5 are satisfied. This extension is provided in anticipation of the issuance of final amendments to the § 401(a)(4) regulations. In addition, it is intended that the final regulations will provide that the reliance granted in the preamble to the proposed regulations may be applied for plan years beginning before 2019.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2014–5, Notice 2015–28, and Notice 2016–57 are modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in development of this guidance. For further information regarding this notice, please contact Ms. Bloom or Linda Marshall at (202) 317-6700 (not a toll-free number).

Relief for Partnerships and REMICs Filing Returns or Extension Requests by the Due Date in Effect Before the Enactment of the Surface Transportation Act

Notice 2017–47

PURPOSE

This notice provides penalty relief to partnerships and real estate mortgage investment conduits (REMICs) that filed certain untimely returns or untimely requests for extension of time to file those returns for the first taxable year that began after December 31, 2015, by the fifteenth day of the fourth month following the close of that taxable year.

BACKGROUND

Section 2006 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Surface Transportation Act), Public Law 114–41, 129 Stat. 443 (2015), amended section 6072 of the Internal Revenue Code (the Code) and changed the date by which a partnership must file its annual return. The due date for filing the annual return of a partnership changed from the fifteenth day of the fourth month following the close of the taxable year (April 15 for calendar-year taxpayers) to the fifteenth day of the third month following the close of the taxable

year (March 15 for calendar-year taxpayers). The new due date applies to the returns of partnerships for taxable years beginning after December 31, 2015.

Partnerships filing Form 1065, "U.S. Return of Partnership Income," and Form 1065–B, "U.S. Return of Income for Electing Large Partnerships," are affected by the Surface Transportation Act amendment. These partnerships may also file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," which are generally due to the IRS on the same date as the partnership's Form 1065 or Form 1065–B. Filers of Form 1065 must furnish their partners with Schedules K-1, "Partner's Share of Income, Deductions, Credits, etc.," by the due date of the Form 1065, and filers of Form 1065–B must furnish their partners with Schedules K-1 by the first March 15 following the close of the partnership's taxable year. Filers of Form 8804 that are required to file Forms 8805 must also furnish their partners with their respective copies of Forms 8805 by the due date of the Form 8804. Some partnerships must also file additional returns, such as Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," by the due date of the Form 1065 or Form 1065–B.

Partnerships can obtain a six-month extension of time to file Form 1065, 1065–B, or 8804 by filing Form 7004, "Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns," by the statutory due date of those returns. Partnerships that receive an extension of time to file Form 1065 receive a concurrent extension of time to furnish their partners with Schedules K-1. Also, partnerships that receive an extension of time to file Form 8804 receive concurrent extensions of time to file Forms 8805 and to furnish respective copies of the Forms 8805 to their partners. The six-month extension may apply to additional returns that partnerships may be required to file by the due date of their Forms 1065 or 1065–B, but it does not affect the due date for partnerships filing Form 1065–B to furnish their partners with Schedules K-1.

Partnerships that fail to timely meet their obligations to file and furnish returns are subject to penalties. Partnerships that fail to file Form 1065, 1065–B, or 8804 by the due date (with regard to extensions) are subject to penalty under section 6698 or 6651 of the Code. Partnerships that fail to file Forms 8805 by the due date (with regard to extensions) are subject to penalty under 6721 of the Code. Partnerships that fail to furnish Schedules K-1 or the partner copies of Forms 8805 by the due date are subject to penalty under section 6722 of the Code. Partnerships that fail to file Form 5471 by the due date are subject to penalty under section 6038 or 6679 of the Code. Partnerships that fail to file additional returns that they are required to file by the due date of their Forms 1065 or 1065–B may also be subject to other penalties.

Many partnerships filed the returns discussed above or Form 7004 for the first taxable year beginning after December 31, 2015, by the date previously required by section 6072. If not for the Surface Transportation Act, these returns and requests for extension of time to file would have been timely.

DISCUSSION

The IRS will grant relief from the penalties described above for any return described above for the first taxable year of any partnership that began after December 31, 2015, if the following conditions are satisfied:

(1) the partnership filed the Form 1065, 1065–B, 8804, 8805, 5471, or other return required to be filed with the IRS and furnished copies (or Schedules K-1) to the partners (as appropriate) by the date that would have been timely under section 6072 before amendment by the Surface Transportation Act (April 18, 2017 for calendar-year taxpayers, because April 15 was a Saturday and April 17 was a legal holiday in the District of Columbia), or

(2) the partnership filed Form 7004 to request an extension of time to file by the date that would have been timely under section 6072 before amendment by the Surface Transportation Act and files the return with the IRS and furnishes copies (or Schedules K-1) to the partners (as appropriate) by the fifteenth day of the ninth month after the close of the partnership's taxable year (September 15, 2017, for calendar-year taxpayers). If the partnership files Form 1065–B and was required to furnish Schedules K-1 to the partners by March 15, 2017, it must have done so to qualify for relief.

This relief will be granted automatically for penalties for failure to timely file Forms 1065, 1065–B, 8804, 8805, and any other returns, such as Form 5471, for which the due date is tied to the due date of Form 1065 or Form 1065–B. Relief will also be granted to REMICs, which file Form 1066, "U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return." Partnerships and REMICs that qualify for relief and have already been assessed penalties can expect to receive a letter within the next several months notifying them that the penalties have been abated. For reconsideration of a penalty covered by this notice that has not been abated by February 28, 2018, contact the number listed in the letter that notified you of the penalty or call (800) 829-0115 and state that you are entitled to relief under Notice 2017–47. Taxpayers who qualify for relief under this notice will not be treated as having received a first-time abatement under the IRS's administrative penalty waiver program.

DRAFTING INFORMATION

The principal author of this notice is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Jonathan R. Black at (202) 317-6845 (not a toll-free number).

Safe Harbor for Inadvertent Normalization Violations

Rev. Proc. 2017–47

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor concerning inadvertent or unintentional uses of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Internal Revenue Code of 1986, as amended (Code), which require the use of the Normalization Rules (as

defined in section 4.04 of this revenue procedure). If the safe harbor under section 5 of this revenue procedure applies, the Internal Revenue Service (Service) will not assert that a taxpayer's inadvertent or unintentional use of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Code constitutes a violation of the Normalization Rules. This revenue procedure does not limit or change the process by which a taxpayer may request a letter ruling or a referral for a technical advice memorandum that the taxpayer's proposed practice or procedure is consistent or inconsistent with the Normalization Rules.

SECTION 2. BACKGROUND

In general, normalization is a system of accounting used by regulated public utilities to reconcile the tax treatment of the Investment Tax Credit (ITC) or accelerated depreciation of public utility assets with their regulatory treatment. Under normalization, a utility receives the tax benefit of the ITC or accelerated depreciation in the early years of an asset's regulatory useful life and passes that benefit on to ratepayers ratably over the regulatory useful life in the form of reduced rates. The remainder of this section 2 describes the intent of Congress in adopting the Normalization Rules and their operation under the Code and Income Tax Regulations.

.01 *Congressional Intent*. Congress had two principal objectives in adopting the Normalization Rules. The first objective was to preserve the utility's incentive to invest. Congress enacted the ITC and accelerated depreciation to stimulate investment. These incentives were not intended to subsidize the consumption of any products or services, including utility products or services. Recognizing that public utility rates are set based on the utility's costs incurred to provide the utility service, including federal income tax expense, Congress enacted a set of rules to assure that some or all of the value of the incentives it provided for utility capital investment would not be diverted from investment by utilities to lower prices for consumption by customers of utilities.

The second objective was to protect the government's tax revenue. Congress reasoned that when a utility elected accelerated depreciation and its regulator lowered rates to reflect the resulting tax benefit, the federal government would experience a reduction in tax revenue twice: once from the added accelerated depreciation deductions taken by the utility, and again from the decline in the revenue received by the utility as a result of its lower rates. See S. Rep. No. 91–552, at 17 (1969). The same impact results if a utility is permitted to flow through the benefit of its ITC to customers.

.02 *Depreciation*. Section 168 of the Code provides taxpayers generally with the benefits of the accelerated cost recovery system in the computation of their depreciation deduction for federal income tax purposes. Section 168(f) provides the description of certain property for which the benefits of § 168 do not apply. Section 168(f)(2) provides that § 168 does not apply to any public utility property, as defined in § 168(i)(10), if the taxpayer does not use a normalization method of accounting. In general, § 168(i)(10) defines "public utility property" as property used predominantly in the trade or business of furnishing or selling (A) electrical energy, water, or sewage disposal services, (B) gas or steam through a local distribution system, (C) certain communications services, or (D) the transportation of gas or steam by pipeline, if rates for such furnishing or sale are established or approved by a State (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof.

Section 168(i)(9) describes what constitutes a "normalization method of accounting." The rules provided in § 168(i)(9) recognize that the rates a regulated public utility is permitted to charge its customers are established or approved by regulators based on the utility's cost of service taking into account the depreciation of assets and federal income tax expense. The Normalization Rules under § 168(i)(9)(A)(i) require the taxpayer to compute the federal income tax expense taken into account in setting its rates using a depreciation method that is the same as, and a depreciation period that is no shorter than, the method and period used to compute the depreciation expense for purposes of computing rates. Under § 168(i)(9)(A)(ii), a taxpayer must account for any difference between its federal income tax expense taken into account in computing its rates and the actual federal income tax it pays as a reserve for deferred taxes. If the taxpayer uses estimates or projections in determining for rate-making purposes its tax expense, depreciation expense, or reserve for deferred taxes, the Normalization Rules under § 168(i)(9)(B) require the use of consistent estimates or projections with respect to the other two items and rate base.

Section 1.167(l)–1(a)(1) of the Income Tax Regulations provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under § 167 of the Code and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account.

.03 *Investment Tax Credit*. Section 46 of the Code sets forth certain investment credits against income tax. Section 50(d) provides special rules for certain taxpayers to qualify for those credits, including § 50(d)(2), which provides that rules similar to the limitations provided under former § 46(f) applicable to public utility property prior to the enactment of the Revenue Reconciliation Act of 1990, Pub. L. No. 101–508, Title XI, 104 Stat. 1388, shall apply to certain regulated companies. The Tax Reform Act of 1986, Pub. L. No. 99–514, 100 Stat. 2085, repealed the ITC generally with respect to public utility property placed in service after 1985; however, due to the long useful life of much public utility property, these provisions retain their vitality.

Under the general rule of former § 46(f), those regulated companies are not entitled to the ITC if either the taxpayer's cost of service or rate base for ratemaking purposes is reduced by any portion of the credit. However, the statute provides important exceptions. Former § 46(f)(1) provides that the ITC may not be used to reduce the taxpayer's cost of service, but

may be used to reduce rate base, if such reduction is restored not less rapidly than ratably. Former § 46(f)(2) provides an election under which a taxpayer is permitted to take into account a ratable portion of the ITC for purposes of determining cost of service, but is not permitted to reduce the base to which the taxpayer's rate of return for ratemaking purposes is applied by any portion of the credit. A utility taxpayer elects either former § 46(f)(1) or former § 46(f)(2) and that choice applies to all public utility property of the taxpayer. A taxpayer that does not specifically elect former § 46(f)(2) is subject to the general rule of former § 46(f)(1).

Former § 46(f)(6) provides that for purposes of determining ratable portions, the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account is to be used. Under § 1.46–6(g)(2) of the Income Tax Regulations, "ratable" is determined by considering the period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which a credit is allowed. "Regulated depreciation expense" is the depreciation expense for the property used by a regulatory body for purposes of establishing the taxpayer's cost of service for ratemaking purposes.

.04 *Application of Sanctions for Failure to Use a Normalization Method of Accounting*. Former § 46(f)(4)(A) provides that there is no disallowance of a credit before the first final inconsistent determination is put into effect for the taxpayer's former § 46(f) property. Section 1.46–6(f)(4) provides that the ITC is disallowed for any former § 46(f) property placed in service by a taxpayer (a) before the date a final inconsistent determination by a regulatory body is put into effect, and (b) on or after such date and before the date a subsequent consistent determination is put into effect.

Section 1.46–6(f)(7) provides that the term "determination" refers to a determination made with respect to former § 46(f) property (other than property to which an election under former § 46(f)(3) applies) by a regulatory body described in former § 46(c)(3)(B) that determines the effect of the credit (a) for purposes of former § 46(f)(1), on the taxpayer's cost of service or rate base for ratemaking purposes, or (b) for a taxpayer that made an election under former § 46(f)(2), on the taxpayer's cost of service, for ratemaking purposes or in its regulated books of account, or on the taxpayer's rate base for ratemaking purposes.

Section 1.46–6(f)(8)(i) provides that "inconsistent" refers to a determination that is inconsistent with former § 46(f)(1) or former § 46(f)(2). For example, a determination to reduce the taxpayer's cost of service by more than a ratable portion of the ITC would be a determination that is inconsistent with former § 46(f)(2). Section 1.46–6(f)(8)(ii) provides that the term "consistent" refers to a determination that is consistent with former § 46(f)(1) or former § 46(f)(2). Section 1.46–6(f)(8)(iii) provides that the term "final determination" means a determination by a regulatory body with respect to which all rights of appeal or to request a review, a rehearing, or a redetermination have been exhausted or have lapsed.

The Senate Finance Committee Report to the Tax Reduction Act of 1975 addressed the importance of the final determination by stating that "if a regulatory agency requires the flowing through of a company's additional investment credit at a rate faster than permitted, or insists upon a greater rate base adjustment than is permitted, the additional investment credit is to be disallowed, but only after a final determination . . . is put into effect." S. Rep. No. 94–36, at 44–45 (1975).

Unlike most tax provisions the sanctions imposed under the Normalization Rules were not intended to directly increase or decrease federal tax revenues. They were intended to discourage the flow through of tax benefits to customers in order to allow utilities to benefit from the underlying depreciation and ITC provisions and prevent the loss of revenue the federal government would suffer if the benefits were flowed through to customers.

In addition, in discussing the limitations on the ratemaking treatment of the ITC under § 46(e)(1) and (e)(2), the Senate Finance Committee Report concerning the Revenue Act of 1971, P.L. 92–178, 85 Stat. 497, indicates that the Committee hoped that the sanctions of disallowance of the ITC would not have to be imposed. S. Rep. No. 92–437, at 41 (1971).

SECTION 3. SCOPE

.01 This revenue procedure applies to a taxpayer that:

(1) owns Public Utility Property (as defined in section 4.03 of this revenue procedure);

(2) has inadvertently or unintentionally failed to follow a practice or procedure that is consistent with the Normalization Rules (as defined in section 4.04 of this revenue procedure) in one or more years;

(3) upon recognizing its failure to comply with the Normalization Rules, the taxpayer changes its Inconsistent Practice or Procedure (as defined in section 4.06 of this revenue procedure) to a Consistent Practice or Procedure (as defined in section 4.05 of this revenue procedure) at the Next Available Opportunity (as defined in section 4.07 of this revenue procedure) in a manner that totally reverses the effect of the Inconsistent Practice or Procedure, provided the Taxpayer's Regulator (as defined in section 4.01 of this revenue procedure) adopts or approves the change; and

(4) retains contemporaneous documentation that clearly demonstrates the effects of the Inconsistent Practice or Procedure and the change to a Consistent Practice or Procedure adopted or approved by the Taxpayer's Regulator.

.02 For purposes of section 3.01(2) of this revenue procedure, a taxpayer's Inconsistent Practice or Procedure is neither inadvertent nor unintentional if the Taxpayer's Regulator specifically considered and specially addressed the application of the Normalization Rules to the Inconsistent Practice or Procedure in establishing or approving the taxpayer's rates even if at the time of such consideration the Taxpayer's Regulator did not believe the practice or procedure was inconsistent with the Normalization Rules.

SECTION 4. DEFINITIONS

.01 Taxpayer's Regulator

Taxpayer's Regulator means a State (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof that estab-

lishes or approves the rates of the taxpayer.

.02 Rate Proceeding

Rate Proceeding means a proceeding in which the Taxpayer's Regulator establishes or approves the taxpayer's rates.

.03 Public Utility Property

Public Utility Property has the meaning provided in former § 46(f)(5) or in § 168(i)(l0), and the applicable Income Tax Regulations.

.04 Normalization Rules

The Normalization Rules mean, in the case of the ITC, the rules provided by former § 46(f), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990, and the Income Tax Regulations thereunder, and, in the case of the accelerated cost recovery system for depreciation, the rules provided by § 168(i)(9), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990, and the Income Tax Regulations thereunder.

.05 Consistent Practice or Procedure

A Consistent Practice or Procedure means a practice or procedure followed by the taxpayer and the Taxpayer's Regulator that is consistent with the Normalization Rules.

.06 Inconsistent Practice or Procedure

An Inconsistent Practice or Procedure means a practice or procedure followed by the taxpayer and the Taxpayer's Regulator that is inconsistent with the Normalization Rules.

.07 Next Available Opportunity

(1) In the case of a taxpayer without a Rate Proceeding pending before the Taxpayer's Regulator, the Next Available Opportunity means the next Rate Proceeding.

(2) In the case of a taxpayer with a Rate Proceeding currently pending before the Taxpayer's Regulator, the Next Available Opportunity means the currently pending proceeding, unless the rules of the Taxpayer's Regulator or applicable state or federal law (at the time the Inconsistent Practice or Procedure is identified) preclude the taxpayer from initiating a change from an Inconsistent Practice or Procedure to a Consistent Practice or Procedure in the currently pending proceeding, in which case the currently pending proceeding shall not be the Next Available Opportunity, and the Next Available Opportunity means the next Rate Proceeding.

(3) If, at the conclusion of a Rate Proceeding, the taxpayer has a private letter ruling request pending before the Service to address whether or not a practice or procedure addressed in the Rate Proceeding is a Consistent Practice or Procedure, and the Taxpayer's Regulator later establishes or approves rates subject to adjustment from the effective date of the unadjusted rates in order to conform to the Service's ruling, the taxpayer shall have corrected its Inconsistent Practice or Procedure at the Next Available Opportunity.

SECTION 5. APPLICATION

.01 For any taxpayer described in section 3 of this revenue procedure, the Service will not assert that the Inconsistent Practice or Procedure constitutes a violation of the Normalization Rules and will not deny that taxpayer the benefits of the ITC and/or accelerated depreciation. In any tax year ending after the taxpayer has identified an Inconsistent Practice or Procedure, but in which the taxpayer has not changed to a Consistent Practice or Procedure because the taxpayer has not reached the year that presents the taxpayer with its Next Available Opportunity, the taxpayer must include in its return a statement described in section 5.02 of this revenue procedure. If the taxpayer makes the representation described in section 5.02(3) of this revenue procedure, the Service will not assert that the Inconsistent Practice or Procedure is a violation of the Normalization Rules and will not challenge the taxpayer's use of the identified Inconsistent Practice or Procedure unless the taxpayer does not change to a Consistent Practice or Procedure at the Next Available Opportunity.

.02 A statement is described in this section 5.02 if:

(1) The top of the statement is marked "FILED PURSUANT TO REV. PROC. 2017–47";

(2) The statement identifies the taxpayer's Inconsistent Practice or Procedure; and

(3) The statement includes a representation by the taxpayer of its intention to change to a Consistent Practice or Procedure at the Next Available Opportunity.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2016. However, the Service will not challenge any Inconsistent Practice or Procedure in any earlier taxable year provided that the requirements of sections 3 and 5 of this revenue procedure are satisfied by the taxpayer with respect to the Inconsistent Practice or Procedure in such taxable year.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2276.

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 OMB control number.

The collections of information are in sections 3 and 5 of this revenue procedure and are required for a taxpayer to apply the safe harbor provided by this revenue procedure. This information is required to be collected and retained to clearly demonstrate the effects of a taxpayer's Inconsistent Practice or Procedure and the taxpayer's change to a Consistent Practice or Procedure adopted or approved by the Taxpayer's Regulator. The taxpayer must also include a statement in its federal income tax return identifying the Inconsistent Practice or Procedure and representing its intention to change to a Consistent Practice or Procedure at the Next Available Opportunity. The likely respondents are corporations or partnerships that are regulated public utilities.

The estimated total annual reporting burden is 1,800 hours.

The estimated annual burden per respondent varies from 10 hours to 14 hours, depending on individual circumstances, with an estimated average burden of 12 hours to collect and retain contemporaneous documentation and to complete the statement required under

this revenue procedure. The estimated number of respondents is 150.

The estimated annual frequency of responses is on occasion.

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 § 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Ms. Bernardini on (202) 317-6853 (not a toll free number).

Part IV. Items of General Interest

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2017–12

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The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 18, 2017 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Beaver County Farmers' Markets, Inc.	1/1/2015	Enon Valley, PA
Milford Valley Memorial Hospital	1/1/2013	Milford Valley, UT
Hosanna Foundation, Inc.	1/1/2014	Miramar, FL
Alternative Christian Experience, Inc.	1/1/2014	Tampa, FL
Nevada Sports Academy Stars, Inc.	1/1/2014	Henderson, NV
Play to Succeed	1/1/2013	Longview, WA
2010 ArtBlok	1/1/2015	Minneapolis, MN
Society for International Help, Inc.	1/1/2008	Long Island City, NY
Knowledge Speaks, Inc.	6/1/2011	Jacksonville, FL
Abraham Project	1/1/2014	Philadelphia, PA
Project OneEight, Inc.	1/1/2014	Spartanburg, SC
Kissy's Kidz, Inc.	1/1/2014	Bowie, MD
Inter-religious Foundation For Community Organization, Inc.	1/1/2009	New York, NY
Faith's Hope Foundation	7/1/2010	Fullerton, CA

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 2017–01 through 2017–26 is in Internal Revenue Bulletin 2017–26, dated June 27, 2017.

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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/*.

We Welcome Comments About the Internal Revenue Bulletin

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