INTERNAL REVENUE
BULLETIN

IRS

# HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2018–9
February 26, 2018

**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.**

## ADMINISTRATIVE

### Rev. Proc. 2018–16, page 383.

This revenue procedure provides guidance to the Chief Executive Officers (CEOs) of any State, about how certain population census tracts may be designated as Qualified Opportunity Zones for purposes of §§ 1400Z–1 and 1400Z–2 of the Internal Revenue Code. Specifically, this revenue procedure clarifies the nomination process under § 1400Z–1 by informing the CEOs of each State which census tracts in their jurisdictions are eligible to be nominated to be Qualified Opportunity Zones and by providing the requirements and due dates for the nomination, certification, and designation of the zones. Additionally, this revenue procedure provides a safe harbor for applying the 25 percent limitation to the number of population census tracts in a state that may be designated as Qualified Opportunity Zones.

## EXEMPT ORGANIZATIONS

### Announcement 2018–01, page 387.

Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

### Announcement 2018–02, page 387.

Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

### Announcement 2018–03, page 387.

Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

### Rev. Proc. 2018–15, page 379.

The IRS generally will not require a new exemption application from a domestic section 501(c) organization that changes its form or place of organization. Rev. Rul. 67–390 and Rev. Rul. 77–469 are obsoleted.

## INCOME TAX

### Notice 2018–15, page 376.

This Notice withdraws the solicitations in Notice 2015–12, 2015–10 I.R.B. 700, and Notice 2017–66, 2017–45 I.R.B. 487, for applications for the remaining unused national limitation of authority to issue new clean renewable energy bonds (New CREBs) under § 54C of the Internal Revenue Code (the Code). Section 54C of the Code was repealed by section 13404 of Public Law No. 115–97, 131 Stat 2138 (2017) (Public Law No. 115–97), effective for bonds issued after December 31, 2017.

### Notice 2018–17, page 376.

In response to the devastation caused by Hurricane Maria to the Commonwealth of Puerto Rico, this notice expands the relief provided in Rev. Proc. 2014–49, 2014–37 I.R.B. 535, and Rev. Proc. 2014–50, 2014–37 I.R.B. 540. The expanded relief in this notice is limited to the Hurricane Maria PR Major Disaster (as defined in the notice). This notice also solicits public comment regarding any desirable amendments to Rev. Proc. 2014–49 and Rev. Proc. 2014–50.

### Rev. Proc. 2018–14, page 378.

This procedure modifies Rev. Proc. 2017–60, 2017–50 I.R.B. 559, to extend the time under the safe harbor for an individual to pay to repair damage to his or her personal residence resulting from deteriorating concrete foundations containing the mineral pyrrhotite.

### Rev. Proc. 2018–17, page 384.

This revenue procedure amends Rev. Proc. 2002–39, 2002–22 I.R.B. 1046, and Rev. Proc. 2006–45, 2006–45 I.R.B. 451, so as to prohibit specified foreign corporations (for purposes of section 965) with taxable years that end on December 31, 2017 from changing their annual accounting periods.

**Finding Lists begin on page ii.**

# 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

## New Clean Renewable Energy Bonds

## Notice 2018–15

### SECTION 1. PURPOSE

This Notice withdraws the solicitations in Notice 2015–12, 2015–10 I.R.B. 700, and Notice 2017–66, 2017–45 I.R.B. 487, for applications for the remaining unused national limitation of authority to issue new clean renewable energy bonds (New CREBs) under § 54C of the Internal Revenue Code (the Code). Section 54C of the Code was repealed by section 13404 of Public Law No. 115–97, 131 Stat 2138 (2017) (Public Law No. 115–97), effective for bonds issued after December 31, 2017.

### SECTION 2. BACKGROUND

Section 54C of the Code authorized the issuance of up to $2.4 billion (volume cap) of New CREBs for qualified renewable energy facilities (as defined in § 54C(d)(1)) (projects). Section 54C(c)(2) provided that up to 1/3 of the volume cap is to be allocated to projects to be owned by public power providers, governmental bodies, and cooperative electric companies, respectively.

Notice 2015–12 solicits applications for allocations of the remaining available volume cap of New CREBs for projects to be owned by public power providers, governmental bodies, and cooperative electric companies. Section 4.c. of Notice 2015–12 provides that applications for projects to be owned by governmental bodies or cooperative electric companies may be submitted beginning on March 5, 2015. Section 5.a.(ii) of Notice 2015–12 provides that, except as otherwise provided by section 5 of Notice 2015–12, the Internal Revenue Service (IRS) will allocate the remaining available volume cap designated for projects to be owned by governmental bodies or cooperative electric companies, respectively, on a first-come, first-served basis by order of submission date (as defined in section 4.a. of Notice 2015–12). Notice 2015–12 provides no deadline for applications for projects to be owned by governmental bodies or cooperative electric companies. Under section 4.b. of Notice 2015–12, the deadline for applications for projects to be owned by public power providers is June 3, 2015.

The IRS later identified $379,549,691.35 of remaining available volume cap designated for projects to be owned by public power providers. Notice 2017–66 solicits applications from qualified issuers of New CREBs for projects to be owned by public power providers, and sets forth June 19, 2018, as the due date for submitting applications. *See* Section 3 of Notice 2017–66.

### SECTION 3. STATUS OF ALLOCATIONS AND THE APPLICATION PROCESS

Section 13404(a) of Public Law No. 115–97 provides, in part, that part IV of subchapter A of chapter 1 of the Code is amended by striking subpart I, which contained § 54C of the Code. Section 13404(d) of Public Law No. 115–97 provides that the amendments made by section 13404 shall apply to bonds issued after December 31, 2017. Accordingly, no bond issued after December 31, 2017, under any allocation of volume cap issued by the IRS under Notice 2015–12, may be treated as a New CREB. In addition, the IRS will not be processing applications for, or issuing allocations of, New CREBs volume cap under Notice 2015–12 or Notice 2017–66.

### SECTION 4. EFFECT ON OTHER DOCUMENTS

This Notice obsoletes Notice 2015–12 in part by withdrawing the solicitation of applications for, and discontinuing the allocation of, New CREBs volume cap under sections 3, 4, and 5 of Notice 2015–12. All other provisions of Notice 2015–12 remain in effect for bonds issued on or prior to December 31, 2017.

This Notice obsoletes Notice 2017–66.

### SECTION 5. DRAFTING INFORMATION

The principal author of this Notice is Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this Notice, contact Mr. Stojanovic at 202-317-6980 (not a toll-free number).

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## Low-Income Housing Credit Disaster Relief for the Commonwealth of Puerto Rico

## Notice 2018–17

### I. PURPOSE

In response to the devastation caused by Hurricane Maria to the Commonwealth of Puerto Rico (hereinafter, Puerto Rico), this notice expands the relief that is provided in Rev. Proc. 2014–49, 2014–37 I.R.B. 535, and Rev. Proc. 2014–50, 2014–37 I.R.B. 540. The expanded relief in this notice is limited to the Hurricane Maria PR Major Disaster, as defined below. Except as expressly provided in this notice, all provisions of Rev. Procs. 2014–49 and 2014–50 apply to the Hurricane Maria PR Major Disaster without modification.

This notice also solicits public comment regarding any desirable modifications to Rev. Procs. 2014–49 and 2014–50.

### II. BACKGROUND

Rev. Procs. 2014–49 and 2014–50 provide temporary relief from certain requirements of §§ 42 and 142(d) of the Internal Revenue Code in the context of a major disaster. Rev. Proc. 2014–49 provides guidance and relief to the owners of qualified low-income housing projects (each such project, a § 42 Project) and to Agencies (as defined in section 5.01 of Rev. Proc. 2014–49) that are responsible for those § 42 Projects. Rev. Proc. 2014–50 provides guidance to issuers of exempt facility bonds financing qualified residential rental projects under § 142(d) (each such issuer, an Issuer; each such project, a § 142(d) Project) and to operators of those § 142(d) Projects. Various aspects of these revenue procedures apply with respect to § 42 Projects and § 142(d) Projects both inside and outside of the area in which the major disaster occurs.

Sections 12 through 14 of Rev. Proc. 2014–49 and sections 5 through 7 of Rev. Proc. 2014–50 facilitate emergency housing relief for Displaced Individuals (as defined in section 5.02 of Rev. Proc. 2014–49 and in section 4.02 of Rev. Proc. 2014–50). To achieve this end, these sections give owners of § 42 Projects and operators of § 142(d) Projects the option to apply certain modifications to the rules of §§ 42 and 142(d), provided that the relevant Agency or Issuer authorizes the owner or operator to do so. Among these modifications is the ability to disregard the actual income of a Displaced Individual housed in a § 42 Project or a § 142(d) Project, even if the Displaced Individual's income exceeds the limitations on income provided in §§ 42 or 142(d). The option to apply these modified rules is limited to a period defined in the revenue procedures as the Temporary Housing Period. *See* section 5.08 of Rev. Proc. 2014–49 and section 4.13 of Rev. Proc. 2014–50. The Temporary Housing Period begins on the first day of the incident period, as determined by the Federal Emergency Management Agency (FEMA), and ends on a date determined by the Agency or Issuer. Both revenue procedures provide a date beyond which the Temporary Housing Period may not extend. *See* section 12.02(1) of Rev. Proc. 2014–49 and section 5.02(1) of Rev. Proc. 2014–50.

On September 20, 2017, the President of the United States issued major disaster and emergency declarations with respect to Hurricane Maria under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), and FEMA determined certain areas within Puerto Rico to be eligible for Public Assistance or Public Assistance and Individual Assistance under the Stafford Act (the Hurricane Maria PR Major Disaster). *See* 82 Fed. Reg. 46820 (2017). The incident period for the Hurricane Maria PR Major Disaster began on September 17, 2017, and closed on November 15, 2017. *See* 82 Fed. Reg. 61768 (2017).

Agencies must periodically review § 42 Projects for compliance with the affordability and habitability requirements of § 42. See §§ 42(m)(1)(B)(iii) and 142(d)(7); also see §§ 1.42–5 and 1.42–5T of the Income Tax Regulations. Under section 9 of Rev. Proc. 2014–49, an Agency may extend the due date for its scheduled compliance reviews for up to one calendar year from the date of a low-income building's restoration and placement again into service. That revenue procedure does not delay the compliance review due dates of buildings that do not require restoration and replacement into service.

Ordinarily, even though an owner has received a carryover allocation of housing credit dollar amount for a building, the benefit of that allocation may be lost if the owner does not timely meet certain progress benchmarks with respect to the building. First, not later than the due date in § 42(h)(1)(E)(ii), the owner's basis in the § 42 Project containing the building must be more than 10 percent of the owner's reasonably expected eventual basis in the project. Second, the building must be placed in service not later than the due date in § 42(h)(1)(E)(i). However, in the case of certain buildings located in major disaster areas, sections 6 and 7 of Rev. Proc. 2014–49 authorize the Agency responsible for a building to extend these deadlines for limited periods.

## III. **EMERGENCY HOUSING RELIEF**

Solely in connection with the Hurricane Maria PR Major Disaster, the second sentence of section 12.02(1) in Rev. Proc. 2014–49 and the second sentence of section 5.02(1) in Rev. Proc. 2014–50 are revised to read: "The Temporary Housing Period cannot extend beyond the end of May 2019."

## IV. **COMPLIANCE MONITORING RELIEF**

Under this notice, the Puerto Rico Housing Finance Authority (PRHFA) may extend the date for its compliance review of low-income buildings located in Puerto Rico notwithstanding section 9 of Rev. Proc. 2014–49. For any such building, this extension may not last beyond one calendar year from the later of—

- November 15, 2017; or
- In the case of a building that has suffered a casualty loss due to Hurricane Maria or has been taken out of service due to that hurricane, the date of the building's restoration and placement again in service.

This extension of dates for compliance review by the PRHFA does not, however, extend the compliance monitoring deadlines for owners. If the PRHFA learns that an owner or operator has failed to comply with the rules of § 42, as applicable, the noncompliance must be reported timely to the Internal Revenue Service (Service), along with a description of whether and how Hurricane Maria contributed to the noncompliance.

## V. **CARRYOVER ALLOCATION RELIEF**

Notwithstanding the limitations in sections 6 and 7 of Rev. Proc. 2014–49, under this notice the PRHFA may grant extensions of the due date in § 42(h)(1)(E)(ii) (regarding basis) for up to 12 months after the later of—

- The due date prior to any extension; or
- November 15, 2017.

Similarly, the PRHFA may grant extensions of the due date in § 42(h)(1)(E)(i) (regarding placement into service) up to December 31 of the first calendar year following the calendar year containing the due date in § 42(h)(1)(E)(ii), taking into account any extension granted under the preceding paragraph.

Except for the ability to extend these two due dates for longer periods, all other procedures and limitations in sections 6 and 7 continue to apply to buildings affected by the Hurricane Maria PR Major Disaster. As is the case for extensions under those sections, if an owner satisfies an extended due date prescribed by the PRHFA under this notice, the Service will not assert that the owner fails to satisfy § 42(h)(1)(E)(i) or (ii), as applicable.

## VI. **REQUEST FOR COMMENTS REGARDING POSSIBLE IMPROVEMENTS TO REVENUE PROCEDURES 2014–49 AND 2014–50**

The Department of the Treasury and the Service are considering whether to make any changes to Rev. Procs. 2014–49 and 2014–50, and, in that regard, request comments from the public regarding possible changes to the two revenue procedures. Comments should be submitted by April 12, 2018. Comments may be mailed to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018–17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018–17)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address:

*Notice.Comments@irscounsel.treas.gov*.

Persons should include "Notice 2018–17" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

VII. **DRAFTING INFORMATION**

The principal author of this notice is James W. Rider of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Rider at (202) 317-4137 (not a toll-free number).

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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.*

*(Also Part 1, §§ 165; 1.165–7(a)(2); 1.165–7(b).)*

# Rev. Proc. 2018–14

## SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2017–60, 2017–50 I.R.B. 559, to extend the time for individuals to pay to repair damage to their personal residences resulting from deteriorating concrete foundations caused by the presence of the mineral pyrrhotite.

## SECTION 2. BACKGROUND

.01 Revenue Procedure 2017–60 provides a safe harbor method that allows a taxpayer who pays to repair damage to that taxpayer's personal residence resulting from a deteriorating concrete foundation that contains the mineral pyrrhotite to treat the amount paid as a casualty loss in the year of payment.

.02 The safe harbor is available to a taxpayer who has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete, and has requested and received a reassessment report that shows the reduced reassessed value of the residential property based on the written evaluation from the engineer and an inspection pursuant to Connecticut Public Act No. 16–45. The safe harbor also is available to a taxpayer whose personal residence is either in Connecticut or outside of Connecticut, provided the taxpayer has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete containing the mineral pyrrhotite.

03. To claim a casualty loss under the safe harbor in Rev. Proc. 2017–60, a taxpayer generally must have paid to repair damage caused by a deteriorating concrete foundation before January 1, 2018.

04. In view of the unique hardships caused by the extensive repairs necessary to remedy the deteriorating concrete foundations and the comments received expressing concern that taxpayers need additional time to make the repairs, the Department of the Treasury and the Internal Revenue Service have determined that it is appropriate to modify the safe harbor in Rev. Proc. 2017–60 to extend the time for individual taxpayers to pay to repair the damage to their personal residences.

## SECTION 3. MODIFICATION TO REV. PROC. 2017–60

Section 4.01 of Rev. Proc. 2017–60, is modified and as modified, this section reads in its entirety as follows:

.01 If a taxpayer pays to repair damage to that taxpayer's personal residence caused by a deteriorating concrete foundation during the taxpayer's 2016 taxable year or earlier, the taxpayer may treat the amount paid as a casualty loss on a timely Amended U.S. Individual Income Tax Return (Form 1040X) for the taxable year of payment. If a taxpayer pays to repair the damage during the taxpayer's 2017 taxable year or prior to a timely filed (including extensions) original U.S. Individual Income Tax Return (Form 1040, 1040A or 1040EZ) for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on the taxpayer's original 2017 income tax return (or a timely filed Form 1040X for the 2017 taxable year). If a taxpayer pays to repair the damage after filing an original 2017 income tax return and prior to the last day for filing a timely Form 1040X for the 2017 taxable year, the taxpayer may treat the amount paid as a casualty loss on a timely filed Form 1040X for the 2017 taxable year. For purposes of this revenue procedure, the term "deteriorating concrete foundation" means a concrete foundation that is damaged as a result of the presence of the mineral pyrrhotite in the concrete mixture used before January 1, 2018, in pouring the foundation. The safe harbor under this revenue procedure is available to a taxpayer who has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete, and has requested and received a reassessment report that shows the reduced reassessed value of the residential property based on the written evaluation from the engineer and an inspection pursuant to Connecticut Public Act No. 16–45 (Act). The safe harbor also is available to a taxpayer whose personal residence is either in Connecticut or outside of Connecticut, provided the taxpayer has obtained a written evaluation from a licensed engineer indicating that the foundation was made with defective concrete containing the mineral pyrrhotite.

## SECTION 4. EFFECTIVE DATE

This modification in this revenue procedure will be treated as in effect as of the effective date of Rev. Proc. 2017–60, which is for federal income tax returns (including amended federal income tax returns) filed after November 21, 2017.

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2017–60 is modified.

## SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Susie K. Bird of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure contact

Susie K. Bird on (202) 317-5100 (not a toll-free number).

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*26 CFR 1.501(a)–1: Exemption from taxation*
*(Also: 26 CFR 1.505(c)–1T: Notification requirement; 26 CFR 1.506–1T: Notification requirement; 26 CFR 1.508–1: Notices; 26 CFR 601.201: Rulings and determination letters)*

# Rev. Proc. 2018–15

The IRS generally will not require a new exemption application from a domestic section 501(c) organization that changes its form or place of organization. Rev. Rul. 67–390 and Rev. Rul. 77–469 are obsoleted.

**SECTION 1. PURPOSE**

This revenue procedure reduces compliance burdens on certain exempt organizations by providing the circumstances under which the Internal Revenue Service (IRS) generally will not require domestic business entities to file a new exemption application when they change their form or state of organization. This revenue procedure obsoletes Rev. Rul. 67–390 and Rev. Rul. 77–469.

**SECTION 2. BACKGROUND AND ANALYSIS**

Section 501(a) of the Internal Revenue Code (Code) provides that an organization described in section 501(c) shall be exempt from taxation under Subtitle A of the Code.

Section 1.501(a)–1(a)(2) of the Treasury Regulations provides that it is necessary for an organization to file an application in order to establish its exemption.

Section 1.501(a)–1(a)(3) of the Treasury Regulations provides that an organization claiming exemption under section 501(a) and described in section 501(c) shall file the form of application prescribed by the Commissioner.

Section 505 of the Code generally provides that an organization shall not be treated as described in paragraph (9), (17), or (20) of section 501(c) unless it has given notice to the Secretary that it is applying for recognition of exemption.

Section 506 of the Code generally provides that an organization described in section 501(c)(4) shall, not less than 60 days after the organization is established, notify the Secretary that it is operating as such.

Section 508 of the Code generally provides that an organization organized after October 9, 1969 shall not be treated as described in section 501(c)(3) unless it has given notice to the Secretary that it is applying for recognition of exemption.

Section 1.508–1(a)(2) of the Treasury Regulations provides that an organization seeking exemption under section 501(c)(3) files the notice described in section 508(a) by submitting a properly completed and executed Form 1023 (or, if applicable, Form 1023–EZ) exemption application.

Section 6109(a) of the Code generally provides that any person required to make a return, statement or other document under subtitle A shall include its identifying number.

Section 6109(c) of the Code provides that the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person.

Section 301.6109–1(a)(1)(ii)(C) of the Treasury Regulations provides that any person other than an individual that is required to furnish a taxpayer identifying number must use a federal Employer Identification Number (EIN). Section 301.6109–1(h)(1) of the Treasury Regulations generally provides that any entity with an EIN will retain that EIN if its federal tax classification changes under § 301.7701–3 of the Treasury Regulations. For special EIN rules, see § 301.6109–1(h)(2) of the Treasury Regulations (entities disregarded as separate from their owners) and (i) (qualified subchapter S subsidiaries).

Section 301.7701–2(a) of the Treasury Regulations provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3 of the Treasury Regulations) that is not properly classified as a trust under § 301.7701–4 of the Treasury Regulations or otherwise subject to special treatment under the Code. It further provides that a business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership, and a business entity with only one owner is classified as a corporation or is disregarded.

Section 301.7701–2(b)(1) of the Treasury Regulations provides that a business entity organized under a federal or state statute is a corporation if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.

Section 301.7701–2(b)(2) of the Treasury Regulations provides that an association as determined in § 301.7701–3 of the Treasury Regulations is a corporation.

Section 301.7701–3(a) of the Treasury Regulations provides that a business entity that is not classified as a corporation under § 301.7701–2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301–7701–2(b)(2) of the Treasury Regulations) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Section 301.7701–3(c)(1)(v)(A) of the Treasury Regulations provides that an eligible entity that has been determined to be, or claims to be, exempt from taxation under section 501(a) is treated as having made an election to be classified as an association (and thus a corporation under § 301.7701–2(b)(2) of the Treasury Regulations).

Rev. Proc. 2018–5, 2018–1 I.R.B. 233, as modified by Rev. Proc. 2018–10, 2018–7 I.R.B. 355, sets forth procedures for issuing determination letters on exempt status (in response to applications for recognition of exemption from federal income tax under section 501) under the jurisdiction of the Director, Exempt Organizations (EO) Rulings and Agreements. Section 3.01 of Rev. Proc. 2018–5 provides that EO Determinations issues determination letters on initial qualification for exempt status of organizations described in section 501, and updated exempt status letters (affirmation letters) to reflect changes to an organization's name or address. Section 3.02 of Rev. Proc. 2018–5 provides that EO Determinations will not issue a determination letter if an organization currently recognized as exempt under section 501(c) seeks a new determination letter confirming that the organization is still recognized under the same Code section under the currently extant facts. Section 4 of Rev. Proc. 2018–5 provides that organizations seeking recognition of exemption under section 501(c)(3) must submit a completed Form 1023 or Form 1023–EZ (if applicable), organizations seeking recognition of exemption under section 501(c)(4) must submit a completed Form 1024–A, organizations seeking recognition of exemption under sections 501(c)(2), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), and (25) must submit a completed Form 1024, and organizations seeking recognition of exemption under sections 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), or (29), or under section 501(d) must submit a letter application. Section 11.02 of Rev. Proc. 2018–5 provides that an organization may not rely on its determination letter if there is a material change of facts, inconsistent with exemption, in the character, purpose, or method of operation of the organization.

Rev. Rul. 67–390, 1967–2 C.B. 179, holds that a new exemption application is required in four cases where an organization previously recognized as exempt from federal income tax under section 501(a) makes certain changes in its structure. The four structural changes are: (1) incorporation of a trust; (2) incorporation of an association; (3) reincorporation by an Act of Congress; and (4) reincorporation under the laws of another state. The ruling states that each of these cases creates a new legal entity and, accordingly, each new organization must file an application for exemption to establish that the new entity qualifies for exemption under the Code and applicable regulations.

Rev. Rul. 77–469, 1977–2 C.B. 196, holds that an unincorporated association which incorporated after the enactment of section 508 is a new legal entity and therefore is required to file an application to be recognized as exempt under section 501(c)(3).

Accordingly, the IRS in the past has specified in forms and publications that a new exemption application is required if an exempt organization changes its legal structure, such as from a trust to a corporation, or it dissolves in one state and incorporates in another. *See, e.g*., Publication 557, Tax Exempt Status for Your Organization (Rev. Jan. 2018) and 2017 Instructions for Form 990 Return of Organization Exempt from Income Tax (Jan. 18, 2018). These IRS forms and publications also specify that organizations are required to report new significant program services or significant changes in how they conduct program services, and significant changes to their organizational documents, on their Forms 990 rather than in letters to EO Determinations. *Id.*

However, other rules generally provide that in many of these circumstances a new EIN is not required for federal tax purposes. For example, when one corporation merges into another corporation under state law and the latter corporation survives, a new EIN is not required for the surviving corporation. Similarly, a new EIN is not required if a corporation incorporated under the laws of one state reincorporates as a corporation incorporated under the laws of another state. *See* Rev. Rul. 73–526, 1973–2 C.B. 404.

Publication 1635, Employer Identification Number, Understanding your EIN (February 2014), provides further instruction regarding when a new EIN is necessary. Specifically, Publication 1635 specifies that a new EIN is not required in the following cases:

- After a corporate merger, the surviving corporation uses its existing EIN.
- After a corporate reorganization, a corporation only changes its identity, form, or place of organization.

Publication 1635 also specifies that a new EIN is required in the following cases:

- A corporation creates a new corporation after a statutory merger.
- A trust changes to an estate or other non-trust.

In 2015, the Department of the Treasury (Treasury Department) and the IRS announced they are studying how to assign (or reassign) EINs to taxpayers following a reorganization under section 368(a)(1)(F) of the Code, including in cases in which the transferor corporation remains in existence as a disregarded entity, and requested public comments. T.D. 9739, 80 F.R. 56904, 56911 (Sept. 21, 2015).

The IRS rules for new exemption applications generally are more burdensome than the rules for new EINs described above. Specifically, Rev. Ruls. 67–390 and 77–469 require new exemption applications in the following cases in which IRS rules generally do not require a new EIN:

- Incorporation of an exempt association.
- Reincorporation under an Act of Congress.
- Reincorporation of an exempt corporation in a different state.

Moreover, the Treasury Department and the IRS have not published guidance on whether a new exemption application is required in the following circumstances in which the IRS may not require a new EIN:

- Continuation of a surviving corporation after a statutory merger of exempt organizations.
- Filing articles of domestication in a different state by an exempt organization.

Requiring a new exemption application after a corporate restructuring often is unnecessary and duplicative, because the IRS requires exempt organizations to report significant organizational changes on their annual Forms 990. Moreover, any possible exemption issues with a corporate restructuring are less burdensome for the IRS to administer when the surviving organization can continue to use the same EIN on its Form 990 as the restructuring organization. Accordingly, this revenue procedure generally eliminates the requirement for domestic business entities classified as corporations for federal tax purposes to file a new exemption application after a corporate restructuring, if certain conditions are met, to better align the requirements for new exemption applications with the requirements for obtaining new EINs in common restructuring situations.

In light of the pending Treasury Department and IRS study on assigning and reassigning EINs in certain reorganizations under section 368(a)(1)(F), and the lack of published guidance explaining how exemption requirements apply to limited liability companies organized under various state laws, this revenue procedure does not apply to corporate restructuring transactions with limited liability companies or foreign business entities.

### SECTION 3. SCOPE

This revenue procedure applies to corporate restructurings of domestic business entities that are classified as corporations under § 301.7701–2(b)(1) or (2) of the Treasury Regulations and are recognized as exempt under section 501(a) as organizations described in section 501(c).

### SECTION 4. DEFINITIONS.

The following definitions apply for purposes of this revenue procedure.

**.01** *Business entity* has the meaning specified in § 301.7701–2(a) of the Treasury Regulations.

**.02** *Corporate restructuring* means incorporation under the laws of a state, reincorporation of a corporation incorporated under the laws of one state under the laws of a different state, filing articles of domestication for a corporation incorporated under the laws of one state under the laws of a different state, or a statutory merger of one corporation with and into another corporation.

**.03** *Disregarded Entity* is an entity that is disregarded as an entity separate from its owner described in § 301.7701–2(c)(2)(i) of the Treasury Regulations.

**.04** *Domestic business entity* is a business entity that is domestic under § 301.7701–5(a) of the Treasury Regulations.

**.05** *Domestic trust* is a trust that is domestic under § 301.7701–7(a)(1) of the Treasury Regulations.

**.06** *Eligible entity* has the meaning specified in § 301.7701–3(a) of the Treasury Regulations.

**.07** *Employer identification number* has the meaning specified in § 301.7701–12 of the Treasury Regulations.

**.08** *Exemption Application* means Form 1023, Form 1023–EZ, Form 1024, Form 1024–A, or letter application, as applicable.

**.09** *Foreign business entity* is a business entity that is foreign under § 301.7701–5(a) of the Treasury Regulations.

**.10** *Limited liability company* means an entity formed under a state limited liability company act.

**.11** *Restructuring organization* means any organization exempt under section 501(a) as an organization described in section 501(c) that enters into a corporate restructuring.

**.12** *Surviving organization* means a surviving or resulting entity of a corporate restructuring.

### SECTION 5. EXEMPTION APPLICATION REQUIREMENTS FOR SURVIVING ORGANIZATIONS OF CORPORATE RESTRUCTURINGS

#### .01 In general

Subject to the requirements and limitations in section 5.02, 5.03 and 5.04 of this revenue procedure, in the case of a corporate restructuring of a domestic business entity that is classified as a corporation under § 301.7701–2(b)(1) or (2) of the Treasury Regulations and is recognized as exempt under section 501(a) as an organization described in section 501(c), the surviving organization will not be required to file a new exemption application to be exempt under section 501(a) as an organization described in the same paragraph of section 501(c) if such surviving organization is—

(1) a domestic business entity;

(2) classified as a corporation under § 301.7701–2(b)(1) or (2) of the Treasury Regulations; and

(3) carrying out the same purposes as the exempt organization that engaged in the corporate restructuring.

#### .02 Good standing requirement

For purposes of this section 5, the restructuring organization (or all restructuring organizations in the case of a statutory merger) must be in good standing with the state in which it was incorporated (or formed in the case of unincorporated associations).

#### .03 Additional requirement for section 501(c)(3) organizations

For purposes of this section 5, if the restructuring organization is exempt under section 501(a) as an organization described in section 501(c)(3), the articles of organization of the surviving organization must continue to meet the organizational test of § 1.501(c)(3)–1(b) of the Treasury Regulations, including § 1.501(c)(3)–1(b)(4) (regarding dedication of assets to exempt purposes).

#### .04 Excluded corporate restructurings

Section 5 of this revenue procedure does not apply to any corporate restructuring in which (1) the restructuring organization or the surviving organization is a disregarded entity, limited liability company, partnership, or foreign business entity; or (2) the surviving organization obtains a new EIN.

#### .05 Exemption application procedures for organizations not meeting requirements of section 5 of this revenue procedure.

Surviving organizations that do not meet the requirements of section 5 of this revenue procedure and that want to be recognized as exempt under section 501(a) should refer to Rev. Proc. 2018–5 for the procedures to apply for a determination letter.

### SECTION 6. REPORTING REQUIREMENTS

The surviving organization must report the corporate restructuring on any required Form 990 for the applicable taxable year. In the case of a domestication or reincorporation in a different state, the surviving organization must also report a change of address as prescribed by the Commissioner. *See* Form 8822–B; Form 990; *https://www.irs.gov/charities-non-profits/other-non-profits/change-of-address-exempt-organizations*.

### SECTION 7. EXAMPLES

The application of this revenue procedure is demonstrated in the following examples. In the examples, each restructuring organization is recognized as exempt under section 501(a) and is in good standing in its state of incorporation or formation, the surviving organization continues to carry out the same purposes as the restructuring organization, and (for section 501(c)(3) organizations) the articles of incorporation of the surviving organization continue to meet the organizational test of § 1.501(c)(3)–1(b) of the Treasury Regulations, including § 1.501(c)(3)–1(b)(4) (regarding dedication of assets to exempt purposes).

**.01 Incorporation of an association**

A is an unincorporated nonprofit organization that was formed on Date 1 under the laws of State M. On Date 2, the IRS recognized A as exempt under section 501(c)(3). A is a domestic business entity and is treated under § 301.7701–3(c)(1)(v)(A) as having made an election to be classified as an association (and thus a corporation under § 301.7701–2(b)(2)). On Date 3, A incorporates in State M, and is classified as a corporation under § 301.7701–2(b)(1). Because A, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, A continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

**.02 Incorporation of a trust**

B is a charitable trust that was formed on Date 1 under the laws of State N. B is a domestic trust. B is not a business entity. On Date 2, the IRS recognized B as exempt under section 501(c)(3). On Date 3, B incorporates in State N. Because the restructuring organization B is not a business entity, pursuant to section 5.01 of this revenue procedure, B is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). *See* Rev. Proc. 2018–5, § 3.01(1).

**.03 Reincorporation in a different state**

C is a corporation formed on Date 1 under the laws of State O. C is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 2, the IRS recognized C as exempt under section 501(c)(4). On Date 3, C reincorporates in State P. Because C, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, C continues to be recognized as exempt under section 501(c)(4) without filing a new application for recognition of exemption.

**.04 Domestication**

D is a corporation formed on Date 1 under the laws of State Q. D is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 2, the IRS recognized D as exempt under section 501(c)(3). On Date 3, D files articles of domestication with the corporation governing agency of State R and a certificate of conversion with the corporation governing agency of State Q. Under the laws of State Q and State R, D continues to exist as the same corporation. Because D, as both the restructuring organization and the surviving organization, is a domestic business entity classified as a corporation, pursuant to section 5.01 of this revenue procedure, D continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

**.05 Restructuring as a limited liability company**

E is a corporation formed on Date 1 under the laws of State S. E is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 2, the IRS recognized E as exempt under section 501(c)(3). On Date 3, E converts into a limited liability company under the laws of State T. Because the surviving organization E is a limited liability company, pursuant to section 5.04 of this revenue procedure, E is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). *See* Rev. Proc. 2018–5, § 3.01(1).

**.06 Reincorporation of a foreign entity**

F is a corporation formed on Date 1 under the laws of Country U. F is a foreign business entity classified as a corporation under § 301.7701–2(b)(8). On Date 2, the IRS recognized F as exempt under section 501(c)(3). On Date 3, F reincorporates in State V. Because the restructuring organization F is a foreign business entity, pursuant to section 5.04 of this revenue procedure, F is required to file a new Form 1023 to be recognized as exempt under section 501(c)(3). *See* Rev. Proc. 2018–5, § 3.01(1).

**.07 Merger into an existing corporation**

G is a corporation formed on Date 1 under the laws of State W. G is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 2, the IRS recognized G as exempt under section 501(c)(3). H is a corporation formed on Date 1 under the laws of State X. H is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 3, the IRS recognized H as exempt under section 501(c)(3). On Date 4, G merged into H in accordance with the applicable state merger statutes and H was the surviving organization. After the corporate restructuring, H carries out the same purposes that G and H carried out prior to the corporate restructuring. Because both G and H are domestic business entities classified as corporations, pursuant to section 5.01 of this revenue procedure, H continues to be recognized as exempt under section 501(c)(3) and is not required to file a new Form 1023.

**.08 Merger into a disregarded entity**

I is a corporation formed on Date 1 under the laws of State Y. I is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 2, the IRS recognized I as exempt under section 501(c)(3). On Date 3, J is formed as a State Z corporation. J is a domestic business entity classified as a corporation under § 301.7701–2(b)(1). On Date 4, the IRS recognized J as exempt under section 501(c)(3). On Date 5, J forms a new State Z limited liability company K that is a disregarded entity. On Date 6, I merges into K under the applicable state laws. After the corporate restructuring, J, directly and through K, carries out the same purposes that I and J carried out prior to the corporate restructuring. Because K is a limited liability company, section 5 of this revenue procedure does not apply. K is required to file a new Form 1023 if it wants to be recognized as exempt under section 501(c)(3). *See* Rev. Proc. 2018–5, § 3.01(1). J should not file a new Form 1023. *See* Rev. Proc. 2018–5, § 3.02(6).

**SECTION 8. APPLICABILITY**

**.01** This revenue procedure specifies the circumstances under which organizations recognized as exempt under section 501(c) are not required to file new exemption applications under the same subsection of section 501(c) for federal income tax purposes after a corporate restructuring.

**.02** For purposes of section 508, a surviving section 501(c)(3) organization that meets the requirements of sections 5.01

through 5.04 of this revenue procedure will not be treated as a new organization.

**.03** For purposes of section 506, a surviving section 501(c)(4) organization that meets the requirements of sections 5.01, 5.02, and 5.04 of this revenue procedure will not be treated as a newly established organization.

**.04** For purposes of section 505, a surviving section 501(c)(9), (17) or (20) organization that meets the requirements of sections 5.01, 5.02, and 5.04 of this revenue procedure will not be treated as a new organization.

**.05** Even when the surviving organization of a corporate restructuring is not required to file a new exemption application pursuant to section 5 of this revenue procedure, the surviving organization may not rely on the determination letter of the restructuring organization if there has been a material change of facts, inconsistent with exemption, in the character, purpose, or method of operation of the restructuring organization. *See* Rev. Proc. 2018–5, section 11.02.

**.06** This revenue procedure does not apply to a corporate restructuring in which the surviving organization seeks a determination that it is exempt under a different paragraph of section 501(c) than its prior determination.

**.07** This revenue procedure does not affect or provide guidance on the rules for EINs under section 6109 or the requirements for a reorganization under section 368(a)(1)(F).

**.08** This revenue procedure does not affect any state law requirements, including any state law reporting, filing, or notice requirements for corporate restructurings.

### SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 67–390, 1967–2 C.B. 179, and Rev. Rul. 77–469, 1977–2 C.B. 196, are obsoleted.

### SECTION 10. EFFECTIVE DATE

This revenue procedure is effective for tax years beginning on or after January 1, 2018.

### SECTION 11. DRAFTING INFORMATION

The principal authors of this revenue procedure are Obinna Chukwuanu and Don Spellmann of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure contact Obinna Chukwuanu or Don Spellmann on (202) 317-4086 (not a toll-free number).

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*26 CFR 601.601: Rules and regulations.*
*(Also Part 1, §§ 45D, 1400Z–1, 1400Z–2.)*

## Rev. Proc. 2018–16

### SECTION 1. PURPOSE

This revenue procedure provides guidance to the Chief Executive Officers of any State, any possession of the United States, and the District of Columbia regarding the procedure for designating population census tracts as Qualified Opportunity Zones for purposes of §§ 1400Z–1 and 1400Z–2 of the Internal Revenue Code (Code).

### SECTION 2. BACKGROUND

.01 *Enactment*. Section 13823 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97, which was enacted on December 22, 2017, amended the Code by adding §§ 1400Z–1 and 1400Z–2 to the Code.

.02 *Tax incentives*. Section 1400Z–2 of the Code allows the temporary deferral of inclusion in gross income for certain realized gains to the extent that corresponding amounts are timely invested in a qualified opportunity fund. Investments in a qualified opportunity fund may also be eligible for additional tax benefits.

.03 *Qualified Opportunity Fund*. Section 1400Z–2(d)(1) of the Code provides that a qualified opportunity fund is an investment vehicle that is organized as a partnership or a corporation for the purpose of investing in Qualified Opportunity Zone property.

.04 *Designations, in general*. Section 1400Z–1 of the Code allows the Chief Executive Officer (CEO) of each State to nominate a limited number of population census tracts to be designated as Qualified Opportunity Zones (QOZs). For purposes of §§ 1400Z–1 and 1400Z–2 and this revenue procedure, the term “State” means any State, any possession of the United States, and the District of Columbia. *See* §§ 1400Z–1(c)(3) and 7701(a)(10) of the Code. Under § 1400Z–1(c)(1), a population census tract is eligible for designation as a QOZ if it satisfies the definition of “low-income community” (LIC) in § 45D(e) of the Code.

.05 *Tracts Contiguous with LICs*. In addition, under § 1400Z–1(e) of the Code, a tract that is not an LIC is eligible for designation if both of the following conditions are met:

(1) The non-LIC tract is contiguous with an LIC that is designated as a QOZ (the contiguous LIC QOZ need not be in the same State.); and
(2) The median family income of the non-LIC tract does not exceed 125 percent of the median family income of that contiguous LIC QOZ.

.06 *Determination Period and Extension*. Pursuant to § 1400Z–1(b)(1)(A) and (c)(2)(B) of the Code, the CEO of the State in which a tract is located may nominate the tract to be a QOZ, and any such nomination must be made no later than March 21, 2018. Under § 1400Z–1(b)(2), however, the State CEO may request, and receive, a 30-day extension of this deadline.

.07 *Consideration Period and Extension*. In general, not later than the end of a 30-day period beginning on the date that the Secretary of the Treasury (Secretary) receives notice of a nomination, the Secretary may certify the nomination and designate the nominated tract as a QOZ. Under § 1400Z–1(b)(2) of the Code, however, the State CEO may request, and receive, a 30-day extension of the Secretary’s deadline.

.08 *Qualified Opportunity Zone*. Section 1400Z–1 of the Code defines a QOZ as any population census tract (either a nominated LIC or a nominated non-LIC, contiguous census tract) that is designated as a QOZ.

.09 *Number of Designations*.

(1) In general, § 1400Z–1(d)(1) of the Code provides that the number of population census tracts in a State that may be designated as QOZs may not exceed 25

percent of the number of population census tracts in the State that are LICs. If the number of LICs in a State is not evenly divisible by 4, the 25 percent limitation is determined by rounding the fractional quotient up to the next whole number. For example, if a State contains 197 LICs, the maximum number of designations is 50, even though 25 percent of 197 is 49.25.

(2) Section 1400Z–1(d)(2) of the Code further provides that, notwithstanding the 25 percent limitation, if a State contains fewer than 100 LICs, then a total of 25 tracts may be designated.

(3) Section 1400Z–1(e)(2) of the Code provides that not more than 5 percent of the tracts designated in a State may be non-LIC, contiguous tracts designated under § 1400Z–1(e)(1). Thus, designations under § 1400Z–1(d)(1) and (d)(2) may include a limited number of non-LIC contiguous tracts. If the number of designated QOZs in a State is not evenly divisible by 20, the 5 percent limitation is determined by rounding the fractional quotient up to the next whole number. For example, suppose that State B has 80 LICs. Under § 1400Z–1(d)(2), State B is allowed to nominate 25 tracts for QOZ designation because State B has fewer than 100 LICs. If State B nominates all 25 of the QOZs allowed, then of the 25 nominated tracts, only 2 (5 percent of 25 or 1.25, rounded up to 2) nominated tracts may be non-LIC contiguous tracts. But if State B nominated only 18 LICs, then it could nominate only 1 (5 percent of 19 or 0.95, rounded up to 1) additional non-LIC contiguous tract.

### SECTION 3. IDENTITY OF LICs AND OF THE CONTIGUOUS TRACTS THAT ARE ALSO ELIGIBLE FOR DESIGNATION AS QOZs

.01 Based on the 2011–2015 American Community Survey (ACS) 5-Year data from the Census Bureau, a public, on-line resource (Information Resource) identifies over 41,000 population census tracts that are eligible for designation as a QOZ:

(1) 31,680 population census tracts that are LICs eligible for designation as QOZs; and

(2) 9,453 non-LIC population census tracts that are eligible for designation if a particular LIC contiguous to the non-LIC tract is designated as a QOZ.

.02 This Information Resource includes detailed mapping, which makes it possible to see the exact location of every tract and to view a variety of demographic information for each eligible tract.

.03 In the case of each tract described in section 3.01(2) of this revenue procedure, the Information Resource includes one or more LIC tracts on whose designation as a QOZ the non-LIC tract's eligibility depends.

.04 The Information Resource can be accessed at *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx*.

.05 In the fall of 2017, the Census Bureau released the 2012–2016 ACS 5-Year data. Because of the March 21, 2018, deadline for State CEOs to nominate tracts for designation as QOZs, the maximum aggregate number of designations in a State is determined on the basis of the 2011–2015 ACS, as reflected in the Information Resource described above.

.06 In addition, the Information Resource is a "safe harbor." That is, if the Information Resource identifies a census tract as being either an eligible LIC or an eligible non-LIC contiguous tract, a State CEO's nomination of that tract will not fail to be certified on the grounds that the tract is no longer eligible under more recent census data.

.07 On the other hand, in many cases, if a tract is eligible under the most recent available ACS 5-Year data, the tract is eligible to be nominated for designation. If the Information Resource, however, does not identify the tract as eligible, the nomination must be accompanied by an analysis demonstrating that eligibility, including appropriate supporting data from that ACS.

### SECTION 4. SCOPE

This revenue procedure applies to the CEO of any State that desires to nominate for designation as QOZs population census tracts that are either LICs that qualify under § 1400Z–1(c)(1) of the Code or non-LIC contiguous tracts that qualify under § 1400Z–1(e)(1) of the Code.

### SECTION 5. PROCEDURE

.01 A Nomination Tool, which can be accessed online, has been developed for the benefit of State CEOs that are making nominations of census tracts for designation as QOZs.

.02 Further information on the nomination process under § 1400Z–1 of the Code, including how to access the online Nomination Tool and how to request an extension of the determination period, will be sent individually to all State CEOs.

### SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on February 8, 2018.

### SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Erika Reigle of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure contact Erika Reigle at (202) 317-7006 (not a toll-free number). For further information regarding the Information Resource, contact the CDFI Fund Help Desk at (202) 653–0421 (not a toll-free number).

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*26 CFR 601.204: Changes in accounting periods and in methods of accounting.*
*(Also: Part I, §§ 442, 898, 965; 1.442–1)*

## Rev. Proc. 2018–17

### SECTION 1. PURPOSE

This revenue procedure modifies the circumstances under which the Internal Revenue Service ("IRS") grants approval of certain requests by certain foreign corporations for changes in annual accounting periods filed under Rev. Proc. 2002–39, 2002–22 I.R.B. 1046, and Rev. Proc. 2006–45, 2006–45 I.R.B. 851. This revenue procedure is issued pursuant to section 965(o) to prevent the avoidance of the purposes of section 965 through changes in the taxable years of certain specified foreign corporations (within the meaning of section 965(e)).[1]

## SECTION 2. BACKGROUND

.01 Section 442 and § 1.442–1(a) generally provide that a taxpayer seeking to change its annual accounting period and use a new taxable year must obtain the approval of the Commissioner.

.02 In general, under § 1.442–1(b)(2), a change in annual accounting period will be approved when a taxpayer agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

.03 Section 1.442–1(b)(3) provides that the Commissioner will prescribe the administrative procedures for a taxpayer to be allowed to adopt, change, or retain an annual accounting period.

.04 Rev. Proc. 2002–39 provides the general procedures under section 442 and § 1.442–1(b) for obtaining the approval of the Commissioner to adopt, change, or retain an annual accounting period for federal income tax purposes.

.05 Rev. Proc. 2006–45, as a successor to Rev. Proc. 2002–37, 2002–22 I.R.B. 1030, provides the exclusive procedures for certain corporations to obtain automatic approval of the Commissioner to change their annual accounting periods, including a section 898 specified foreign corporation that is changing to a one-month deferral year or to a 52–53-week taxable year that references the one-month deferral year. *See* section 4.02(8) of Rev. Proc. 2006–45.

.06 Section 898(a) provides that the taxable year of any section 898 specified foreign corporation is the required year determined under section 898(c). In contrast, a foreign corporation other than a section 898 specified foreign corporation generally does not have a required year.

.07 In general, section 898(b) defines a section 898 specified foreign corporation as any controlled foreign corporation (as defined in section 957) ("CFC") with respect to which a United States shareholder (as defined in section 951(b), subject to certain modifications) owns, on certain testing days, more than 50 percent of either the total voting power of all classes of stock of such corporation entitled to vote or the total value of all classes of stock of such corporation. The rules of section 958(a) and (b) apply for purposes of determining ownership. A United States shareholder that meets this more-than-50-percent ownership threshold is referred to in this revenue procedure as a "majority U.S. shareholder."

.08 The required year determined under section 898(c) is the majority U.S. shareholder year (as defined in section 898(c)(3)), or, if there is no majority U.S. shareholder year, the taxable year prescribed under regulations. Section 898(c)(2) provides that a section 898 specified foreign corporation may elect, in lieu of the required year, a taxable year beginning one month earlier than the majority U.S. shareholder year.

.09 Section 965(a) provides that for the last taxable year of a deferred foreign income corporation ("DFIC") that begins before January 1, 2018, the subpart F income of the corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or December 31, 2017 (each such date, a "measurement date").

.10 For purposes of section 965, a DFIC is, with respect to any United States shareholder, any section 965 specified foreign corporation of such United States shareholder that has accumulated post-1986 deferred foreign income (as of a measurement date) greater than zero. Section 965(d)(1). The term "section 965 specified foreign corporation" means (A) any CFC, and (B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder ("10-percent corporation"). Section 965(e)(1). For purposes of sections 951 and 961, a 10-percent corporation is treated as a CFC solely for purposes of taking into account the subpart F income of such corporation under section 965(a). Section 965(e)(2). However, if a passive foreign investment company (as defined in section 1297) with respect to the shareholder is not a CFC, then such corporation is not a section 965 specified foreign corporation. Section 965(e)(3).

.11 Section 965(o) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 965, including regulations or other guidance to prevent the avoidance of the purposes of such section, including through a reduction in earnings and profits, through changes in entity classification or accounting methods, or otherwise. The Conference Report accompanying the Act states, "The conferees are also aware that certain taxpayers may have engaged in tax strategies designed to reduce the amount of post-1986 earnings and profits in order to decrease the amount of the inclusion required under this provision. Such tax strategies may include a change in entity classification, accounting method, *and taxable year*. . . ." H.R. Rep. No. 115–466, at 619 (2017) (emphasis added).

.12 A section 965 specified foreign corporation with a taxable year ending on December 31, 2017, could avoid the purposes of section 965 by changing its taxable year. For example, if a DFIC with the calendar year as its taxable year elected, effective for its taxable year beginning January 1, 2017, a taxable year closing on November 30, the election could defer by as much as 11 months a United States shareholder's inclusion with respect to the DFIC under section 965. Further, the election could, depending on the facts, reduce the amount of the tax liability of a United States shareholder of the DFIC by reason of section 965, including through the reduction of the post-1986 earnings and profits of the DFIC.

## SECTION 3. SCOPE

This revenue procedure applies to a section 965 specified foreign corporation seeking to change its taxable year that ends on December 31, 2017. For purposes of applying this revenue procedure, a 52–53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52–53-week taxable year, and is deemed to end or

[1] The term "specified foreign corporation" is defined differently in sections 898(b) and 965(e). In order to avoid confusion, this revenue procedure refers to a specified foreign corporation within the meaning of section 898(b) as a "section 898 specified foreign corporation" and to a specified foreign corporation within the meaning of section 965(e) as a "section 965 specified foreign corporation."

close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be. *See* § 1.441–2(c).

## SECTION 4. MODIFICATIONS

.01 *Inapplicability of Rev. Proc. 2006–45*. Section 4.02 of Rev. Proc. 2006–45 is modified to add a new paragraph (15) to read as follows:

"(15) *Certain specified foreign corporations.* Notwithstanding any other provision in this section 4, a specified foreign corporation (as defined in section 965(e)) if each of the following conditions is satisfied:

(a) The specified foreign corporation's taxable year (determined without regard to the requested change) ends on December 31;

(b) If the requested change were permitted, the first effective year of the corporation would begin on January 1, 2017, and would end on a date before December 31, 2017; and

(c) The specified foreign corporation has one or more United States shareholders that must include an amount in gross income under section 951(a)(1) by reason of section 965 with respect to the specified foreign corporation or any other specified foreign corporation (with such amount determined without regard to the requested change)."

.02 *Inapplicability of Rev. Proc. 2002–39.* Section 3 of Rev. Proc. 2002–39 is modified to add a new subsection 3.03 to read as follows:

".03 *Inapplicability for certain specified foreign corporations.* Notwithstanding any other provision of this revenue procedure, a request to change the annual accounting period of a specified foreign corporation (as defined in section 965(e)) pursuant to this revenue procedure will not be approved if:

(a) The specified foreign corporation's taxable year (determined without regard to the requested change) ends on December 31;

(b) If the requested change were permitted, the first effective year of the corporation would begin on January 1, 2017, and would end on a date before December 31, 2017; and

(c) The specified foreign corporation has one or more United States shareholders that must include an amount in gross income under section 951(a)(1) by reason of section 965 with respect to the specified foreign corporation or any other specified foreign corporation (with such amount determined without regard to the requested change)."

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–39 and Rev. Proc. 2006–45 are modified.

## SECTION 6. EFFECTIVE DATE

This revenue procedure applies with respect to any request to change an annual accounting period that ends on December 31, 2017, regardless of when such request was filed.

## SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Leni C. Perkins of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Perkins on (202) 317-6934 (not a toll-free number).

# Part IV. Items of General Interest

## Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

### Announcement 2018–01

This announcement serves notice to donors that on September 20, 2017, the United States Tax Court entered a stipulated decision that, as of September 19, 1980, the organization listed below is qualified as an organization described in section 501(c)(3), is exempt from taxation under section 501(a), and is described in section 170(c)(2), and, as of August 31, 1990, the organization is a private foundation.

Conservation Endowment Fund
Ojai, CA

## Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

### Announcement 2018–02

This announcement serves notice to donors that on September 14, 2017, the United States Tax Court entered a stipulated decision that, as of May 5, 1994, the organization listed below is qualified as an organization described in section 501(c)(3), is exempt from taxation under section 501(a), and is described in section 170(c)(2).

International Center for Earth Concerns
Ojai, CA

## Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

### Announcement 2018–03

This announcement serves notice to donors that, on September 13, 2017, the United States Tax Court entered a stipulated decision stating that, effective January 1, 2008, the organization listed below is not qualified as an organization described in I.R.C. § 501(c)(3), is not exempt from taxation under I.R.C. § 501(a), and is not an organization described in I.R.C. § 170(c)(2).

Taft Foundation
Ojai, 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 2017–27 through 2017–52 is in Internal Revenue Bulletin 2017–52, dated December 27, 2017.

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# 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/*.

# We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.