INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2019–37
September 9, 2019

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.

EMPLOYEE PLANS

NOT 2019-49, page 699.

Notice 2019-49 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 2021 if the conditions of Notice 2014-5 are satisfied.

EMPLOYMENT TAX + INCOME TAX

REG-101378-19, page 702.

Employers must generally include the fair market value of the personal use of an employer-provided vehicle in an employee's income for federal income and employment tax purposes. IRS regulations provide various methods for valuing an employee's personal use of an employer-provided vehicle. In order to use some of these valuation methods, the fair market value of the vehicle cannot exceed a stated amount that is indexed for inflation each year. These proposed regulations explain how to determine the maximum fair market value of an employer-provided vehicle for purposes of these special valuation methods.

EXCISE TAX

NOT 2019-50, page 700.

This Notice announces the applicable amount for the Affordable Care Act Section 9010 health insurance providers fee for the 2020 fee year.

INCOME TAX

NOT 2019-46, page 695.

This notice announces that the Department of the Treasury and the Internal Revenue Service intend to issue regulations that will permit a domestic partnership or S corporation to apply the rules in proposed §1.951A-5 for taxable years ending before June 22, 2019. This notice also addresses the applicability of penalties in the case of a domestic partnership or S corporation that acted consistently with proposed §1.951A-5 on or before June 21, 2019, but files a tax return consistent with the final regulations under §1.951A-1(e). In order to apply the rules in proposed §1.951A-5 or for penalties not to apply as discussed in this notice, a domestic partnership or S corporation must satisfy certain notification and reporting requirements described in this notice.

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.

Domestic Partnerships and S Corporations Filing Under Proposed GILTI Regulations

Notice 2019-46

SECTION 1. OVERVIEW

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue regulations that will permit a domestic partnership or S corporation to apply the rules in proposed §1.951A-5 for taxable years ending before June 22, 2019. This notice also addresses the applicability of penalties in the case of a domestic partnership or S corporation that acted consistently with proposed §1.951A-5 on or before June 21, 2019, but files a tax return consistent with the final regulations under §1.951A-1(e). In order to apply the rules in proposed §1.951A-5 or for penalties not to apply as discussed in this notice, a domestic partnership or S corporation must satisfy certain notification and reporting requirements described in section 5 of this notice.

The regulations described in this notice will be effective for taxable years ending before June 22, 2019. Prior to the issuance of the regulations described in this notice, domestic partnerships and S corporations may rely on this notice, provided they satisfy the requirements described herein.

SECTION 2. BACKGROUND

.01 *Partnership and Partner Returns*

Section 6031(a) of the Internal Revenue Code (Code) requires every partnership to file a return for each taxable year stating specifically the items of its gross income and the deductions allowable by subtitle A of the Code and such other information for the purposes of carrying out the provisions of subtitle A as the Secretary may by forms and regulations prescribe, including information about the partners in the partnership. Section 1.6031(a)-1(a)(2) requires that the partnership return contain the information required by the prescribed form and the accompanying instructions. For a partnership, the return required by section 6031(a) is Form 1065, *U.S. Return of Partnership Income*, which includes Schedules K-1 (Form 1065). Schedule K-1 (Form 1065) provides the name of the partner and the partner's distributive share of taxable income and other information related to the partner regarding the partnership.

Section 6031(b) requires that a partnership required to file a return under section 6031(a) furnish to each partner a copy of the Schedule K-1 (Form 1065) that includes such information as may be required to be shown by regulations. In general, section 6031(b) also prohibits partnerships from amending the information required to be furnished to its partners after the due date of the return, unless the partnership has made an election under section 6221(b) for the taxable year. A partnership subject to this prohibition under section 6031(b) that has not timely filed a request to extend the time to file its Form 1065 may not be eligible for the relief provided by this notice unless the partnership fulfills the requirements of Rev. Proc. 2019-32, 2019-33 I.R.B. 659, which allows a Form 1065 to be filed by an extended deadline. A partnership seeking relief under Rev. Proc. 2019-32 must furnish Schedules K-1 consistent with the superseding Form 1065.

Section 6222(a) generally requires a partner in a partnership to treat a partnership-related item, as defined in section 6241(2)(B) and the corresponding regulations, consistently on the partner's return with the treatment of such item by the partnership on its return.

Section 6222(c) provides that the consistency requirement of section 6222(a) does not apply to a partnership-related item if the partner files with the Secretary a statement identifying the inconsistency. The statement required by section 6222(c) is Form 8082, *Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR),* which may be filed on an original, amended, or superseding return.

Sections 6072(b) and 6031(b) provide that the deadline for filing Form 1065 and furnishing Schedules K-1 (Form 1065) to partners is generally the fifteenth day of the third month after the end of the partnership's taxable year. For a calendar-year partnership, this deadline generally is March 15.

Section 6081(a) permits the Secretary of the Treasury Department to grant a reasonable extension of time, generally no more than six months, for filing any return, statement, or other required document. Generally, to receive an extension of time to file a return, §1.6081-2(b) provides that a partnership must submit an application before the date prescribed for filing Form 1065 (taking into account certain extensions). For a calendar-year partnership that requests a six-month extension, the extended deadline for its 2018 taxable year is September 16, 2019.

.02 *S Corporation and Shareholder Returns*

Section 6037(a) requires every S corporation to file a return for each taxable year stating specifically the items of its gross income and the deductions allowable by subtitle A of the Code, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each distribution, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information for the purpose of carrying out the provisions of subchapter S of chapter 1 of the Code, as the Secretary may by forms and regulations prescribe. Section 1.6037-1(a) provides in part that the return shall set forth the items of gross income and the deductions allowable in computing taxable income as required by the return form or in the instructions issued with respect thereto. For an S corporation, the return required by section 6037(a) is Form 1120S, *U.S. Income Tax Return for an S Corporation*, which includes Schedule K-1 (Form 1120S). Schedule K-1 (Form 1120S) provides the name of the shareholder and the shareholder's pro rata share of taxable income and other information related to the shareholder regarding the S corporation.

Section 6037(b) requires that an S corporation required to file a return under section 6037(a) furnish a copy of the Schedule K-1 (Form 1120S) to each shareholder that includes such information as may be required to be shown by regulations.

Section 6037(c)(1) generally requires a shareholder of an S corporation to treat a subchapter S item, as defined in section 6037(c)(4), consistently on the shareholder's return with the treatment of such item by the S corporation on its return.

Section 6037(c)(2) provides that the consistency requirement of section 6037(c)(1) does not apply to a subchapter S item if the shareholder files with the Secretary a statement identifying the inconsistency. The statement required by section 6037(c)(2) is Form 8082, which may be filed on an original, amended, or superseding return.

Sections 6072(b) and 6037(b) provide that the deadline for filing Form 1120S and furnishing Schedules K-1 (Form 1120S) to shareholders of an S corporation is generally the fifteenth day of the third month after the end of the S corporation's taxable year. For a calendar-year S corporation, this deadline generally is March 15. As with partnership returns, this deadline generally may be extended upon request for up to six months under section 6081(a). For a calendar-year S corporation that requests a six-month extension, the extended deadline for its 2018 taxable year is September 16, 2019.

.03 *Potentially Applicable Penalties*

Section 6698(a) imposes a penalty if any partnership that is required to file a return under section 6031 fails to file a timely return, or files a return that fails to show the information required under that section, unless the failure is due to reasonable cause.

Section 6699(a) imposes a penalty if any S corporation required to file a return under section 6037 fails to file a timely return, or files a return that fails to show the information required under that section, unless the failure is due to reasonable cause.

Section 6722(a) imposes penalties for failing to include all required information or for including incorrect information on a payee statement (as defined in section 6724(d)(2) and the corresponding regulations), such as a Schedule K-1 (Form 1065) or Schedule K-1 (Form 1120S), unless section 6724(a) applies because the failure is due to reasonable cause and was not due to willful neglect.

.04 *Global Intangible Low-Taxed Income (Section 951A)*

Section 14201(a) of Pub. L. 115-97 (131 Stat. 2054, 2208), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added section 951A, which applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders (as defined in section 951(b)) (U.S. shareholders) in which or with which such taxable years of foreign corporations end.

Section 951A(a) requires a U.S. shareholder of any controlled foreign corporation (as defined in section 957) (CFC) for any taxable year to include in gross income the shareholder's global intangible low-taxed income (GILTI) inclusion for such taxable year. In general, a U.S. shareholder's GILTI inclusion amount is determined by reference to the stock of CFCs that the shareholder owns within the meaning of section 958(a). See section 951A(e)(1), cross-referencing section 951(a)(2).

Section 951(b) defines a U.S. shareholder of a foreign corporation as a United States person (U.S. person) that owns (within the meaning of section 958(a)), or is considered as owning by applying the ownership rules of section 958(b), at least 10 percent of the total combined voting power or value of stock of the foreign corporation. Section 957(c) generally defines a U.S. person by reference to section 7701(a)(30), which defines a U.S. person as a citizen or resident of the United States, a domestic partnership, a domestic corporation, and certain estates and trusts. Section 1373(a) provides, in part, that for purposes of subpart F of part III of subchapter N of the Code (sections 951 through 965), an S corporation is treated as a partnership, and the shareholders of such corporation are treated as partners of such partnership.

On October 10, 2018, the Treasury Department and the IRS published in the **Federal Register** proposed regulations under section 951A (REG-104390-18, 83 FR 51072) (Proposed Regulations). The Proposed Regulations provided a hybrid approach to the treatment of a domestic partnership that is a U.S. shareholder (U.S. shareholder partnership) of a CFC (partnership CFC). Under the hybrid approach, a U.S. shareholder partnership would determine its GILTI inclusion amount, and the partners of the partnership that were not also U.S. shareholders of the partnership CFC would take into account their distributive share of the partnership's GILTI inclusion amount. See proposed §1.951A-5(b). Partners that were themselves U.S. shareholders of a partnership CFC would not take into account their distributive share of the partnership's GILTI inclusion amount, and instead would be treated as proportionately owning the stock of the partnership CFC within the meaning of section 958(a) as if the domestic partnership were a foreign partnership. See proposed §1.951A-5(c).

On June 21, 2019, the Treasury Department and the IRS published in the **Federal Register** final regulations under section 951A (T.D. 9866, 84 FR 29288) (Final Regulations). The Final Regulations did not adopt the hybrid approach with respect to domestic partnerships in the Proposed Regulations. Under the Final Regulations, a domestic partnership (including a U.S. shareholder partnership) does not have a GILTI inclusion amount, and therefore no partner of the partnership has a distributive share of a GILTI inclusion amount. See §1.951A-1(e)(1). Rather, for purposes of determining the GILTI inclusion amount of any partner of a domestic partnership, each partner is treated as proportionately owning the stock of a CFC owned by the partnership within the meaning of section 958(a) in the same manner as if the domestic partnership were a foreign partnership. See id. Because only a U.S. person that is a U.S. shareholder can have a GILTI inclusion amount, a partner that is not a U.S. shareholder of a partnership CFC does not have a GILTI inclusion amount determined by reference to such partnership CFC. In summary, under the Final Regulations, a partner that is not a U.S. shareholder with respect to a partnership CFC has neither a distributive share of a GILTI inclusion amount nor a GILTI inclusion amount that is determined by reference to such partnership CFC.

The Final Regulations apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. See §1.951A-7. Therefore, domestic partnerships and S corporations that file their income tax returns for the 2018 tax year after June 21, 2019, must, absent the relief provided in this notice, file income tax returns consistent with the Final Regulations and furnish Schedules K-1 to their partners and shareholders that are consistent with these income tax returns.

The Treasury Department and the IRS are aware that many domestic partnerships and S corporations furnished Schedules K-1 to their partners and shareholders on or before the date of publication of the Final Regulations on June 21, 2019. Consistent with proposed §1.951A-5, these Schedules K-1 (Proposed Regulation Schedules K-1) may have reported a distributive share of the domestic partnership's GILTI inclusion amount or a pro rata share of the S corporation's GILTI inclusion amount. In the absence of relief, to avoid potential penalties under section 6698, 6699, or 6722, these domestic partnerships and S corporations could be required to file returns for the 2018 taxable year consistent with the Final Regulations, and furnish Schedules K-1 consistent with their Form 1065 (Schedule K) or Form 1120S (Schedule K). The issuance of corrected Schedules K-1 consistent with the Final Regulations under these circumstances may result in significant additional costs to these domestic partnerships and S corporations and significant burden to the IRS related to processing amended returns based on corrected Schedules K-1.

After considering the compliance burden of domestic partnerships and S corporations associated with §1.951A-1(e), the Treasury Department and the IRS have decided to provide relief in this notice for certain domestic partnerships and S corporations (described in section 3 of this notice) so that they may apply the rules in the Proposed Regulations for taxable years ending before June 22, 2019. In addition, section 4 of this notice provides that certain penalties that might otherwise apply to domestic partnerships or S corporations that acted consistently with proposed §1.951A-5 prior to June 22, 2019, do not apply.

SECTION 3. APPLICATION OF PROPOSED §1.951A-5

It is anticipated that forthcoming regulations will provide that a domestic partnership or S corporation may apply the rules in proposed §1.951A-5, in their entirety, for taxable years that ended before June 22, 2019. Thus, for example, a domestic partnership that applies proposed §1.951A-5 for a taxable year ending before June 22, 2019, would file a Form 1065, including Form 8992, *U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI)*, for such taxable year on the basis of proposed §1.951A-5 and furnish to its partners for such taxable year Schedules K-1 on the basis of proposed §1.951A-5. The forthcoming regulations are expected to provide that in order to apply the rules in proposed §1.951A-5, a partnership or S corporation must satisfy the notification and reporting requirements described in section 5 of this notice.

Comments noted that proposed §1.951A-5 did not provide taxpayers with guidance in a number of areas. The adoption of an aggregate approach to domestic partnerships under §1.951A-1(e) did not resolve all of these open questions. Therefore, it is anticipated that forthcoming regulations applicable where there is reliance on this notice will provide, regarding future distributions by a partnership CFC of a partnership or S corporation, that the amount excludible from gross income under section 959 reflects only amounts included in income by a partner or shareholder under proposed §1.951A-5.

SECTION 4. INAPPLICABILITY OF PENALTIES

If a domestic partnership or S corporation satisfies the requirements of section 5 of this notice, penalties for failures described in sections 6698(a), 6699(a), 6722(a) or any similar provision will not apply to the domestic partnership or S corporation to the extent such failures arise from acting consistently with proposed §1.951A-5 prior to June 22, 2019 (such as, by issuing one or more Proposed Regulation Schedules K-1 and not reissuing Schedules K-1 based on the Final Regulations) including from filing a Form 1065 or Form 1120S based on the Final Regulations after June 21, 2019, that incorporates Schedules K-1 consistent with the Proposed Regulations that were issued before June 22, 2019.

SECTION 5. REQUIREMENTS FOR APPLICATION OF PROPOSED §1.951A-5 AND INAPPLICABILITY OF PENALTIES

.01 *Notification*

In order for the rules described in section 3 or section 4 of this notice to apply, a domestic partnership or S corporation must provide notification to each partner of the partnership or shareholder of the S corporation (1) that the Schedule K-1 provided to the partner or shareholder is consistent with proposed §1.951A-5; (2) whether the domestic partnership or S corporation filed a Form 1065 or Form 1120S consistent with proposed §1.951A-5 or the Final Regulations; and (3) that the notification is being provided in accordance with this notice. Such notification must be provided no later than the extended due date of the domestic partnership's or S corporation's tax return (September 16, 2019, in the case of a calendar-year filer), and may be provided through any reasonable method, including via mail, e-mail, or posting on a website through which the domestic partnership or S corporation would ordinarily disseminate tax information to its partners or shareholders. In the event a domestic partnership or S corporation has filed its tax return and not filed for an extension of time to file its return, the notice described in this section 5.01 must be provided by the date on which the return would have been due had an extension been properly requested.

The domestic partnership or S corporation must also attach the notification described in the previous paragraph and Form 8992 reflecting computations under proposed §1.951A-5 to any tax return with respect to which the rules described in section 3 or 4 of this notice are being applied if the tax return has not been filed as of the date of publication of this notice.

.02 *Schedule K-1 Distribution Reporting*

If a domestic partnership or S corporation furnished a Schedule K-1 based on proposed §1.951A-5, the domestic partnership or S corporation must separately state on Schedules K-1 for subsequent taxable years the partner's or shareholder's distributive share or pro rata share of a foreign corporation's distributions to the domestic partnership or S corporation of earnings and profits that relate to the GILTI inclusion amount of the partnership or S corporation that was reflected on the first mentioned Schedules K-1. This information must be provided for each taxable year of the domestic partnership or S corporation following the taxable year to which the first Schedule K-1 relates. The information could be used by a partner of a domestic partnership or a shareholder of an S corporation that receives a Schedule K-1 separately stating such distributions to calculate its gross income if such partner or shareholder filed inconsistently with the first Schedule K-1 and did not include in gross income its distributive share or pro rata share of the GILTI inclusion amount reported on such Schedule K-1.

SECTION 6. EXAMPLES

It is anticipated that the forthcoming regulations described in this notice will provide rules consistent with the following examples. Comments are requested as to the results described in these examples and what general standards or principles should be applied with respect to the application of the Proposed Regulations.

Example 1 – Filing Form 1065 applying proposed §1.951A-5 – (i) *Facts*. USP, a domestic corporation, and Individual A, a United States citizen unrelated to USP, own 95% and 5%, respectively, of the interests in PRS, a domestic partnership. PRS owns 100% of the single class of stock of FC1, a controlled foreign corporation with no earnings and profits prior to 2018. USP also owns 100% of the single class of stock of FC2, a controlled foreign corporation. USP, Individual A, PRS, FC1, and FC2 use the calendar year as their taxable year. For the 2018 taxable year, FC1 had $100x of tested income and no other items. For the 2018 taxable year, FC2 had a tested loss of $45x. Based on proposed §1.951A-5, PRS provided Schedules K-1 for the 2018 taxable year to USP and Individual A on March 15, 2019, that indicated a pro rata share of tested income of $95x to USP and a distributive share of a GILTI inclusion amount of $5x to Individual A. These Schedules K-1 were based on a determination of tested income of FC1 and a GILTI inclusion amount of $100x to PRS under proposed §1.951A-5. Under either proposed §1.951A-5 or the Final Regulations, USP's GILTI inclusion amount for the 2018 taxable year was $50x ($95x, USP's pro rata share of FC1's tested income, less $45x, USP's pro rata share of FC2's tested loss), all of which is with respect to FC1 under section 951A(f)(1) and §1.951A-5(b). Based on the Schedule K-1 that Individual A received from PRS, Individual A included its distributive share of PRS's GILTI inclusion amount, or $5x, in income for the 2018 taxable year. PRS intends to file Form 1065 for the 2018 taxable year on September 16, 2019, and would like to apply the rules in proposed §1.951A-5 under this notice. In 2019, FC1 earns no income and distributes $100x out of earnings and profits to PRS.

(ii) *Analysis* – (A) *Notification*. In order to rely on proposed §1.951A-5 to file Form 1065 for the 2018 taxable year, as described in Section 5.01 of this notice, PRS must provide notification to USP and Individual A that (1) the Schedules K-1 they received for the 2018 taxable year were consistent with proposed §1.951A-5; (2) PRS is filing its Form 1065 for the 2018 taxable year under proposed §1.951A-5; and (3) the notification is being provided as required under this notice. Additionally, because PRS is filing after the issuance of this notice, PRS must attach a similar notification statement to its Form 1065 for the 2018 taxable year as described in Section 5.01 of this notice.

(B) *Schedule K-1 distribution reporting*. For the 2019 taxable year, the year of the distribution of earnings and profits of FC1 that relate to PRS's GILTI inclusion amount, under section 5.02 of this notice, PRS must separately state on the Schedules K-1 furnished to USP and Individual A their distributive shares of such distribution from FC1. Thus, with respect to USP's Schedule K-1, $95x of the $100x distribution from FC1 is a separately stated item, and with respect to Individual A's Schedule K-1, $5x of the $100x distribution from FC1 is a separately stated item. USP included $50x in income under section 951A for the 2018 taxable year with respect to FC1; thus, only $45x ($95x - $50x) of the $95x of separately stated income is included in USP's income (before the application of section 245A) for the 2019 taxable year. Individual A included $5x in income as a distributive share of PRS's GILTI inclusion amount with respect to FC1; thus, none of the $5x of separately stated income is included in Individual A's income for the 2019 taxable year.

Example 2 – Filing Form 1065 under Final Regulations with Schedule K-1s issued under proposed §1.951A-5 – (i) *Facts*. The facts in this Example 2 are the same as in Example 1, except that PRS files Form 1065 on September 16, 2019, under the Final Regulations.

(ii) *Analysis* – (A) *Notification*. In order to file Form 1065 for the 2018 taxable year under the Final Regulations but not be subject to potential penalties with respect to the Schedules K-1 for the 2018 taxable year, PRS must provide notification to USP and Individual A as described in section 5.01 of this notice that (1) the Schedules K-1 they received for the 2018 taxable year were consistent with proposed §1.951A-5; (2) PRS is filing its Form 1065 for the 2018 taxable year under the Final Regulations; and (3) the notification is being provided as required under this notice. Additionally, because PRS is filing after the issuance of this notice, PRS must attach a similar notification statement to its Form 1065 for the 2018 taxable year as described in section 5.01 of this notice.

(B) *Schedule K-1 distribution reporting*. For the 2019 taxable year, the year of the distribution of earnings and profits of FC1 that relate to the 2018 taxable year Schedules K-1 issued by PRS that reflected a GILTI inclusion amount of PRS, PRS must separately state on the Schedules K-1 furnished to USP and Individual A their distributive shares of such distribution from FC1 under section 5.02 of this notice. Thus, with respect to USP's Schedule K-1, $95x of the $100x distribution from FC1 is a separately stated item, and with respect to Individual A's Schedule K-1, $5x of the $100x distribution from FC1 is a separately stated item. USP included $50x in income under section 951A for the 2018 taxable year with respect to FC1; thus, only $45x ($95x - $50x) of the $95x of separately stated income is included in USP's income (before the application of section 245A) for the 2019 taxable year. Individual A included $5x in income based on the Schedule K-1 for the 2018 taxable year as a distributive share of PRS's GILTI inclusion amount with respect to FC1; thus, none of the $5x of separately stated income is included in Individual A's income for the 2019 taxable year.

SECTION 7. COORDINATION WITH REV. PROC. 2019-32

A partnership that is eligible for and elects the relief provided in Rev. Proc. 2019-32 (granting to eligible partnerships an extension of time to file a superseding Form 1065 and furnish a corresponding Schedule K-1 (Form 1065) to each of its partners) is eligible to apply the rules described in this notice. However, under Rev. Proc. 2019-32, a partnership eligible for and electing the relief provided in Rev. Proc. 2019-32 must timely furnish Schedules K-1 that are consistent with the superseding Form 1065; thus, in the case of a partnership electing the relief provided in Rev. Proc. 2019-32, Schedules K-1 consistent with the Final Regulations must be furnished if the partnership files Form 1065 consistent with the Final Regulations.

SECTION 8. APPLICABILITY DATE

Forthcoming regulations will provide that they may be applied to taxable years ending before June 22, 2019. Before the issuance of the forthcoming regulations, a domestic partnership or S corporation may rely on the rules described in this notice.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information in section 5.01 of this notice are reflected in the submission to the Office of Management and Budget (OMB) for review in accordance with Paperwork Reduction Act (44 U.S.C. 3507(c)) (PRA) that is associated with Form 1065 and Form 1120S (OMB control number 1545-0123) because the notification requirements in section 5.01 are closely related to the Schedules K-1 for such forms.

The collections of information in section 5.02 of this notice will be reflected in submissions to the OMB for review in accordance with the PRA that are associated with Form 1065 and Form 1120S (OMB control number 1545-0123). These submissions will be updated in the ordinary course.

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 in this notice are in sections 5.01 and 5.02. This information is required to allow partners of domestic partnerships and shareholders of S corporations to ensure that they are taxed only once with respect to a GILTI inclusion amount of a domestic partnership or S corporation that applied the rules in proposed §1.951A-5. This information is also required to allow the IRS to verify that partners and shareholders are taxed only once with respect to such a GILTI inclusion amount. The collections of information are required in order for section 4 of this notice to apply. The likely respondents are business or other for-profit institutions.

The burdens associated with the notification requirements in section 5.01 of this notice would be so minor as to not impact the estimated burdens provided in such submission. The burdens associated with the reporting requirements in section 5.02 of this notice are also minor.

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 U.S.C. 6103.

SECTION 10. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Joshua P. Roffenbender of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Joshua P. Roffenbender at (202) 317-6934 (not a toll free number).

Extension of Temporary Nondiscrimination Relief for Closed Defined Benefit Plans through 2020

Notice 2019-49

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 2021 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 (that is, 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, Notice 2016-57, 2016-40 I.R.B. 432, Notice 2017-45, 2017-38 I.R.B. 232, and Notice 2018-69, 2018-37 I.R.B. 426, extend the temporary nondiscrimination relief provided in Notice 2014-5 by applying that relief to plan years beginning before 2020 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 Department of the Treasury (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 2018-69). 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 2021 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 expected 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 2021.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2014-5, Notice 2015-28, Notice 2016-57, Notice 2017-45, and Notice 2018-69 are modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). 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).

Health Insurance Providers Fee; Procedural and Administrative Guidance

Notice 2019-50

SECTION 1. PURPOSE

This notice provides the Applicable Amount for the fee imposed by Section 9010 of the Patient Protection and Affordable Care Act (PPACA) for the 2020 fee year.

SECTION 2. BACKGROUND

Section 9010 of the PPACA, Public Law 111-148 (124 Stat. 119 (2010)), as amended by Section 10905 of PPACA, and as further amended by Section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)), imposes an annual fee on covered entities engaged in the business of providing health insurance for United States health risks. The fee is a fixed amount (Applicable Amount) allocated among all covered entities in proportion to their relative market share as determined by each entity's net premiums written for the data year, which is the year immediately preceding the year in which the fee is paid (the year in which the fee is paid is the fee year). Section 4003 of Division D—The Suspension of Certain Health-Related Taxes enacted on January 22, 2018, Public Law 115-120 (132 Stat. 38), suspended the fee for 2019. Absent legislative action, the fee will resume in 2020.

Section 9010(e)(1) provides the Applicable Amount for calendar years 2014 through 2018. The Applicable Amount for the 2018 fee year was $14,300,000,000. Section 9010(e)(2) provides that in the case of any calendar year beginning after 2018, the Applicable Amount shall be the Applicable Amount for the preceding calendar year increased by the rate of premium growth (within the meaning of § 36B(b)(3)(A)(ii) of the Internal Revenue Code).

Section 36B(b)(3)(A)(ii) generally provides that certain amounts are adjusted annually to reflect the excess of the rate of premium growth over the rate of income growth for the preceding calendar year. Sections 1.36B-2(c)(3)(v)(C) and 1.36B-3(g) of the Income Tax regulations provide that the amounts may be further adjusted to reflect updates to the data and data sources used to compute the ratio of premium growth to income growth. The amounts are computed using a premium adjustment percentage provided in guidance issued by the Department of Health and Human Services (HHS). For years prior to 2020, the rate of premium growth was based on per enrollee spending for employer-sponsored insurance as published in the National Health Expenditure Account (NHEA). However, in the 2020 Notice of Benefit and Payment Parameters, 84 FR 17454 (April 25, 2019), HHS provided a new premium growth measure beginning in calendar year 2020 that captures increases in individual market premiums in addition to increases in employer-sponsored insurance premiums for purposes of calculating the premium adjustment percentage for the 2020 benefit year and beyond. With this notice, the Department of the Treasury and the Internal Revenue Service adopt the new premium growth measure provided in the 2020 Notice of Benefit and Payment Parameters for purposes of determining the Applicable Amount for the fee imposed by Section 9010.

SECTION 3. METHODOLOGY

.01 *Premium growth*. The measure of premium growth for a calendar year is the premium adjustment percentage. For 2020, the premium adjustment percentage is calculated as the difference between the percentage (if any) by which the most recent National Health Expenditure Accounts (NHEA) projection of per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) for the preceding calendar year, 2019 ($6,436), exceeds the most recent NHEA estimate of per enrollee premiums for private health insurance (excluding Medigap and property and casualty insurance) for 2017 ($5,929), the year preceding the last year that the Applicable Amount was provided by statute (2018, the base year), carried out to 10 significant digits. This method implicitly takes into account the premium growth from 2017-2018 as well as 2018-2019, thereby reflecting updates to the data and data sources that would have applied to compute the Applicable Amount for the 2019 fee year if the fee had not been suspended for that year. Using this formula, the premium adjustment percentage for 2020 is 1.0855118907.

.02 *Applicable Amount*. The 2020 Applicable Amount is determined by multiplying the fee for the 2018 base year (14,300,000,000) by the premium adjustment percentage for 2020 (1.0855118907), rounded to the nearest dollar.

SECTION 4. GUIDANCE FOR FEE YEAR 2020

The 2020 Applicable Amount is $15,522,820,037.

SECTION 5. APPLICABILITY DATE

This notice applies to the 2020 fee year.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Rachel S. Smith of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, please contact Ms. Smith at (202) 317-6855 (not a toll-free number).

Part IV.

Notice of Proposed Rulemaking

Determination of the Maximum Value of a Vehicle for Use with the Fleet-average and Vehicle Cents-per-mile Valuation Rules

REG-101378-19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations regarding special valuation rules for employers and employees to use in determining the amount to include in an employee's gross income for personal use of an employer-provided vehicle. The proposed regulations reflect changes made by the Tax Cuts and Jobs Act, Public Law 115-97 (the Act).

DATES: Comments and requests for a public hearing must be received by October 22, 2019.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG-101378-19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-101378-19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-101378-19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Gabriel J. Minc at (202) 317-4774; concerning submissions of comments or to request a public hearing, Regina L. Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income under section 61 of the Internal Revenue Code (the Code). In addition, benefits paid as remuneration for employment, including the personal use of employer-provided vehicles, generally are also wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA) and the Collection of Income Tax at Source on Wages (federal income tax withholding). Sections 3121(a), 3306(b), and 3401(a).

The amount that must be included in the employee's income and wages for the personal use of an employer-provided vehicle generally is determined by reference to the vehicle's fair market value (FMV). However, the regulations under section 61 provide special valuation rules for employer-provided vehicles. If an employer chooses to use a special valuation rule, the special value is treated as the FMV of the benefit for income tax and employment tax purposes. §1.61-21(b)(4). Two such special valuation rules, the fleet-average valuation rule and the vehicle cents-per-mile valuation rule, are set forth in §1.61-21(d)(5)(v) and §1.61-21(e), respectively. These two special valuation rules are subject to limitations, including that they may be used only in connection with vehicles having values that do not exceed a maximum amount set forth in the regulations.

Under the current §1.61-21 regulations (the final regulations), the vehicle cents-per-mile valuation rule may be used only to value the personal use of a vehicle having a value no greater than $12,800 (the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the recovery period of the vehicle). §1.61-21(e)(1)(iii). The fleet-average valuation rule may be used only to value the personal use of vehicles having values no greater than $16,500. §1.61-21(d)(5)(v)(D). (The fleet-average valuation rule uses the term "automobile" rather than "vehicle." For convenience, this preamble uses the term "vehicle" except in specific discussions of the fleet-average valuation rule or the section 280F depreciation limitations.) Under the final regulations, each of these maximum values is adjusted annually pursuant to section 280F(d)(7).

1. *The Fleet-Average Valuation Rule*

The fleet-average valuation rule is an optional component of a special valuation rule called the automobile lease valuation rule set forth in §1.61-21(d). Under the automobile lease valuation rule, the value of the personal use of an employer-provided automobile available to an employee for an entire year is the portion of the annual lease value determined under the regulations (Annual Lease Value) relating to the availability of the automobile for personal use. Furthermore, provided the FMV of the automobile does not exceed the maximum value permitted under §1.61-21(d)(5)(v), an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Value of any automobile in the fleet.

The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, §1.61-21(d)(5)(v)(D) provides that the value of an employee's personal use of an automobile may not be determined under the fleet-average valuation rule for a calendar year if the FMV of the automobile on the first date the automobile is made available to the employee exceeds the base value of $16,500, as adjusted annually pursuant to section 280F(d)(7). Section 1.61-21(d)(5)(v)(D) provides that the first such adjustment shall be for calendar year 1989, subject to minor modifications to the section 280F(d)(7) formula specified in the regulations. In other words, under the final regulations, the maximum value for use of the fleet-average rule is the base value of $16,500, as adjusted annually under section 280F(d)(7) every year since 1989.

Prior to enactment of the Act, the automobile price inflation adjustment of section 280F(d)(7)(B) was calculated using the "new car" component of the Consumer Price Index (CPI) "automobile component." Beginning in 2005, the IRS began to calculate the price inflation adjustment for trucks and vans separately from cars using the "new truck" component of the CPI, and continued using the "new car" component of the CPI for automobiles other than trucks and vans. Rev. Proc. 2005-48, 2005-32 I.R.B. 271. For 2017, the year prior to the enactment of the Act, the maximum value for use of this rule was $21,100 for a passenger automobile and $23,300 for a truck or van. See Notice 2017-03, 2017-2 I.R.B. 368.

Section 1.61-21(d)(5)(v)(B) provides that the fleet-average valuation rule may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a sufficient number of automobiles to total a fleet of 20 or more, each one satisfying the maximum value requirement of §1.61-21(d)(5)(v)(D). The Annual Lease Value calculated for automobiles in the fleet, based on the fleet-average value, must remain in effect for the period that begins with the first January 1 the fleet-average valuation rule is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two-year period is calculated by determining the fleet average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1.

2. *The Vehicle Cents-Per-Mile Valuation Rule*

Another special valuation rule is the vehicle cents-per-mile rule in §1.61-21(e). Under §1.61-21(e), if an employer provides an employee with the use of a vehicle that the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer), or that satisfies the requirements of §1.61-21(e)(1)(ii) (i.e., the vehicle is actually driven at least 10,000 miles in the year and use of the vehicle during the year is primarily by employees), the value of the personal use may be determined based on the applicable standard mileage rate multiplied by the total number of miles the vehicle is driven by the employee for personal purposes.

Section 1.61-21(e)(1)(iii)(A) provides that the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the vehicle on the first date the vehicle is made available to the employee exceeds the sum of the maximum recovery deductions allowable under section 280F(a) for a five-year period for an automobile first placed in service during that calendar year (whether or not the automobile is actually placed in service during that year), as adjusted by section 280F(d)(7). The final regulations also provide that, under this rule, with respect to a vehicle placed in service in or after 1989, the limitation on value is $12,800, as adjusted under section 280F(d)(7). In other words, under the final regulations, the maximum value of a vehicle for use of the vehicle cents-per-mile valuation rule is the base value of $12,800, as adjusted annually under section 280F(d)(7) since 1989. As with the fleet-average valuation rule, beginning in 2005, the IRS calculated the price inflation adjustment for trucks and vans separately from cars. See Rev. Proc. 2005-48. For 2017, the year prior to the enactment of the Act, the maximum value for use of the vehicle cents-per-mile valuation rule was $15,900 for a passenger automobile and $17,800 for a truck or van. See Notice 2017-03.

Section 1.61-21(e)(5)(i) states that an employer must adopt the vehicle cents-per-mile valuation rule for a vehicle to take effect by the first day on which the vehicle is used by an employee of the employer for personal use (or, if another special valuation rule called the commuting valuation rule of §1.61-21(f) is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used). Section 1.61-21(e)(5)(ii) also provides, in part, that once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

3. *Tax Cuts and Jobs Act Changes and the Maximum Vehicle Values for 2018 and 2019*

The Act made the following amendments to the Code:

(1) For owners of passenger automobiles, section 280F(a), as modified by section 13202(a)(1) of the Act, imposes dollar limitations on the depreciation deduction for the year the taxpayer places the passenger automobile in service and for each succeeding year. The amendments made by the Act substantially increase the maximum annual dollar limitations on the depreciation deductions for passenger automobiles. The new dollar limitations are based on the depreciation, over a five-year recovery period, of a passenger automobile with a cost of $50,000 (formerly $12,800).

(2) Section 11002(d)(8) of the Act amended section 280F(d)(7)(B) effective for tax years beginning after December 31, 2017. Pursuant to these amendments, the price inflation amount for automobiles (including trucks and vans) is calculated using both the CPI automobile component and the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) automobile component.

a. *Notice 2019-08 – The Maximum Value for 2018*

To implement the changes described above, Notice 2019-08, 2019-3 I.R.B. 354, provides interim guidance for 2018 on new procedures for calculating the price inflation adjustments to the maximum vehicle values for use with the special valuation rules under §1.61-21(d) and (e) using section 280F(d)(7), as modified by sections 11002 and 13202 of the Act. Notice 2019-08 states that the Treasury Department and the IRS anticipated that further guidance would be issued in the form of proposed regulations and expected that the regulations would be consistent with the rules set forth in Notice 2019-08.

Notice 2019-08 provides that, consistent with the substantial increase in the dollar limitations on depreciation deductions under section 280F(a), as modified by section 13202(a)(1) of the Act, the Treasury Department and the IRS intend to amend §1.61-21(d) and (e) to incorporate a higher base value of $50,000 as the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules effective for the 2018 calendar year. Notice 2019-08 further states that the Treasury Department and the IRS intend that the regulations would be modified to provide that this $50,000 base value will be adjusted annually using section 280F(d)(7) for 2019 and subsequent years. Accordingly, Notice 2019-08 provides that, for 2018, the maximum value for use of the vehicle cents-per-mile and fleet-average valuation rules is $50,000.

Finally, for 2018 and 2019, Notice 2019-08 provides that the Treasury Department and the IRS will not publish separate maximum values for trucks and vans for use with the fleet-average and vehicle cents-per-mile valuation rules. As noted above, the Act amended section 280F(d)(7)(B) to make inflation adjustments based on the CPI and C-CPI-U automobile component. The C-CPI-U automobile component does not currently have separate components for new cars and new trucks. Accordingly, due to the lack of data, the Treasury Department and the IRS will publish only one maximum value of a vehicle for use with the vehicle cents-per-mile and fleet-average valuation rules beginning in 2019.

b. *Notice 2019-34 - The Maximum Vehicle Value for 2019*

Notice 2019-34, 2019-22 I.R.B. 1257, provides that the inflation-adjusted maximum value of an employer-provided vehicle (including cars, vans and trucks) first made available to employees for personal use in calendar year 2019 for which the vehicle cents-per-mile valuation rule provided under §1.61-21(e), or the fleet-average valuation rule provided under §1.61-21(d), may be applicable is $50,400. Notice 2019-34 also provides information about the manner in which the Treasury Department and the IRS intend to publish this maximum vehicle value in the future.

As noted in Notice 2019-34, Rev. Proc. 2010-51, 2010-51 I.R.B. 883, provides rules for using optional standard mileage rates in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. Section 2.12(1) of Rev. Proc. 2010-51 provides that the IRS publishes both the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan, in a separate annual notice. See, e.g., Notice 2019-02, 2019-02 I.R.B. 281.

Notice 2019-34 indicates that, in amending §1.61-21(d) and (e) to incorporate a higher base value of $50,000 as the maximum value for use with the vehicle cents-per-mile and the fleet-average valuation rules, the IRS and Treasury Department expected that the maximum value for use of those rules for 2019 and subsequent years would be the same as the maximum standard automobile cost that may be used in computing the allowance under a FAVR plan. Accordingly, Notice 2019-34 provides that the maximum value for use with the fleet-average and vehicle cents-per-mile valuation rules will be published in the annual notice providing the standard mileage rates for use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost that may be used in computing the allowance under a FAVR plan.

Notice 2019-34 also provides that the Treasury Department and the IRS intend to revise §1.61-21(d) to include a transition rule for any employer that did not qualify to use the fleet-average valuation rule prior to January 1, 2018 because the inflation-adjusted maximum value requirement of §1.61-21(d)(5)(v)(D), as published by the IRS in a notice or revenue procedure applicable to the year the automobile was first made available to any employee of the employer, was not met. In such a case, under the transition rule, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the requirements of §1.61-21(d)(5)(v) are met for that year using the maximum values set forth in Notice 2019-08 ($50,000) or Notice 2019-34 ($50,400), respectively.

In addition, Notice 2019-34 states that the Treasury Department and the IRS intend to revise §1.61-21(e) to provide a transition rule for vehicles first made available to employees for personal use before calendar year 2018, if the employer did not qualify under §1.61-21(e)(5) to adopt the vehicle cents-per-mile valuation rule for the vehicle on the first day on which the vehicle was used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of §1.61-21(e)(1)(iii) as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use. In such a case, under the transition rule, the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of a vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in Notice 2019-08 ($50,000) or Notice 2019-34 ($50,400), respectively.

Similarly, Notice 2019-34 also provides that the Treasury Department and the IRS intend to amend §1.61-21(e) to provide a transition rule for a vehicle first placed in service before calendar year 2018 if the commuting valuation rule of §1.61-21(f) was used when the vehicle was first used by an employee of the employer for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule on the first day on which the commuting valuation rule was not used because the vehicle had a fair market value in excess of the inflation-adjusted maximum permitted under §1.61-21(e)(1)(iii) as published by the IRS in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used. Under the transition rule, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year based on the maximum fair market value of the vehicle for purposes of the vehicle cents-per-mile valuation rule set forth in Notice 2019-08 or Notice 2019-34, respectively.

With respect to the transition rules described above, Notice 2019-34 adds that, consistent with §1.61-21(e)(5), an employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

Explanation of Provisions

These proposed regulations update the fleet-average and vehicle cents-per-mile valuation rules described in §1.61-21(d) and (e), respectively, to align the limitations on the maximum vehicle fair market values for use of these special valuation rules with the changes made by the Act to the depreciation limitations in section 280F. Specifically, consistent with the substantial increase in the dollar limitations on depreciation deductions under section 280F(a), these proposed regulations increase, effective for the 2018 calendar year, the maximum base fair market value of a vehicle for use of the fleet-average or vehicle cents-per-mile valuation rule to $50,000. As previously, the maximum fair market value of a vehicle for purposes of the fleet-average and vehicle cents-per-mile valuation rule is adjusted annually under section 280F(d)(7). This annual adjustment will be calculated in accordance with section 280F(d)(7) as amended by the Act. Consistent with Notice 2019-34, the Treasury Department and the IRS expect that the inflation-adjusted maximum fair market value for a vehicle for purposes of the fleet-average and vehicle cents-per-mile valuation rules will be included in the annual notice published by the IRS providing the standard mileage rates for the use of an automobile for business, charitable, medical, and moving expense purposes and the maximum standard automobile cost for purposes of an allowance under a FAVR plan.

Furthermore, consistent with Notice 2019-34, the following transition rules are included in these proposed regulations:

(1) With respect to the fleet-average valuation rule, if an employer did not qualify to use the fleet-average valuation rule prior to January 1, 2018 with respect to an automobile because the fair market value of the automobile exceeded the inflation-adjusted maximum value requirement of §1.61-21(d)(5)(v)(D), as published by the IRS in a notice or revenue procedure applicable to the year the automobile was first made available to any employee of the employer, the employer may adopt the fleet-average valuation rule for 2018 or 2019, provided the fair market value of the automobile does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively.

(2) With respect to the vehicle cents-per-mile valuation rule, for a vehicle first made available to any employee of the employer for personal use before calendar year 2018, if an employer did not qualify under §1.61-21(e)(5) to adopt the vehicle cents-per-mile valuation rule on the first day on which the vehicle was used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of §1.61-21(e)(1)(iii), as published by the IRS in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use, the employer may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year with respect to the vehicle, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. Similarly, if the commuting valuation rule of §1.61-21(f) was utilized when the vehicle was first used by an employee of the employer for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule on the first day on which the commuting valuation rule was not used because the vehicle had a fair market value in excess of the inflation-adjusted limitation of §1.61-21(e)(1)(iii), as published by the IRS in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. However, consistent with §1.61-21(e)(5), an employer that adopts the vehicle cents-per-mile valuation rule must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of §1.61-21(f), use the commuting valuation rule with respect to the vehicle.

Until amendments to the final regulations are published under Treas. Reg. §1.61-21(d) and (e) in the Federal Register, taxpayers may rely on the guidance provided in these proposed regulations.

Special Analyses

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the proposed regulations would update existing regulations to comport with the statutory changes to section 280F made by the Act. Although the proposed regulations might affect a substantial number of small entities, the economic impact of the proposed regulations is not expected to be significant.

Since the current vehicle valuation rules in the regulations are tied to inflation adjustments under section 280F, the statutory changes to section 280F necessitate modifications to the procedures for calculating annual inflation adjustments to the maximum fair market value of a vehicle permitted for use with the fleet-average and vehicle cents-per-mile special valuation rules. These proposed revised special valuation rules are consistent with the base values and methodology used for section 280F purposes and simplify the determination of the amount employers must include in employees' income and wages for income and employment tax purposes for the personal use of employer-provided vehicles. The modifications that would be made by these proposed regulations to the maximum fair market value of a vehicle permitted for use with the fleet-average and vehicle cents-per-mile special valuation rules, and the transition rules provided in connection with these proposed regulations, increase the number of employers and employees that may take advantage of the special valuation rules, without increasing costs to the employer.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

The Treasury Department and the IRS request comments on all aspects of the proposed rules.

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading.

All comments are available at *https://www.regulations.gov* or upon request. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Gabriel Minc of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Tax). However, other personnel from the IRS and the Treasury Department participated in their development.

Statement of Availability

The IRS Notices and Revenue Procedures cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1-INCOME TAXES

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

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

Par. 2. Section 1.61-21 is amended by revising paragraph (d)(5)(v)(D), adding paragraphs (d)(5)(v)(G) and (H), revising paragraph (e)(1)(iii)(A), revising paragraph (e)(5)(i), and adding paragraphs (e)(5)(vi) and (e)(6), to read as follows:

§1.61-21 Taxation of fringe benefits.

*****

(d) ***

(5) ***

(v) ***

(D) *Limitations on use of fleet-average rule*. The rule provided in this paragraph (d)(5)(v) may not be used for any automobile the fair market value of which (determined pursuant to paragraphs (d)(5)(i) through (iv) of this section as of the first date on which the automobile is made available to any employee of the employer for personal use) exceeds $50,000, as adjusted by section 280F(d)(7). The first such adjustment shall be for calendar year 2019. In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. For rules concerning when an automobile is regularly used in the employer's business, see paragraph (e)(1)(iv) of this section.

*****

(G) *Transition rule for 2018 and 2019*. Notwithstanding paragraph (d)(5)(v)(B) of this section, an employer that did not qualify to use the fleet-average valuation rule prior to January 1, 2018 with respect to any automobile (including a truck or van) because the fair market value of the vehicle exceeded the inflation-adjusted maximum value requirement of paragraph (d)(5)(v)(D) of this section, as published by the Service in a notice or revenue procedure applicable to the year the vehicle was first made available to any employee of the employer, may adopt the fleet-average valuation rule for 2018 or 2019 with respect to the vehicle, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively.

(H) *Applicability date*. Paragraphs (d)(5)(v)(D), and (G) of this section apply to taxable years beginning on or after [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Notwithstanding the first sentence of this paragraph (d)(5)(v)(H), any taxpayer may choose to apply paragraph (d)(5)(v)(G) of this section beginning on or after January 1, 2018.

*****

(e) ***

(1) ***

(iii) ***

(A) *In general*. The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) for a calendar year if the fair market value of the automobile (determined pursuant to paragraphs (d)(5)(i) through (iv) of this section as of the first date on which the automobile is made available to any employee of the employer for personal use) exceeds $50,000, as adjusted by section 280F(d)(7). The first such adjustment shall be for calendar year 2019.

* * * * *

(5) ***

(i) *Use of the vehicle cents-per-mile valuation rule by an employer*. An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle to take effect by the first day on which the vehicle is used by an employee of the employer for personal use (or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first day on which the commuting valuation rule is not used).

*****

(vi) *Transition rule for 2018 and 2019*. For a vehicle first made available to any employee of the employer for personal use before calendar year 2018, if an employer did not qualify under this paragraph (e)(5) to adopt the vehicle cents-per-mile valuation rule on the first day on which the vehicle is used by the employee for personal use because the fair market value of the vehicle exceeded the inflation-adjusted limitation of paragraph (e)(1)(iii), as published by the Service in a notice or revenue procedure applicable to the year the vehicle was first used by the employee for personal use, may first adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. Similarly, for a vehicle first made available to any employee of the employer for personal use before calendar year 2018, if the commuting valuation rule of paragraph (f) of this section was used when the vehicle was first used by the employee for personal use, and the employer did not qualify to switch to the vehicle cents-per-mile valuation rule of this paragraph (e) on the first day on which the commuting valuation rule of paragraph (f) of this section was not used because the vehicle had a fair market value in excess of the inflation-adjusted limitation of paragraph (e)(1)(iii) of this section, as published by the Service in a notice or revenue procedure applicable to the year the commuting valuation rule was first not used, the employer may adopt the vehicle cents-per-mile valuation rule for the 2018 or 2019 taxable year, provided the fair market value of the vehicle does not exceed $50,000 on January 1, 2018, or $50,400 on January 1, 2019, respectively. However, in accordance with paragraph (e)(5)(ii) of this section, an employer that adopts the vehicle cents-per-mile valuation rule pursuant to this paragraph (e)(5)(vi) must continue to use the rule for all subsequent years in which the vehicle qualifies for use of the rule, except that the employer may, for any year during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with regard to the vehicle.

(6) *Applicability date.* Paragraphs (e)(1)(iii)(A) and (e)(5)(i) and (vi) of this section apply to taxable years beginning on or after [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Notwithstanding the first sentence of this paragraph (e)(6), any taxpayer may choose to apply paragraph (e)(5)(vi) of this section beginning on or after January 1, 2018.

* * * * *

Kirsten Wielobob
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on August 22, 2019, 8:45 a.m., and published in the issue of the Federal Register for August 23, 2019, 84 F.R. 44258)

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 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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