INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2021–51
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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, INCOME TAX

Rev. Proc. 2021-52, page 883.
This revenue procedure will update Rev. Proc. 2020-54, 2020-53 I.R.B. 1806, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure will apply to any income tax return filed on 2021 tax forms for a taxable year beginning in 2021 and to any income tax return filed in 2022 on 2021 tax forms for short taxable years beginning in 2022.

EMPLOYMENT TAX

Notice 2021-65, page 880.
Notice 2021-65 provides guidance regarding the retroactive termination of the employee retention credit under IRC section 3134 in the fourth calendar quarter of 2021 for employers who are not recovery startup businesses. This notice applies to employers that paid wages after September 30, 2021 and received an advance payment of the employee retention credit for those wages or reduced employment tax deposits in anticipation of the credit for the fourth calendar quarter of 2021, but are now ineligible for the credit due to the change in the law. The notice also provides guidance regarding how the rules apply to recovery startup businesses during the fourth calendar quarter of 2021.

EXEMPT ORGANIZATIONS

Announcement 2021-17, page 889.
Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

INCOME TAX

REG-109128-21, page 890.
These proposed regulations would provide that minimum essential coverage does not include Medicaid coverage that is limited to COVID-19 testing and diagnostic services provided under the Families First Coronavirus Response Act, would provide an automatic extension of time for providers of minimum essential coverage to furnish individual statements regarding such coverage, and would provide an alternative method for furnishing individual statements when the shared responsibility payment amount is zero. Additionally, the proposed regulations would provide an automatic extension of time for applicable large employers to furnish statements relating to health insurance that the employer offers to its full-time employees.

Rev. Proc. 2021-43, page 882.
This revenue procedure provides safe harbors for when an obligation described in § 42(h)(4)(A) of the Internal Revenue Code or an allocation of a low-income housing credit dollar amount is more than de minimis for purposes of the associated revenue ruling providing guidance on whether the 4

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percent applicable percentage under § 42(b)(3) applies to certain low-income buildings.

Rev. Proc. 2021-53, page 887.

Rev. Proc. 2021-53 provides temporary guidance regarding the treatment of certain stock distributions by publicly offered real estate investment trusts (REITs) and publicly offered regulated investment companies (RICs). Specifically, in recognition of the need for liquidity as a result of the impact of the COVID-19 pandemic, this Rev. Proc. modifies the safe harbor provided in Rev. Proc. 2017-45, 2017-35 I.R.B. 216, by temporarily reducing the minimum required aggregate amount of cash that distributee shareholders may receive to not less than 10 percent of the total distribution in order for § 301 of the Code, by reason of § 305(b) of the Code, to apply to such distribution. This temporary modification is effective solely with respect to distributions declared by a publicly offered REIT or publicly offered RIC on or after November 1, 2021, and on or before June 30, 2022.

Rev. Rul. 2021-20, page 875.

This revenue ruling provides guidance regarding whether the 4 percent applicable percentage (4 percent floor) under § 42(b)(3) of the Internal Revenue Code applies to the low-income buildings described in the revenue ruling. This revenue ruling holds that a draw-down bond that is issued prior to 2021 (with draws occurring in a subsequent year), a de minimis § 42(h)(4)(A) obligation issued after December 31, 2020, or a de minimis allocation of low-income housing credit dollar amount occurring after December 31, 2020, do not cause a building to be subject to the minimum 4 percent floor under § 42(b)(3).

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

Section 42. - Low-Income Housing Credit.

(Also §§ 141, 142, and 146, and 26 CFR 1.42-8, 1.42-13, and 1.150-1).

Rev. Rul. 2021-20

ISSUES

(1) Does the minimum 4 percent applicable percentage (4 percent floor) under § 42(b)(3) of the Internal Revenue Code (Code) apply to the building in *Situation 1*, which is financed in part with a draw-down exempt facility bond issue that was issued in 2020 and on which one or more draws are taken after December 31, 2020?

(2) Does the 4 percent floor under § 42(b)(3) of the Code apply to the building in *Situation 2*, which is financed in part with proceeds of an exempt facility bond issue that was issued in 2020 and in part with proceeds of a different exempt facility bond issue that is issued in a *de minimis* amount after December 31, 2020?

(3) Does the 4 percent floor under § 42(b)(3) of the Code apply to the building in *Situation 3*, which receives an allocation of housing credit dollar amount in 2020 and a *de minimis* additional allocation after December 31, 2020?

FACTS

Situation 1: *Draw-down loan with issue date in 2020*. *Agency* is a State agency with authority to issue exempt facility bonds to support qualified residential rental projects within the meaning of § 142(d) of the Code. Taxpayer *X* (*Conduit Borrower*[1]) and *Agency* entered into an agreement that *Agency* would provide exempt facility bond financing to the *Conduit Borrower* to construct a new building for a qualified residential rental project. In 2020, *Agency* borrowed pursuant to a draw-down loan that qualifies as an issue of exempt facility bonds (the Loan), and the proceeds of the Loan are to be used by the *Conduit Borrower* to construct the building. *Agency* plans to make multiple draws under the Loan over the course of the construction, depending on the *Conduit Borrower's* financing needs at the time. In 2020, *Agency* drew an amount under the Loan that exceeded the lesser of $50,000 or 5 percent of the issue price. In subsequent years, *Agency* draws, and the *Conduit Borrower* uses, the remaining amounts available under the issue to construct the building. All of the draws on the Loan (that is, the bonds of the issue) are taken into account in applying the volume cap for private activity bonds set forth in § 146 of the Code. The qualified low-income building is placed in service after December 31, 2020. Any low-income housing credits earned with respect to the building meet the requirements of § 42(h)(4)(A) for not counting against the State's housing credit ceiling.

Situation 2: *Post-2020 issuance of a de minimis amount of exempt facility bonds*. The facts are the same as in *Situation 1*, except that instead of borrowing pursuant to a draw-down loan that qualifies as an issue of exempt facility bonds, *Agency* issued an issue of exempt facility bonds in 2020 to finance the *Conduit Borrower's* construction of the new building for the qualified residential rental project. In a subsequent year, *Agency* issues a different issue of exempt facility bonds (not pursuant to a draw-down loan), in a *de minimis* amount, that the *Conduit Borrower* similarly uses to finance construction of the building.

Situation 3: *Additional allocation of a de minimis housing credit dollar amount after 2020*. *Agency* is a housing credit agency that allocates housing credit dollar amounts under § 42(h). In 2020, *Agency* and *Taxpayer Y* entered into a binding agreement. Under the agreement, *Agency* agreed to allocate to *Y* a housing credit dollar amount for the acquisition of an existing building and an additional housing credit dollar amount for the rehabilitation of the building into a qualified low-income building. In 2020, *Agency* made allocations both of the amount related to the acquisition and of the additional amount related to the rehabilitation. Each allocation qualified for an exception under § 42(h)(1)(E), and thus each was a valid carryover allocation. As a result of those qualifications for an exception under § 42(h)(1)(E), the State's housing credit ceiling for 2020 was reduced by the amounts of the two carryover allocations. *Y* completes the acquisition and rehabilitation of the building into a qualified low-income building and places the building in service after December 31, 2020. After 2020, but before the building is placed in service, *Agency* makes an additional allocation of housing credit dollar amount related to the acquisition of the existing building. The amount of this additional allocation is *de minimis* and reduces *Agency's* ceiling for housing credit dollar amounts for the year after 2020 in which the allocation is made.

LAW

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(b)(1) provides rules to determine the applicable percentage. Section 42(b)(1)(A) defines the term "applicable percentage" with respect to any building as the appropriate percentage prescribed by the Secretary of the Treasury or her delegate (Secretary) for the earlier of (i) the month in which the building is placed in service, or (ii) at the election of the taxpayer—(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to the building (which is binding on the agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or (II) in the case of any building to which § 42(h)(4)(B) applies, the month in which the tax-exempt obligations are issued. A month may be elected under § 42(b)(1)(A)(ii) only if the election is made not later than the fifth

[1] A governmental issuer may serve as a conduit between investors who buy bonds, such as exempt facility bonds, and a person (like Taxpayer X) that receives the bond proceeds and is solely responsible for debt service payments. That person is referred to as the "conduit borrower." See § 1.150-1(b) of the Income Tax Regulations.

day after the close of such month. Such an election, once made, is irrevocable.

Section 42(b)(2), which was enacted by section 3002(a)(1) of the Housing Assistance Tax Act of 2008 (2008 Act), Division C of the Housing and Economic Recovery Act of 2008, Public Law 110-289, 122 Stat. 2654, 2879 (July 30, 2008), provides a minimum credit rate of 9 percent for new buildings that are not federally subsidized (9 percent floor). Section 3002(c) of the 2008 Act provides that the 9 percent floor under § 42(b)(2) applies to buildings placed in service after July 30, 2008.

Notice 2008-106, 2008-49 IRB 1239, provides guidance on application of the 9 percent floor. The notice clarifies that the 9 percent floor applies even if, before the 2008 Act, a taxpayer had made an irrevocable election under § 42(b)(1)(A)(ii) to apply to a building an applicable percentage that is less than 9 percent. The notice also concludes that: "Notwithstanding the application of the 9 percent floor, the housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. See 42(m)(2)."

Section 201(a) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182, 3056 (December 27, 2020), added to the Code a new § 42(b)(3), which provides a 4 percent minimum credit rate for buildings to which the 9 percent floor in § 42(b)(2) does not apply and which are placed in service by the taxpayer after December 31, 2020. The amendments to § 42(b) made by section 201(a) of the Act "apply to (1) any building which receives an allocation of housing credit dollar amount after December 31, 2020, and (2) in the case of any building any portion of which is financed with an obligation described in section 42(h)(4)(A), any such building if any such obligation which so finances such building is issued after December 31, 2020." Section 201(b)(1) and (2) of the Act.

Section 42(d)(2)(B) provides that, except as provided in § 42(f)(5), a credit is allowable under § 42(a) by reason of rehabilitation expenditures that are treated as a new building under § 42(e) with respect to the building. Section 42(e)(1) provides that if rehabilitation expenditures are paid or incurred by the taxpayer with respect to any building and if the expenditures meet the criteria in § 42(e)(2) and (3), those expenditures are treated as a separate new building.

Under § 42(h)(1), the amount of the credit determined under § 42(a) for any taxable year with respect to any building must not exceed the housing credit dollar amount allocated to the building. Section 42(h)(1)(E) provides general rules for carryover allocations of the low-income housing credit. A carryover allocation is defined in § 1.42-6(a)(1) as an allocation that meets the requirements of § 42(h)(1)(E) (relating to carryover allocations for single buildings) or § 42(h)(1)(F) (relating to carryover allocations for multiple-building projects).

Section 42(h)(4)(A) provides an exception to the requirement in § 42(h)(1). Thus, a building within the exception can earn low-income housing credits without having received any allocation. The exception applies to the portion of any credit allowed under § 42(a) that is attributable to a building's eligible basis financed by an obligation the interest on which is exempt from tax under § 103 of the Code if: (i) the obligation is taken into account under § 146; and (ii) principal payments on the financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded under § 146(i)(6).

Section 42(m)(2)(D) provides that § 42(h)(4) does not apply to any project unless the governmental unit which issued the bonds makes a determination under rules similar to the rules provided for in § 42(m)(2)(A) and (B). Section 42(m)(2)(A) provides that a housing credit dollar amount allocated to a project cannot exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing credit project throughout the credit period. Under § 42(m)(2)(B) and § 1.42-17(a)(3), when a housing credit agency makes a determination under § 42(m)(2)(A), it must consider a number of factors including: (i) the sources and uses of funds and total financing planned for the project; (ii) any proceeds or receipts expected to be generated by reason of tax benefits; (iii) the percentage of housing credit dollar amount used for project costs other than the cost of intermediaries; and (iv) the reasonableness of the developmental and operational costs of the project.

Section 1.42-17(a)(4)(i) describes the timing of the housing credit agency determinations and certifications under § 1.42-17(a)(3). They must be made at (A) the time of the application for the housing credit dollar amount; (B) the time of the allocation of the housing credit dollar amount; and (C) the date the building is placed in service. Section 1.42-17(a)(5) provides that, for the determination at the time the building is placed in service, the taxpayer must submit a schedule of project costs. Section 1.42-17(a)(6), provides that a project qualifying under § 42(h)(4) (concerning bond-financed projects) is not entitled to any credit unless the governmental unit that issued the bonds, or the housing credit agency responsible for issuing the Form(s) 8609, *Low-Income Housing Credit Allocation and Certification*, to the project, makes determinations under rules similar to the rules in § 1.42-17(a)(3), (4), and (5).

Section 142 provides rules for exempt facility bonds. Section 142(a) provides that an exempt facility bond is any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to support certain categories of building projects, one of which is a qualified residential rental project. Section 142(d) generally defines a "qualified residential rental project" as any project for residential rental property if, at all times during the qualified project period and disregarding that part of the building in which such property is located that is used for purposes other than residential rental purposes, either (1) 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income, or (2) 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

Under § 1.150-1(c)(4)(i), bonds issued pursuant to a draw-down loan are treated as part of a single issue. The issue date of the issue is the first date on which the aggregate draws under the loan exceed the lesser of $50,000 or 5 percent of the issue price.

ANALYSIS

In a determination of whether the 4 percent floor applies, all the buildings described in the FACTS of this revenue ruling satisfy the requirement of § 42(b)(3) that a building be placed in service after 2020. Each of these three situations, however, raises the question whether the post-2020 events in that situation meet the relevant portions of the effective date provisions in section 201(b) of the Act, which require a post-2020 issuance of a tax-exempt obligation or a post-2020 allocation of housing credit dollar amount.

An evaluation of the effect of these post-2020 events must consider the apparent reasons for the requirement in section 201(b) of the Act of certain post-2020 actions by State or local governments. For example, when section 3002 of the 2008 Act added the 9 percent floor, the effective date required only that a building be placed in service after July 30, 2008, the applicable date of enactment. Section 42(b)(3) also expressly provides such a placed-in-service effective date for the 4 percent floor. However, section 201(b) of the Act adds an additional requirement—application of the 4 percent floor to a qualified low-income building is also dependent on the existence of some post-2020 government action with respect to the building. The apparent reason for the additional effective date criteria in section 201(b) of the Act can be inferred by comparing buildings that satisfy only the placed-in-service requirement with those satisfying both that requirement and section 201(b) of the Act.

Considered in this way, section 201(b) of the Act functions to prevent a windfall of credits in situations where, prior to enactment of the 4 percent floor, the taxpayer had substantially completed the structuring of the transaction. Governmental determinations of financial feasibility under § 42(m)(2)(A) must occur not later than an allocation of housing credit dollar amounts or an issuance of exempt facility bonds for a qualified residential rental project. Because the date of enactment of the Act occurred so late in 2020, absence of a post-2020 allocation or issuance means that the low-income building had been planned, and its financial feasibility had been assessed, without taking the 4 percent floor into account. Absent the restriction in section 201(b) of the Act, buildings would receive unnecessary and unanticipated credits on arrangements that had been structured and vetted to function without them. Thus, the requirements in section 201(b) of the Act seem to treat the possibility of those unplanned for credits as if they are a windfall to be avoided.

In *Situation 1*, the building is financed by a draw-down loan. Section 1.150-1(c)(4)(i) treats bonds issued pursuant to a draw-down loan as part of a single issue. Further, under § 1.150-1(c)(4)(i), the issue date of the issue in *Situation 1* was in 2020 because amounts drawn exceeded the lesser of $50,000 or 5 percent of the issue price. This issue date of the issue in *Situation 1* does not change under § 1.150-1(c)(4)(i) because a subsequent draw (that is, a bond) occurs after 2020.

The language of section 201(b)(2) of the Act refers to the issue date of the "obligation which so finances such building." Thus, the question here is whether this language refers to the issue or to the individual draws. Interpreting the "obligation" as the issue rather than the draws is consistent with the apparent intent of the effective date provisions in the Act, as discussed above. Although individual draws occur at various times, the maximum amount of the financing provided by the Loan was finalized before 2021. For example, in *Situation 1*, if the financing structure had been finalized during September 2020, the applicable percentage for that month was 3.07 percent. *See* Table 4 of Rev. Rul. 2020-16, 2020-37 IRB 550, 551. Hence, this is a situation where the transaction was structured assuming an applicable percentage that is not increased by a 4 percent floor. Accordingly, if the post-2020 draws under the 2020 issue caused the 4 percent floor to apply, the result would be a windfall of credits that were not taken into account when the transaction was structured.

Thus, in *Situation 1*, because the Loan (that is, the draw-down issue of bonds) was issued in 2020, the applicable percentage of the building is determined without regard to the 4 percent floor. The applicable percentage of the building is the amount determined under § 42(b)(1)(B) and (C) for the month determined under § 42(b)(1)(A).

Unlike the circumstances with the Loan in *Situation 1* (which was a draw-down loan), the post-2020 bond proceeds in *Situation 2* were from a post-2020 issuance of an exempt facility bond issue, and each post-2020 bond is part of that post-2020 issue. Thus, the *Situation 2* analysis does not depend on whether the language of section 201(b)(2) of the Act refers to the issue date of a bond issue or to the issue date of the individual bonds.

In *Situation 2*, the *Conduit Borrower* receives financing from two issues of exempt facility bonds—one issued in 2020 and one issued in a later year. The latter issue, however, is only a *de minimis* amount. See Rev. Proc. 2021-43, page 882 this bulletin, providing a safe harbor for determining whether an exempt facility bond issue that is issued after December 31, 2020, is more than *de minimis* for purposes of this revenue ruling. Because the building was placed in service after 2020, whether the 4 percent floor applies depends on the effect, if any, of the post-2020 *de minimis* issuance. That is, the determination of whether the 4 percent floor applies depends on whether the post-2020 *de minimis* issuance satisfies the effective date requirement in section 201(b)(2) of the Act that a building be financed by a § 42(h)(4)(A) obligation issued after December 31, 2020.

As discussed in connection with *Situation 1*, section 201(b) of the Act functions to prevent windfalls. It is necessary, therefore, to consider whether a *de minimis* post-2020 financing could create a windfall of tax credits. When an issue of exempt facility bonds is issued in a non-*de-minimis* amount after 2020, any concern over a windfall of credits is lessened. In those situations, because the post-2020 issuance is not *de minimis*, the transaction is less likely to have been entirely structured prior to the enactment of the 4 percent floor. Further, a greater portion of the total credits generated by applying the

4 percent floor to the building would be expected to result from basis financed by the post-2020 issuance. Thus, it is consistent with the apparent intent of section 201(b) for the 4 percent floor to apply to buildings whose financing includes both pre-2021 exempt facility bonds and a non-*de-minimis* amount of exempt facility bonds that are part of an issue that is issued after December 31, 2020.

The situation is different, however, if a *de minimis* amount of bonds constitute a building's only exempt facility bonds issued as part of an issue issued after 2020. In this case, *Situation 2* aligns more closely with a building whose only tax-exempt financing was issued before 2021 (even if it is placed in service after 2020). If a *de minimis* amount of post-2020 tax-exempt bond financing caused the project to qualify for the 4 percent floor, then that project would receive substantially more credit than an economically equivalent project all of whose tax-exempt financing was issued pre-2021.

Further, application of the 4 percent floor would produce an increase in credits not commensurate with the *de minimis* post-2020 financing. Except for the *de minimis* subsequent financing, the increased credit available by virtue of the 4 percent floor would be based on assets whose ability to yield low-income housing credits was the result of their pre-2021 financing. There is no indication that Congress contemplated such an incongruous result in drafting the effective date provisions in section 201(b) of the Act.

Moreover, the application of the 4 percent floor would create an undesirable incentive for taxpayers if a *de minimis* amount of post-2020 financing were held to satisfy section 201(b)(2) of the Act. Under this approach, taxpayers might seek nominal additional financing even in situations where the additional financing is not necessary for the financial feasibility of the building. Any such taxpayer efforts would increase complexity when housing credit agencies and bond issuers evaluate the financial feasibility of projects for purposes of § 42(m)(2)(D).

In addition, such a holding would undercut § 42(m)(2) and § 1.42-17, which guide housing credit agencies and bond issuers when they determine whether an amount is needed for the financial feasibility of a project. Those requirements reduce any incentive to seek *de minimis* amounts that are not necessary for the project's financial feasibility. There is no indication that Congress meant to interpret the effective date requirement to incentivize taxpayers to seek unnecessary amounts. This result is avoided by interpreting section 201(b)(2) of the Act as describing only non-*de-minimis* post-2020 financing.

Thus, in *Situation 2*, the *de minimis* amount of exempt facility bonds that are part of an issue issued after 2020 fail to cause the 4 percent floor to apply to the building. See Rev. Proc. 2021-43, page 882 this bulletin, providing a safe harbor for determining whether an exempt facility bond issue that is issued after December 31, 2020, is more than *de minimis* for purposes of this revenue ruling. Because the 4 percent floor does not apply, the applicable percentage is the amount determined under § 42(b)(1)(B) and (C) for the month determined under § 42(b)(1)(A).

This analysis would be the same for a building that is financed in part with proceeds of an exempt facility bond issue that was issued in 2020 and in part with a portion of the proceeds of a different exempt facility bond issue that is issued in a non-*de-minimis* amount after December 31, 2020 (primarily to finance one or more other buildings) when the portion of the proceeds of the exempt facility bond issue issued after December 31, 2020, that finances the building represents a *de minimis* portion of the building's overall exempt facility bond financing.

Finally, when the 4 percent floor applies to a building, it applies to any 30-percent-present-value applicable percentage used to compute low-income housing credits for the building. In these cases, therefore, it is irrelevant whether an election had been made under § 42(b)(1)(A)(ii) to use a pre-placed-in-service month for determining the applicable percentage. *Cf.* Notice 2008-106 (reaching a similar result when the 9 percent floor was enacted).

In *Situation 3*, *Agency* makes no more than a *de minimis* allocation of housing credit dollar amount after 2020. Although the acquisition of the building was completed after 2020, and the building was placed in service after 2020, the transaction was structured in 2020, and at that time, *Y* and *Agency* did not take the 4 percent floor into account. Arguably, the windfall effect with an allocation is less than in a building financed with exempt facility bonds. The credits in this context are limited to those allocated by a housing credit agency. By contrast, in projects financed by § 42(h)(4)(A) obligations, the credits are limited only by what the qualified basis can generate. Nevertheless, the requirements of section 201(b)(1) of the Act manifest the same legislative intent as section 201(b)(2) of the Act and should therefore be interpreted consistently. Thus, the principles that govern *de minimis* amounts of bonds are equally applicable to *de minimis* allocations. See Rev. Proc. 2021-43, page 882 this bulletin, providing a safe harbor for determining whether an allocation of housing credit dollar amounts that is made after December 31, 2020, is more than *de minimis* for purposes of this revenue ruling. Accordingly, the 4 percent floor does not apply to the building described in *Situation 3*. *Y* must use the applicable percentage determined under § 42(b)(1)(B) and (C) for the month determined under § 42(b)(1)(A).

As described above, when the 4 percent floor applies to a building, it applies to any 30-percent-present-value applicable percentage used to compute low-income housing credits for the building. In these cases, therefore, it is irrelevant whether an election had been made under § 42(b)(1)(A)(ii) to use a pre-placed-in-service month for determining the applicable percentage.

HOLDINGS

(1) *Situation 1.* The 4 percent floor under § 42(b)(3) does not apply to the building in *Situation 1*, which is financed in part with a draw-down exempt facility bond issue that was issued in 2020 and on which one or more draws are taken after December 31, 2020.

(2) *Situation 2.* The 4 percent floor under § 42(b)(3) does not apply to the building in *Situation 2*, which is financed in part with proceeds of an exempt facility bond issue that was issued in 2020 and in part with proceeds of a different exempt facility bond issue that is issued in a *de minimis* amount after December 31, 2020.

(3) *Situation 3*. The 4 percent floor under § 42(b)(3) does not apply to the building in *Situation 3*, which receives an allocation of housing credit dollar amount in 2020 and a de minimis additional allocation after December 31, 2020.

The analysis in this revenue ruling applies only for purposes of determining whether the 4 percent floor under § 42(b)(3) applies to a building.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Dillon Taylor and Michael Torruella Costa of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Dillon Taylor or Michael Torruella Costa at (202) 317-4137 (not a toll-free number).

Part III

Termination of the Employee Retention Credit under Section 3134 of the Code in the Fourth Calendar Quarter of 2021 for Certain Employers

Notice 2021-65

I. PURPOSE

This notice modifies Notice 2021-49, 2021-34 IRB 316, and Notice 2021-24, 2021-18 IRB 1122, to implement statutory changes made by the Infrastructure Investment and Jobs Act (Infrastructure Act), Pub. L. 117-58, 135 Stat. 429 (2021), enacted November 15, 2021.

II. BACKGROUND

Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281 (2020), as originally enacted, provides for an employee retention credit for eligible employers, including tax-exempt organizations, that pay qualified wages, including certain health plan expenses, to some or all employees after March 12, 2020, and before January 1, 2021. Section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020), adopted retroactive amendments and technical changes to section 2301 of the CARES Act for qualified wages paid after March 12, 2020, and before January 1, 2021, primarily expanding eligibility for certain employers to claim the credit. Section 207 of the Relief Act, effective for calendar quarters beginning after December 31, 2020, further amended section 2301 of the CARES Act to extend the application of the employee retention credit to qualified wages paid after December 31, 2020, and before July 1, 2021, and to modify the calculation of the credit amount for qualified wages paid during that time. Section 9651 of the American Rescue Plan Act of 2021 (ARP), Pub. L. 117-2, 135 Stat. 4, enacted section 3134 of the Internal Revenue Code (Code), effective for calendar quarters beginning after June 30, 2021, and provides an employee retention credit for wages paid after June 30, 2021, and before January 1, 2022.

Prior to the enactment of section 3134, section 2301 of the CARES Act, as amended by sections 206 and 207 of the Relief Act, provided that an employer may be eligible for the employee retention credit with respect to a calendar quarter only if (i) the operation of the employer's trade or business is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 19 (COVID-19),[1] or (ii)(a) for calendar quarters in 2020, the employer experiences a significant decline in gross receipts, or (b) for calendar quarters in 2021, the employer experiences a decline in gross receipts.[2] Section 3134(c)(2) of the Code added "recovery startup businesses" as a third category of employers that are eligible for the employee retention credit for qualified wages paid in the third and fourth calendar quarters of 2021.

Section 3134 also modified the employee retention credit in other respects for qualified wages paid in the third and fourth calendar quarters of 2021. Section 3134(j)(2) limited the amount of the employee retention credit that could be advanced and which employers could request advance payments. In addition, section 3134(j)(3)(B) allows for the direct assessment of certain erroneous refunds of advanced portions of the credit. It provides that if a small eligible employer specified in section 3134(j)(2) receives excess advance payments of the credit, then the taxes imposed under section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, for the calendar quarter are increased by the amount of the excess advance payments. Section 3134(m)(3) provides that the Secretary will issue such forms, instructions, regulations, and other guidance as are necessary to prevent the avoidance of the purposes of the limitations under section 3134.

On March 31, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Notice 2020-22, 2020-17 IRB 664, which provides penalty relief under section 6656 to employers entitled to certain refundable tax credits provided under the Families First Coronavirus Response Act (Families First Act), Pub. L. 116-127, 134 Stat. 178 (2020) and the CARES Act for an employer's failure to timely deposit Employment Taxes[3] with the IRS.[4] On April 13, 2021, the Treasury Department and the IRS issued Notice 2021-24, which extended the penalty relief provided under Notice 2020-22 to employers claiming certain other credits under ARP, including the employee retention credit under section 3134. On August 4, 2021, the Treasury Department and the IRS issued Notice 2021-49, providing guidance on the employee retention credit under section 3134. Notice 2021-49 amplified Notice

[1] The rules for determining whether an employer's trade or business is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 are set forth in section III.D. of Notice 2021-20, 2021-11 IRB 922 (guidance on the employee retention credit under section 2301 of the CARES Act, as amended by section 206 of the Relief Act).

[2] The rules for determining whether an employer experienced a significant decline in gross receipts in 2020 are set forth in section III.E. of Notice 2021-20. The rules for determining whether an employer experienced a decline in gross receipts in the first or second calendar quarters of 2021 are set forth in section III.C. of Notice 2021-23, 2021-16 IRB 1113 (guidance on the employee retention credit under section 2301 of the CARES Act, as amended by section 207 of the Relief Act).

[3] For purposes of this notice, "Employment Taxes" means withheld income taxes, taxes under the Federal Insurance Contributions Act (FICA), and taxes under the Railroad Retirement Tax Act (RRTA).

[4] Relief from the failure to deposit penalty imposed by section 6656 is provided to the extent the amounts not deposited are equal to or less than the anticipated amount of refundable tax credits to which the employer is entitled under the Families First Act and CARES Act and for which no advance payment was sought.

2021-20,[5] which provides guidance on the employee retention credit under section 2301 of the CARES Act, as amended by section 206 of the Relief Act, and Notice 2021-23,[6] which provides guidance on the employee retention credit under section 2301 of the CARES Act, as amended by section 207 of the Relief Act.[7]

On September 10, 2021, the Treasury Department and the IRS published TD 9953, 86 FR 50,637, setting forth temporary regulations on the Recapture of Excess Employment Tax Credits under the American Rescue Plan Act of 2021. The temporary regulations, in part, authorize the assessment and collection of any erroneous refund of certain credits, including the employee retention credit under section 3134 of the Code, in the normal course of processing applicable employment tax returns.

Section 80604 of the Infrastructure Act amended section 3134(n) of the Code to provide that the employee retention credit under section 3134 shall apply only to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022). Additionally, effective for calendar quarters beginning after September 30, 2021, section 80604 of the Infrastructure Act amended the definition of recovery startup business under section 3134(c)(5) of the Code to remove the requirement that a recovery startup business not otherwise be an eligible employer due to a full or partial suspension of operations or a decline in gross receipts.

III. GUIDANCE

In accordance with the amendments made by section 80604 of the Infrastructure Act to section 3134(n) of the Code, employers, other than recovery startup businesses, are not entitled to the employee retention credit for wages paid on or after October 1, 2021. The Infrastructure Act amendments require the modification of guidance related to the employee retention credit for the fourth calendar quarter of 2021.

A. Termination of Employee Retention Credit for Employers other than Recovery Startup Businesses

Section I of Notice 2021-49 provides that the rules set forth in Notice 2021-20 and Notice 2021-23 addressing CARES Act provisions that are the same as those provided under section 3134 of the Code continue to apply for the third and fourth calendar quarters of 2021. Due to the amendments made by section 80604 of the Infrastructure Act, rules for determining whether an employer is an eligible employer due to a full or partial suspension of operations (section III.D. of Notice 2021-20) or a decline in gross receipts (section III.C. of Notice 2021-23) no longer apply for the fourth calendar quarter of 2021. Any rules based upon the determination that an employer is an eligible employer due to a full or partial suspension of operations or a decline in gross receipts, such as rules relating to "severely financially distressed employers" discussed in section III.E. of Notice 2021-49, also no longer apply for the fourth calendar quarter of 2021. Further, references in Notice 2021-49 to eligible employers claiming the employee retention credit for qualified wages paid in the fourth calendar quarter of 2021 no longer apply unless the employer is a recovery startup business.

The rules related to recovery startup businesses in section III.D. of Notice 2021-49 include the requirement that a recovery startup business not otherwise be an eligible employer due to a full or partial suspension of operations or a decline in gross receipts. Section 80604 of the Infrastructure Act removes this requirement for the fourth calendar quarter of 2021. Accordingly, this requirement no longer applies to recovery startup businesses in the fourth calendar quarter of 2021.

All other rules set forth in Notice 2021-20 and Notice 2021-23 addressing CARES Act provisions that are the same as those provided under section 3134 of the Code continue to apply for the fourth calendar quarter of 2021 to recovery startup businesses. Similarly, all other rules set forth in Notice 2021-49 continue to apply for the fourth calendar quarter of 2021 to recovery startup businesses.

B. Repayment of Advance Payments for Employers other than Recovery Startup Businesses

Employers may have requested advance payments of the employee retention credit for wages paid in the fourth calendar quarter of 2021 prior to the enactment of the Infrastructure Act. An advance payment of any portion of the employee retention credit to a taxpayer in excess of the amount to which the taxpayer is entitled is an erroneous refund that the employer must repay. Accordingly, if an employer requested and received an advance payment of the employee retention credit for wages paid in the fourth calendar quarter of 2021, and the employer is not a recovery startup business, the employer is not eligible for an employee retention credit and must repay the amount of the advance. Employers who need to repay these excess advance payments of the employee retention credit must do so by the due date for the applicable employment tax return that includes the fourth calendar quarter of 2021. Employers should refer to the instructions to the applicable employment tax form for additional information. Failure to repay the advance payment by the due date of the applicable employment tax return may result in the imposition of failure to pay penalties under section 6651.

C. Failure to Deposit Penalties for Employers other than Recovery Startup Businesses

Prior to the enactment of the Infrastructure Act, in accordance with the guidance provided in Notice 2021-24, employers may have reduced deposits of Employment Taxes by the amount of the employee retention credit the employer anticipated for the fourth calendar quarter of 2021 based on a full or partial suspension of operations or a decline in gross receipts. Due to the termination of the employee retention credit for wages paid in the fourth calendar quarter of 2021 for

[5] *Supra* note 1.
[6] *Supra* note 2.
[7] Notice 2021-49 also provides additional guidance on issues regarding the employee retention credit under both section 3134 and section 2301 of the CARES Act, as amended by sections 206 and 207 of the Relief Act.

employers that are not recovery startup businesses, the IRS will no longer waive failure to deposit penalties for employers that reduce deposits in anticipation of the employee retention credit after December 20, 2021, unless the employer is a recovery startup business.

For deposits due on or before December 20, 2021, with respect to wages paid on or after October 1, 2021, but before January 1, 2022, an employer that is not a recovery startup business will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes for the fourth calendar quarter of 2021 if—

1. The employer reduced its deposits in anticipation of the employee retention credit, consistent with the rules provided in section 3.b. of Notice 2021-24; and
2. The employer deposits the amounts initially retained in anticipation of the employee retention credit on or before the relevant due date for wages paid on December 31, 2021 (regardless of whether the employer actually pays wages on that date).[8] Deposit due dates will vary based on the deposit schedule of the employer; and
3. The employer reports the tax liability resulting from the termination of the employer's employee retention credit on the applicable employment tax return or schedule that includes the period from October 1, 2021 through December 31, 2021. Employers should refer to the instructions to the applicable employment tax return or schedule for additional information on how to report the tax liability.

If an employer does not qualify for relief under this Notice, it may reply to a notice about a penalty with an explanation and the IRS will consider reasonable cause relief pursuant to section 6656(a).

IV. EFFECT ON OTHER DOCUMENTS

Notice 2021-49 is modified as provided in this notice. Notice 2021-24 is modified as provided in this notice.

V. PAPERWORK REDUCTION ACT

Any collection of information associated with this notice has been submitted to the Office of Management and Budget for review under OMB control number 1545-0029 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

VI. DRAFTING INFORMATION

The principal authors of this notice are Danchai Mekadenaumporn of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) and Michael A. Franklin of the Office of the Associate Chief Counsel (Procedure and Administration), although other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, please contact Mr. Mekadenaumporn at 202-317-6798 (not a toll-free call) or Mr. Franklin at 202-317-6844 (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 §§ 42, 141, 142, and 146, and 26 CFR 1.42-8, 1.42-13, and 1.150-1.)

Rev. Proc. 2021-43

SECTION 1. PURPOSE

This revenue procedure provides safe harbors for determining whether an exempt facility bond issue that is issued after December 31, 2020, or an allocation of a housing credit dollar amount that is made after December 31, 2020, is more than *de minimis* for purposes of Holdings 2 and 3 of Rev. Rul. 2021-20, page 875 this bulletin. That ruling addresses whether the minimum 4 percent applicable percentage (4 percent floor) under § 42(b)(3) of the Internal Revenue Code applies to a building.

SECTION 2. BACKGROUND

.01 Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

.02 Section 42(b) describes rules to determine the applicable percentage.

.03 Section 42(b)(2) provides a minimum credit rate of 9 percent for non-federally subsidized new buildings.

.04 Section 201(a) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182, 3056 (December 27, 2020), amended § 42(b) by redesignating § 42(b)(3) as § 42(b)(4) and adding a new § 42(b)(3).

.05 Section 42(b)(3), as added by section 201(a) of the Act, provides that in the case of any new or existing building to which § 42(b)(2) does not apply and which is placed in service by the taxpayer after December 31, 2020, the applicable percentage cannot be less than 4 percent. The amendments to § 42(b) in section 201(a) of the Act apply to (1) any building which receives an allocation of housing credit dollar amount after December 31, 2020, and (2) in the case of any building any portion of which is financed with an obligation described in § 42(h)(4)(A), any such building if any such obligation which so finances such building is issued after December 31, 2020.

.06 Rev. Rul. 2021–20 addresses three situations. *Situation 2* of the ruling describes a building that is financed in part with proceeds of an exempt facility bond issue that was issued in 2020 and in part with proceeds of a different exempt facility bond issue that is issued in a *de minimis* amount in a subsequent year. (Generally, exempt facility bonds

[8] If the amounts initially retained in anticipation of the employee retention credit total $100,000 or more with or without any additional liability on that date, then the employer is subject to the $100,000 One-Day rule of § 31.6302-1(c)(3) (also referred to as the "Next-Day Deposit Rule").

are bonds issued pursuant to § 142 of the Code, and the interest on these bonds is exempt from tax under § 103 of the Code provided certain requirements are met.) *Situation 3* of the ruling describes a building that receives an allocation of housing credit dollar amount in 2020 and a *de minimis* additional allocation in a subsequent year.

.07 Holdings 2 and 3 of Rev. Rul. 2021–20 provide that a *de minimis* amount of exempt facility bonds issued, or a *de minimis* allocation made, after December 31, 2020, does not cause the 4 percent floor under § 42(b)(3) to apply to a building.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers with buildings that are eligible for the low-income housing credit under § 42 and that must determine whether the 4 percent floor under § 42(b)(3) applies to their buildings.

SECTION 4. PROCEDURE

.01 For purposes of *Situation 2* of Rev. Rul. 2021–20, an exempt facility bond issue issued after December 31, 2020, that finances the building in question is not *de minimis* if, as of the latest issue date of any such issue, the aggregate amount of the post-2020 obligations is at least 10 percent of the total amount of all § 42(h)(4)(A) obligations that finance the building. For this section 4.01, an issue is taken into account only to the extent that it finances the particular building in question (such as the building described in *Situation 2* of Rev. Rul. 2021–20).

.02 For purposes of *Situation 3* of Rev. Rul. 2021–20, an allocation of housing credit dollar amounts to a building made after December 31, 2020, is not *de minimis* if the allocation is at least 10 percent of the total allocations to the building that have been made on or before the date of the allocation in question. For this section 4.02, all allocations to a building of housing credit dollar amounts that reduce a State's housing credit ceiling for one or more years after 2020 are treated as one allocation that was made to the particular building in question on the latest date of these post-2020 allocations.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to buildings financed with exempt facility bond issues that are issued after December 31, 2020, and to buildings to which allocations of housing credit dollar amounts are made after December 31, 2020.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Dillon Taylor and Michael Torruella Costa, Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, please contact Dillon Taylor or Michael Torruella Costa on (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, §§ 6662, 6694, 1.6662-4, 1.6694-2)

Adequate Disclosure Revenue Procedure Renewal

Rev. Proc. 2021-52

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2020-54, 2020-53 I.R.B. 1806, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including but not limited to the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(b)(7) and (j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements). If this revenue procedure does not include an item or position, disclosure is adequate with respect to that item or position only if made on a properly completed Form 8275 or 8275-R, as appropriate, attached to the return for the year or to a qualified amended return. *See* Treas. Reg. § 1.6664-2(c) for information about qualified amended returns.

This revenue procedure applies to any income tax return filed on 2021 tax forms for a taxable year beginning in 2021, and to any income tax return filed in 2022 on 2021 tax forms for short taxable years beginning in 2022.

SECTION 2. CHANGES FROM REV. PROC. 2020-54

The background section has been changed to state that the section 6662 penalty rate is generally 20 percent. The addition of "generally" acknowledges that the penalty rate is higher in some circumstances, although this revenue procedure does not apply in those circumstances. In addition, editorial changes have been made throughout this revenue procedure. Changes have been made in order to update the taxable years to which this revenue procedure applies. No substantive changes have been made.

SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount generally equal to 20 percent of the portion of the underpayment is added to the tax. Under section 6662(b)(2), the penalty applies to the portion of any underpayment of tax that is attributable to a substantial understatement of income tax. The penalty rate increases to 40 percent in the case of gross valuation misstatements under section 6662(h), nondisclosed noneconomic substance transactions under section 6662(i), or undisclosed foreign financial asset understatements under section 6662(j).

.02 Generally, there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of (i) 10 percent of the amount of tax required to be shown on the return for the taxable year or (ii) $5,000. Section 6662(d)(1). Section 6662(d)(1)(C) provides a special rule for taxpayers claiming a section 199A deduction. In the case of any taxpayer who claims any deduction allowed under section 199A for the taxable year, there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of (i) 5 percent of the amount of tax required to be shown on the return for the taxable year or (ii) $5,000. Section 6662(d)(1)(B) provides a special rule for corporations. A corporation (other than an S corporation or a personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of (i) 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, $10,000) or (ii) $10,000,000. Generally, an understatement is the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate, where the excess is determined without regard to items to which the reportable transaction understatement penalty under section 6662A applies. Section 6662(d)(2)(A). For purposes of determining whether an understatement is substantial, the understatement determined under the general rule is increased by the aggregate amount of any reportable transaction understatements relating to the return. Section 6662A(e)(1)(A).

.03 In the case of an item not attributable to a tax shelter, if the taxpayer has a reasonable basis for the tax treatment of the item, the amount of the understatement is reduced by the portion of the understatement attributable to the item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. Section 6662(d)(2)(B)(ii).

.04 Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting an understatement of liability due to an "unreasonable position" if the tax return preparer knew (or reasonably should have known) of the position. A position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) is generally treated as unreasonable unless (i) there is or was substantial authority for the position, or (ii) the position was properly disclosed in accordance with section 6662(d)(2)(B)(ii)(I) and had a reasonable basis. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. *See* Notice 2009-5, 2009-3 I.R.B. 309, for interim penalty compliance rules for tax shelter transactions.

.05 In general, this revenue procedure provides guidance for determining when disclosure by return is adequate for purposes of section 6662(d)(2)(B)(ii) and section 6694(a)(2)(B). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable.

.06 This revenue procedure may apply to a return for a fiscal tax year that begins in 2021 and ends in 2022. This revenue procedure may also apply to a short year return for a period beginning in 2022 if the return is to be filed before the 2022 forms are available. (Note that individuals are generally not put in this position.) The most frequent situation in which a short year arises is when filing a decedent's final return for a fractional part of a year. In that situation, the 2022 form will be available because the final return is due the fifteenth day of the fourth month following the close of the 12-month period that began with the first day of such fractional part of the year (meaning the due date is not accelerated). *See* Treas. Reg. § 1.6072-1(b). In the case of fiscal year and short year returns, the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2021, even though these changes are not reflected on the form or instructions.

.07 This document does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2021. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, until the Service prescribes criteria for complying with the requirement.

.08 A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP, *Uncertain Tax Position Statement*, will be treated as if the corporation filed a Form 8275 or Form 8275-R regarding the tax position. The filing of a Form 8275 or Form 8275-R, however, will not be treated as if the corporation filed a Schedule UTP.

SECTION 4. PROCEDURE

.01 General

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M-1 and M-3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between parties who are related within the meaning of section 267(b). If an entry may present a legal issue or controversy because of a related-party transaction, then that transaction and the relationship must be disclosed on a Form 8275 or Form 8275-R.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that item

(such as on an unnamed line under an "Other Expense" category), the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words "bad debt" must be written or typed on the line of Schedule C (Form 1040 or 1040SR) that shows the amount of the bad debt. Also, for Schedule M-3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 38, Other expense/deduction items with differences, the entry must provide descriptive language; for example, "Cost of non-compete agreement deductible not capitalizable," and the description must be provided on an attachment. Similarly, for other forms, if space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return (1) does not have a reasonable basis as defined in Treas. Reg. § 1.6662-3(b)(3); (2) is attributable to a tax shelter item as defined in section 6662(d)(2)(C)(ii); or (3) is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position.

(6) Disclosure also will have no effect for purposes of the section 6694(a) penalty as applicable to tax return preparers if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies.

.02 Items

(1) Form 1040, Schedule A, *Itemized Deductions*:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 7, supplying all required information. Line 6 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 8 through 10, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is completed, or (ii) amounts disallowed under section 265.

(d) Charitable Contributions: Complete lines 11 through 14, supplying all required information and attaching all related forms required pursuant to statute or regulation.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Officers' Compensation: Complete Form 1125-E, *Compensation of Officers*, when its instructions require completion. You must express the "percent of time devoted to business" as a numerical percentage, rather than as a non-numerical description such as "part" or "as needed." This section does not apply to "excess parachute payments," as defined in section 280G. This section does not apply to the extent that remuneration paid or incurred exceeds an applicable employee-remuneration deduction limitation under section 162(m).

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any amount properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting:

For Schedule M-1 and all Schedules M-3, including those listed in (a)-(f) below, the information provided must reasonably apprise the Service of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275-R must be used to adequately disclose the item (*see* Part II of the instructions for those forms).

Note: An item reported on a line with a pre-printed description, shown on an attached schedule or "itemized" on Schedule M-1, may represent the aggregate amount of several transactions producing that item (*i.e.*, a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, a potentially controversial item may involve a portion of the aggregate amount disclosed on the schedule. The Service will not be reasonably apprised of a potential controversy by the aggregate amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275-R regarding that portion of the item.

Combining unlike items, whether on Schedule M-1 or Schedule M-3 (or on an attachment when directed by the instructions), will not constitute an adequate disclosure.

Additionally, taxpayers that file the Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*, may be required to complete Schedule B (Form 1120), *Additional Information for Schedule M-3 Filers*. For further information, see Who Must File in the General Instructions for Schedule B (Form 1120). Taxpayers that file the Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*, may be required to complete Schedule C (Form 1065), *Additional Information for Schedule M-3 Filers*. For further information, see Who Must File in the General Instructions for Schedule C (Form 1065). When required, these schedules are necessary to constitute adequate disclosure:

(a) Form 1065. Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*:

Part II (reconciliation of income (loss) items)	Column (a), *Income (Loss) per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference*; and Column (d), *Income (Loss) per Tax Return*
Part III (reconciliation of expense/deduction items)	Column (a), *Expense per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference;* and Column (d), *Deduction per Tax Return*

(b) Form 1120. (i) Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*.
(ii) Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*:

Part II (reconciliation of income (loss) items)	Column (a), *Income (Loss) per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference*; and Column (d), *Income (Loss) per Tax Return*
Part III (reconciliation of expense/deduction items)	Column (a), *Expense per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference;* and Column (d), *Deduction per Tax Return*

(c) Form 1120-L. Schedule M-3 (Form 1120-L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More*:

Part II (reconciliation of income (loss) items)	Column (a), *Income (Loss) per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference*; and Column (d), *Income (Loss) per Tax Return*
Part III (reconciliation of expense/deduction items)	Column (a), *Expense per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference;* and Column (d), *Deduction per Tax Return*

(d) Form 1120-PC. Schedule M-3 (Form 1120-PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More*:

Part II (reconciliation of income (loss) items)	Column (a), *Income (Loss) per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference*; and Column (d), *Income (Loss) per Tax Return*
Part III (reconciliation of expense/deduction items)	Column (a), *Expense per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference;* and Column (d), *Deduction per Tax Return*

(e) Form 1120-S. Schedule M-3 (Form 1120-S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More*:

Part II (reconciliation of income (loss) items)	Column (a), *Income (Loss) per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference*; and Column (d), *Income (Loss) per Tax Return*
Part III (reconciliation of expense/deduction items)	Column (a), *Expense per Income Statement*; Column (b), *Temporary Difference*; Column (c), *Permanent Difference;* and Column (d), *Deduction per Tax Return*

(f) Form 1120-F. Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More*:

Part II (reconciliation of income (loss) items)	Column (b), *Temporary Differences*; Column (c), *Permanent Differences*; and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI*
Part III (reconciliation of expense/deduction items)	Column (b), *Temporary Differences*; Column (c), *Permanent Differences*; and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI*

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*; Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, must be completed when required by its instructions.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses (for use only by Armed Forces reservists, qualified performing artists, fee-basis state or local government officials, and employees with impairment-related work expenses)*, and attach to the return. This section does not apply to club dues or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2021 tax form for a taxable year beginning in 2021 and to any income tax return filed on a 2021 tax form in 2022 for a short taxable year beginning in 2022.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Han Huang of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and Administration at (202) 317-6844 (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 I, §§ 301, 305, 852, 857; 1.305-1, 1.305-2)

Rev. Proc. 2021-53

SECTION 1. PURPOSE

This revenue procedure provides temporary guidance regarding the treatment of certain stock distributions by publicly offered real estate investment trusts (REITs) and publicly offered regulated investment companies (RICs) under the Internal Revenue Code (Code). Specifically, in recognition of the need for liquidity as a result of the impacts of the Coronavirus Disease 2019 (COVID-19) pandemic, this revenue procedure, like Rev. Proc. 2020-19, 2020-22 I.R.B. 871, modifies the safe harbor provided in Rev. Proc. 2017-45, 2017-35 I.R.B. 216, by temporarily reducing the minimum required aggregate amount of cash that distributee shareholders may receive to not less than 10 percent of the total distribution in order for § 301 of the Code, by reason of § 305(b) of the Code, to apply to such distribution. This temporary modification is effective solely with respect to distributions declared by a publicly offered REIT or publicly offered RIC on or after November 1, 2021, and on or before June 30, 2022.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2017-45 provides a safe harbor for Publicly Offered REITs and Publicly Offered RICs that make a distribution to their shareholders with respect to their stock to ensure that such distributions of stock pursuant to a distribution in which each shareholder may elect to receive up to all of the shareholder's distribution in cash or stock of equivalent value are treated as distributions of property to which § 301 applies by reason of § 305(b). *See generally* Rev. Proc. 2017-45, section 3.12 (defining *Publicly Offered REIT*), section 3.13 (defining *Publicly Offered RIC*), and section 5 (enumerating safe harbor requirements). Rev. Proc. 2017-45 allows a Publicly Offered REIT or Publicly Offered RIC to eliminate C corporation earnings and profits in order to satisfy the REIT or RIC distribution requirements while maintaining sufficient liquidity. If each condition set forth in sections 5.01 through 5.07 of Rev. Proc. 2017-45 is met, (1) the Internal Revenue Service will treat the stock distribution as a distribution of property under § 301 by reason of § 305(b), and (2) the value of the stock received by any shareholder in lieu of cash will be considered to be equal to the amount of cash which could have been received instead.

.02 Section 5.03 of Rev. Proc. 2017-45 requires that the Cash Limitation Percentage be at least 20 percent. Section 3.05 of Rev. Proc. 2017-45 defines the *Cash Limitation Percentage* as the percentage obtained by dividing (1) the maximum aggregate amount of cash to be distributed to all shareholders as limited by the Publicly Offered REIT's or Publicly Offered RIC's declaration of the distribution, by (2) the amount of cash that would be distributed if each shareholder elected to receive solely cash under their respective Cash-or-Stock Election. Section 3.06 of Rev. Proc. 2017-45 generally defines a *Cash-or-Stock Election* as an election each shareholder may make to receive up to all of the shareholder's entire distribution subject to the election either (1) in cash, or (2) in stock of the distributing corporation of equivalent value as determined under section 5.07 of Rev. Proc. 2017-45.

.03 To enable Publicly Offered REITs and Publicly Offered RICs to conserve capital and thereby enhance their liquidity, Rev. Proc. 2020-19 temporarily allowed such REITs and RICs to further limit the amount of cash available to be distributed to their shareholders by reducing the Cash Limitation Percentage to 10 percent. Rev. Proc. 2020-19 applied to distributions declared on or after April 1, 2020, and on or before December 31, 2020.

.04 For the same reasons, this revenue procedure temporarily allows Publicly Offered REITs and Publicly Offered RICs to limit the amount of cash available to be distributed to their shareholders by reducing the Cash Limitation Percentage to 10 percent.

SECTION 3. TEMPORARY REDUCTION OF CASH LIMITATION PERCENTAGE

With respect to distributions declared by a Publicly Offered REIT or a Publicly Offered RIC on or after November 1, 2021, and on or before June 30, 2022, section 5.03 of Rev. Proc. 2017-45 is modified by striking "The Cash Limitation Percentage is not less than 20 percent" and inserting "The Cash Limitation Percentage is not less than 10 percent".

SECTION 4. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 2017-45 solely with respect to distributions declared by a Publicly Offered REIT or Publicly Offered RIC on or after November 1, 2021, and on or before June 30, 2022.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Justin O. Kellar of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Justin O. Kellar on (202) 317-6847 (not a toll-free number).

Part IV

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

Announcement 2021-17

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on December 20, 2021 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
A Greener Globe	1/1/2015	San Francisco, CA
A Positive Progress Service Inc	1/1/2016	Red Springs, NC
American Medical Missionary Care Inc	1/1/2014	Alpharetta, GA
Arizona Bike Week Charities	1/1/2014	Mesa, AZ
Beam Global Initiatives	1/1/2016	Portsmouth, OH
Community Worship Church	8/1/2012	Portland, OR
Dan Hartman Foundation for Music and Arts	1/1/2017	Northridge, CA
Disabled American Veteran’s (AKA Chapter 2 Cactus)	7/1/2015	Tucson, AZ
DMC Foundation	7/1/2016	Richmond, CA
Father’s Rights Organization	7/1/2014	Toledo, OH
Friends of Fiver Foundation	2/1/2017	New York, NY
Kingdom Victories Outreach Ministries	1/1/2016	Inkster, MI
Light of the World Inc	1/1/2015	Unionville, CT
Michael Patrick Hollins Memorial Foundation	1/1/2016	MT Ephraim, NJ
Moses Hill Cemetery Inc	1/1/2016	Holdrege, NE
New World Sanctuary Foundation	1/1/2016	Ashland, OR
Nia Comprehensive Center for Developmental Disabilities Inc	7/1/2013	Chicago, IL
Real Pay It Forward Inc	1/1/2016	Clearwater, FL
Retreat and Rescue	1/1/2017	Saint Louis, MO
Roife-Nissenbaum Trust	1/1/2016	Hopkins, MN
Sigma Theta Tau International Inc	7/1/2014	Mayaguez, PR
Strength for the Journey Inc	1/1/2015	Hobe Sound, FL
Support Our Veterans Inc	1/1/2014	Central Village, CT
SV Festival	1/1/2016	Reading, PA
Teen Leadership Foundation	1/1/2015	Newport Beach, CA

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
The Atlantis Educational Foundation	7/1/2016	Fall River, MA
Thirty Thousand Feet Booster Club	3/21/2014	Travis AFB, CA
Uplift Individuals in Christ	1/1/2015	Ft. Washington, MD
Walter's Family Foundation	1/1/2015	Tamarac, FL
Washington County Hospital Inc	10/1/2015	Plymouth, NC
You Are Loved LLC	1/1/2016	Mandeville, LA

Notice of Proposed Rulemaking

Information Reporting of Health Insurance Coverage and Other Issues

REG-109128-21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking

SUMMARY: This document contains proposed regulations providing that "minimum essential coverage," as that term is used in health insurance-related tax laws, does not include Medicaid coverage that is limited to COVID-19 testing and diagnostic services provided under the Families First Coronavirus Response Act. The proposed regulations also would provide an automatic extension of time for providers of minimum essential coverage (including health insurance issuers, self-insured employers, and government agencies) to furnish individual statements regarding such coverage and would provide an alternative method for furnishing individual statements when the shared responsibility payment amount is zero. Additionally, the proposed regulations would provide an automatic extension of time for "applicable large employers" (generally employers with 50 or more full-time or full-time equivalent employees) to furnish statements relating to health insurance that the employer offers to its full-time employees. The proposed regulations would affect some taxpayers who claim the premium tax credit; health insurance issuers, self-insured employers, government agencies, and other persons that provide minimum essential coverage to individuals; and applicable large employers.

DATES: Written or electronic comments and requests for a public hearing must be received by February 4, 2022. Requests for a public hearing must be submitted as prescribed in the "**Comments and Requests for a Public Hearing**" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-109128-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Internal Revenue Service (IRS) expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable, on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-109128-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Gerald Semasek, Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317-7006 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Regina Johnson at (202) 317-5177 (not a toll-free number) or send an email to publichearings@irscounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR parts 1 (Income Tax Regulations) and 301 (Procedure and Administration Regulations) under sections 5000A, 6055, and 6056 of the Internal Revenue Code (Code).

1. *Minimum Essential Coverage under Section 5000A*

Beginning in 2014, under the Patient Protection and Affordable Care Act, Pub. L. 111-148 ,124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029 (2010) (collectively, the Affordable Care Act or ACA), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the ACA may claim a premium tax credit under section 36B of the Code. Section 36B and § 1.36B-3 of the Income Tax Regulations provide that a taxpayer is allowed a premium tax credit only for months that are coverage months for individuals in the taxpayer's family, as defined in § 1.36B-1(d). Under § 1.36B-3(c)(1)(iii), a "coverage month" for an individual includes only those months the individual is not eligible for minimum essential coverage other than coverage in the individual market.

Section 5000A was added to the Code by section 1501 of the ACA. Section 5000A(f)(1) defines "minimum essential coverage" to include various types of health plans and programs, including, for example, specified government-sponsored programs such as the Medicare program under Part A of title XVIII of the Social Security Act; the Medicaid program under Title XIX of the Social Security Act; the Children's Health Insurance Program under Title XXI of the Social Security Act (CHIP); the TRICARE program under chapter 55 of Title 10, United States Code (U.S.C.); health care programs for veterans and other individuals under chapter 17 or 18 of Title 38, U.S.C.; coverage for Peace Corps volunteers under 22 U.S.C. 2504(e); coverage under the Nonappropriated Fund Health Benefits Program under section 349 of Public Law 103-337; and coverage under an eligible employer-sponsored plan. Section 1.5000A-2(b)(2) of the Income Tax Regulations lists certain government-sponsored programs that do not constitute minimum essential coverage.

Section 5000A requires that individuals have minimum essential coverage for each month in the taxable year, qualify for an exemption from the minimum essential coverage requirement, or make an individual shared responsibility payment upon filing a federal income tax return. Section 11081 of Public Law 115-97, 131 Stat. 2054, 2092 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), reduces the individual shared responsibility payment amount to zero for months beginning after December 31, 2018.

2. *Information Reporting under Sections 6055 and 6056*

Section 6055 of the Code provides that all persons who provide minimum essential coverage to an individual must report certain information to the IRS that identifies covered individuals and the period of coverage. *See* section 6055(a) and (b). Those persons also must furnish a statement to the covered individuals containing the same information. *See* section 6055(c). Under section 6055(a), (c)(2), and § 1.6055-1(f) and (g), every person that provides minimum essential coverage to an individual during the calendar year is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to the responsible individual identified on the return a written statement on or before January 31 of the year following the calendar year to which the statement relates. The information returns and written statements must include certain information about the reporting entity, the name and taxpayer identification number (TIN) of the responsible individual, the name and TIN of each individual covered under the health policy, and any other information specified in IRS instructional materials. *See* § 1.6055-1(e) and (g)(4). The IRS generally has designated Form 1094-B, *Transmittal of Health Coverage Information Returns*, and Form 1095-B, *Health Coverage*, to meet the section 6055 requirements.

Section 6056 of the Code requires an applicable large employer (ALE), as defined in section 4980H(c) of the Code, that is required to meet the requirements of section 4908H to file annually information returns and furnish written statements in relation to the health insurance, if any, that the employer offers to its full-time employees. These information returns and written statements are needed in order to administer the employer shared responsibility provisions of section 4980H.

Under section 6056(a), (c)(2), and § 301.6056-1(e) and (g), every ALE or member of an aggregated group that is determined to be an ALE (ALE member) is required to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 of the year following the calendar year to which the statement relates. The IRS generally has designated Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, to meet the section 6056 requirements.

In addition, an ALE member that offers coverage through a self-insured health plan must complete the reporting required under section 6055, specifically the information regarding each individual enrolled in the self-insured health plan, using Form 1095-C, Part III, rather than Form 1095-B. ALE members use Form 1095-C, Part III, to meet the section 6055 reporting requirement for all employees. For individuals who are not full-time employees, ALE members report only certain information to reflect that the Form 1095-C is being used to complete the section 6055 reporting applicable to individuals who are not full-time employees, but not the section 6056 reporting applicable only to full-time employees.

The current regulations under sections 6055 and 6056 allow the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C for good cause shown. *See* §§ 1.6055-1(g)(4)(i)(B)(*1*) and 301.6056-1(g)(1)(ii)(A). Additionally, filers of Forms 1095-B, 1094-C and 1095-C may receive an automatic 30-day extension of time to file the forms with the IRS by submitting Form 8809, *Application for Extension of Time to File Information Returns*, on or before the due date for filing the forms. *See* §§ 1.6081-1 and 1.6081-8.

3. *Information Reporting Penalties under Sections 6721 and 6722*

Section 6721 imposes a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Section 6722 imposes a penalty for failing to timely furnish an information statement or furnishing an incorrect or incomplete information statement. The section 6721 and 6722 penalties are imposed with regard to information returns and statements listed in section 6724(d), which include those required by sections 6055 and 6056. Section 6724 provides that no penalty will be imposed under section 6721 or 6722 with respect to any failure if it is shown that the failure is due to reasonable cause and not to willful neglect.

The preambles to the section 6055 and 6056 regulations provided that the IRS would not impose section 6721 and 6722 penalties on reporting entities for the reporting of 2015 health coverage and offers of coverage if those entities could show that they made good faith efforts to comply with the information reporting requirements (transitional good faith relief). *See* T.D. 9660, 79 FR 13220 at 13226 (Mar. 10, 2014); T.D. 9661, 79 FR 13231 at 13246 (Mar. 10, 2014). The transitional good faith relief covered incorrect or incomplete information, including TINs or dates of birth, reported on information returns or statements. The relief did not apply to a failure to timely file or furnish a return or statement, or when the filer failed to make a good faith effort to comply with the reporting requirements. The preambles to the section 6055 and 6056 regulations also stated that reporting entities failing to meet the reporting requirements of the regulations may have been eligible for penalty relief if the IRS determined the standards for reasonable cause under section 6724 were satisfied. The Treasury Department and the IRS reiterated the transitional good faith relief in Notice 2015-68, 2015-41 I.R.B. 547 (Oct. 13, 2015), and Notice 2015-87, 2015-52 I.R.B. 889 (Dec. 28, 2015).

Explanation of Provisions

1. *Medicaid Coverage of COVID-19 Testing and Diagnostic Services under Section 5000A*

Notice 2020-66, 2020-40 I.R.B. 785 (Sept. 28, 2020), provides that Medicaid coverage that is limited to COVID-19 testing and diagnostic services under section 6004(a)(3) of the Families First Coronavirus Response Act, Pub. L. 116-127, 134 Stat. 178 (Mar. 18, 2020) is not minimum essential coverage under a government-sponsored program. As a consequence, an individual's eligibility for such coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the premium tax credit under section 36B. Notice 2020-66 applies to taxable years beginning in or after 2020.

Notice 2020-66 further indicates that the Treasury Department and the IRS intend to amend § 1.5000A-2 to provide guidance respecting Medicaid coverage for COVID-19 testing and diagnostic services. Accordingly, these proposed regulations propose to amend § 1.5000A-2 by adding Medicaid coverage for COVID-19 testing and diagnostic services to the enumerated health coverages under § 1.5000A-2(b)(2) that do not qualify as minimum essential coverage under a government-sponsored program.

Notice 2020-66 provides that taxpayers, including ALEs, may continue to rely on the guidance described in Notice 2020-66 if no proposed regulations or other guidance are released within 18 months after September 28, 2020, which is the date that Notice 2020-66 was published in the Internal Revenue Bulletin.

2. *Time and Manner for Furnishing Statements under Sections 6055 and 6056*

Through a series of notices, the Treasury Department and the IRS extended the due dates for furnishing statements to individuals under sections 6055 and 6056 for years 2015 through 2019. *See* Notice 2016-04, 2016-3 I.R.B. 279 (Jan. 19, 2016); Notice 2016-70, 2016-49 I.R.B. 784 (Dec. 5, 2016); Notice 2018-06, 2018-3 I.R.B. 300 (Jan. 16, 2018); Notice 2018-94, 2018-51 I.R.B. 1042 (Dec. 17, 2018); and Notice 2019-63, 2019-51 I.R.B. 1390 (Dec. 16, 2019). Those notices extended the due date for furnishing Forms 1095-B and 1095-C by 30 days (or the next business day if the 30th day fell on a Saturday, Sunday or legal holiday), except that for 2015 information statements, the furnishing due date was extended by 60 days.

In addition to extending the due dates for furnishing statements, Notices 2018-94 and 2019-63 stated that, as a result of the TCJA's reduction of the shared responsibility payment amount under section 5000A(c) to zero for months beginning after December 31, 2018, the Treasury Department and the IRS were studying how the reporting requirements under section 6055 should change, if at all, for future years. Notice 2019-63 also requested comments on whether an extension of the due date for furnishing statements to individuals pursuant to section 6056 would be necessary for future years, and whether the reporting requirements under section 6055 should change for future years. Only one comment was received.

Notice 2020-76, 2020-47 I.R.B. 1058 (Nov. 16, 2020) provided an automatic extension of time for reporting entities to furnish 2020 information statements (Forms 1095-B and 1095-C) to individuals from January 31, 2021, to March 2, 2021. The notice stated that the Treasury Department and the IRS determined that a substantial number of employers, insurers, and other providers of minimum essential coverage needed additional time beyond January 31, 2021, to gather and analyze the information necessary to prepare and issue the Forms 1095-B and 1095-C. Notice 2020-76 also provided that because of the grant of the automatic extension to March 2, 2021, for furnishing Forms 1095-B and 1095-C, §§ 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A) (allowing the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C) would not apply. The notice did not extend the due dates for filing 2020 Forms 1095-B, 1094-C, or 1095-C with the IRS. The provisions of §§ 1.6081-1 and 1.6081-8 (allowing an automatic extension of time for filing information returns by submission of a Form 8809 before the due date) were not affected by Notice 2020-76.

The Treasury Department and the IRS received 119 public comments in response to Notice 2020-76. The commenters included health insurance providers, employers, associations, governmental agencies, payroll processors, and others. Nearly all commenters generally supported an extension of the due date for furnishing Forms 1095-B and 1095-C to responsible individuals and employees. The commenters generally indicated that the current January 31 deadline to furnish Forms 1095-B and 1095-C to responsible individuals and employees, under section 6055(c)(2) and 6056(c)(2), and §§ 1.6055-1(g)(4)(i)(A) and 1.6056-1(g)(1)(i), is difficult to meet.

Commenters noted that the process by which reporting entities compile accurate health coverage offer and enrollment information is complex and often takes more time than the current January 31 deadline allows. Employers are required to compile offer and enrollment information for large numbers of employees, sometimes from multiple systems, verify the accuracy of the information, and transmit the information to vendors so that the statements can be timely issued to individuals. Commenters further indicated that, while health coverage information is tracked throughout the year, accurate reporting on Forms 1095-B and 1095-C includes data and information from the month of December, which necessarily requires employers to spend substantial time after the close of the year compiling and verifying data. A number of commenters stated that the data and information necessary to prepare the forms is not available until mid-January and that the period required to prepare and mail the large numbers of forms can take from three to seven weeks.

Commenters also pointed out that the January 31 deadline for furnishing Forms 1095-B and 1095-C to individuals may make it difficult for employers to make changes to their benefit plans near the end of the calendar year. Commenters further noted that the January 31 deadline coincides with the due dates of other government forms, including Form W-2, Form 1099-NEC, Form 941 for the fourth quarter, and annual Forms 940 and 945. One commenter wrote that the substantial time necessary to complete Forms 1095-B and 1095-C is attributable to the fact that the information required depends upon detailed employer and employee activities. The commenter stated that, in some cases, employers must undertake a day-by-day or person-by-person assessment, which may lead to varied individual results in the codes that are required to be entered on the forms. These factors, the commenter noted, make the Forms 1095-B and 1095-C meaningfully distinguishable from other information returns on which aggregate dollar amounts are reported for the year – for example, Form W-2 – without regard to day-by-day activity.

Some of the commenters indicated that, if a more permanent automatic extension of the January 31 furnishing deadline is not provided for future reporting, entities will annually request additional time to produce and mail accurate Forms 1095-B and 1095-C pursuant to the current extension procedures. The result would be that the IRS would need to process a significant number of extension requests each year.

a. *Extension of Deadline for Furnishing Statements under Section 6055*

To reduce administrative burdens for reporting entities and the IRS, the Treasury Department and the IRS have determined that the furnishing requirements under § 1.6055-1(g) should be modified by providing an automatic extension of time for reporting entities to furnish statements to responsible individuals. This proposed amendment to the regulations under section 6055 is consistent with Notice 2020-76.

Under these proposed regulations, § 1.6055-1(g)(4)(i) is proposed to be amended to provide that reporting entities are granted an automatic extension of time, not to exceed 30 days, in which to furnish the written statements required by § 1.6055-1(g). Because this extension is automatic, the proposed regulations eliminate the requirement in § 1.6055-1(g)(4)(i)(B)(*1*) that a reporting entity make a written application to the IRS showing good cause to request an extension of time to furnish the statement. Under this proposed amendment to the regulations, statements (Forms 1095-B) furnished to responsible individuals will be timely if furnished no later than 30 days after January 31 of the calendar year following the calendar year in which minimum essential coverage is provided. If the extended furnishing date falls on a weekend day or legal holiday, statements will be timely if furnished on the next business day. *See* section 7503. The automatic 30-day extension would replace both the 30-day extension for good cause in § 1.6055-1(g)(4)(i)(B)(*1*) and the authorization for the Commissioner to provide automatic extensions in § 1.6055-1(g)(4)(i)(B)(*2*).

b. *Alternative Manner of Furnishing Statements under Section 6055*

Notice 2020-76 indicates that, because the TCJA reduced the individual shared responsibility payment amount to zero for 2020, responsible individuals do not need the information on Form 1095-B to prepare and file their individual returns. Nonetheless, reporting entities required to furnish Forms 1095-B must expend resources to do so. In light of those factors, the Treasury Department and the IRS determined that relief from the penalty under section 6722 for failing to furnish a statement (Form 1095-B) required under section 6055 for 2020 was in the interest of sound tax administration in certain cases. Thus, Notice 2020-76 provided that the IRS would not assess a section 6722 penalty against a reporting entity for failing to furnish Form 1095-B to responsible individuals for 2020 in cases when two conditions were met (2020 section 6055 furnishing relief). First, a reporting entity was required to post a notice prominently on its website stating that responsible individuals may receive a copy of their 2020 Form 1095-B upon request, accompanied by an email address and a physical address to which a request may be sent, along with a telephone number that responsible individuals may use to contact the reporting entity with any questions. Second, a reporting entity was required to provide a 2020 Form 1095-B to a responsible individual upon request within 30 days of the date the request was received. A reporting entity could furnish the statements to responsible individuals electronically if the requirements of § 1.6055-2 were satisfied.

Because of the combined reporting by ALE members under sections 6055 and 6056 on Form 1095-C for full-time employees of ALE members enrolled in self-insured health plans, the 2020 section 6055 furnishing relief was not extended to the requirement to furnish Forms 1095-C to full-time employees. The 2020 section 6055 furnishing relief, however, applied to penalty assessments related to the requirement to furnish Form 1095-C to a part-time employee enrolled in an ALE member's self-insured plan for any month in 2020, subject to the two requirements of the 2020 section 6055 furnishing relief. Finally, the 2020 section 6055 furnishing relief did not extend to the assessment of penalties relating to failures to file the 2020 Forms 1094-B or 1095-B or the Forms 1094-C or 1095-C, as applicable, with the IRS.

In response to Notice 2020-76, a number of health plan providers, governmental agencies, and associations requested that the 2020 section 6055 furnishing relief be made permanent or extended at least for the time periods when the individual shared responsibility payment amount is zero. These commenters echoed the considerations identified in Notice 2020-76 supporting the 2020 section 6055 furnishing relief. Namely, commenters pointed to the high costs associated with producing and mailing Forms 1095-B although individuals have no need for the information on the Form 1095-B to correctly compute federal tax liability and timely file returns. Commenters cited additional production and/or mailing costs ranging from a half million to more than four million dollars annually without the relief. One state agency reported receiving only 478 requests for Form 1095-B from approximately one million Medicaid recipients for 2019. Other commenters indicated that a small number of individuals need proof of minimum essential coverage to satisfy certain state requirements, but that very few individuals have otherwise requested the Form 1095-B. Some commenters pointed out that taxpayers may be confused by the receipt of Forms 1095-B.

In light of the public comments received, § 1.6055-1(g)(4) is proposed to be amended by adding new paragraph (g)(4)(ii)(B) to provide an alternative manner for a reporting entity to timely furnish statements. Under this alternative manner of furnishing, the reporting entity must post a clear and conspicuous notice on the entity's website stating that responsible individuals may receive a copy of their statement upon request. The notice must include an email address, a physical address to which a request may be sent, and a telephone number that responsible individuals may use to contact a reporting entity with any questions. This alternative manner of furnishing will apply only to taxable years when the shared responsibility payment amount under section 5000A(b) is zero.

One commenter requested that, if the 2020 section 6055 furnishing relief is extended, a self-insured ALE member should continue to be permitted to use the relief for employees who are enrolled in the ALE's self-insured plan and who are not full-time employees of the ALE. The commenter also requested that the proposed regulations allow a self-insured ALE member to use the 2020 section 6055 furnishing relief for non-employees, such as former employees of the ALE, who are enrolled in the self-insured plan. The proposed regulations adopt both requests in the rules for the alternative method of furnishing. However, consistent with the guidance in Notice 2020-76, the proposed regulations do not allow ALE members to use the alternative method of furnishing for full-time employees who are enrolled in the self-insured plan.

The proposed regulations also address a suggestion of a commenter to Notice 2020-76 who requested that future guidance specify the time period a reporting entity is required to retain the notice on its website and also explain how prominent the notice must be. The provisions of proposed § 1.6055-1(g)(4)(ii)(B) provide that a reporting entity satisfies the furnishing requirements under § 1.6055-1(g)(4) by retaining the website notice until October 15 of the year following the calendar year to which the statement relates. Additionally, the proposed regulations clarify the requirement in Notice 2020-76 that a reporting entity include a prominently posted notice on its website. Under the proposal, a reporting entity must include a clear and conspicuous notice on the reporting entity's website that is reasonably accessible by individuals who may search the entity's website for tax information. A notice posted on a reporting entity's website will satisfy the requirement under proposed § 1.6055-1(g)(4)(ii)(B) if written in plain, non-technical terms and with letters of a font size large enough (including any visual clues or graphical figures) to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. For example, a reporting entity's website that includes a statement on the main page, or a link on the main page, reading "Tax Information," to a secondary page that includes a statement, in capital letters, "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS;" explains how responsible individuals may request a copy of Form 1095-B, Health Coverage, or Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, as applicable; and includes the reporting entity's email address, mailing address, and telephone number, is a clear and conspicuous notice under these proposed regulations.

One commenter requested that the 2020 section 6055 furnishing relief be modified to allow a reporting entity to satisfy the furnishing requirement under § 1.6055-1(g) by including only a link to a member portal through which responsible individuals may receive a copy of the Form 1095-B via electronic download. The commenter stated that because responsible individuals will have located and navigated the website of a reporting entity to locate the entity's address and other contact information, the website notice informing individuals of the ability to request a Form 1095-B should not have to also include contact information. The commenter noted that the process under which responsible individuals will send written requests or call customer service representatives of reporting entities to request Forms 1095-B will take time and add costs to providing health care. Under the commenter's proposal, reporting entities that do not provide a member portal for individuals to download and receive the Form 1095-B will be required to include a website notice with an email address, physical address, and telephone number for individuals to call to request the form, consistent with the first condition of the 2020 section 6055 furnishing relief.

The requirement in these proposed regulations that a reporting entity include its email address, mailing address, and telephone number on a website notice informing individuals of the ability to request a Form 1095-B is consistent with other information reporting provisions. *See*, *for example*, § 1.6050S-1(c)(1)(iii)(G) (an educational institution or insurer issuing Form 1098-T, *Tuition Statement*, is required to include contact information on statement). A responsible individual may have questions about how to request a copy of the statement required under § 1.6055-1(g) for the taxable year or may have questions about some of the information on the statement. The proposed rule requiring the reporting entity's contact information on a posted website notice fulfills that need for responsible individuals. Accordingly, the comment recommending that a reporting entity may provide only website access to a member portal (and capability to electronically download Form 1095-B) without the reporting entity's contact information is not adopted.

If, in the future, the shared responsibility payment amount under section 5000A(b) is not zero, the Treasury Department and the IRS anticipate that reporting entities will need adequate time to develop or restart processes for preparing and mailing paper statements to responsible individuals. If the shared responsibility payment amount is modified in the future, the Treasury Department and the IRS anticipate providing guidance, if necessary, to allow sufficient time for reporting entities to restart the reporting process.

c. *Extension of Deadline for Furnishing Statements under Section 6056*

For the reasons discussed in section 2 of the Explanation of Provisions, the Treasury Department and the IRS have determined that, to reduce administrative burdens for ALE members and the IRS, the furnishing requirements under § 301.6056-1(g)(1) should be modified by providing an automatic extension of time for ALE members to furnish written statements to full-time employees. This proposed amendment to the regulations under section 6056 is consistent with Notice 2020-76.

Under these proposed regulations, § 301.6056-1(g)(1) is proposed to be amended to provide that ALE members are granted an automatic extension of time, not to exceed 30 days, in which to furnish the written statements to full-time employees. Because the extension is automatic, the proposed regulations eliminate the requirement in § 301.6056-1(g)(1)(ii)(A) that an ALE member make a written application to the IRS showing good cause or to otherwise request an extension of time to furnish the statement. Under this proposed amendment to the regulations, statements (Forms 1095-C) furnished to full-time employees will be timely if furnished no later than 30 days after January 31 of the calendar year in accordance with applicable Internal Revenue Service procedures and instructions. If the extended furnishing date falls on a weekend day or legal holiday, statements will be timely furnished if provided on the next business day. *See* section 7503. The automatic 30-day extension would replace both the 30-day extension for good cause in § 301.6056-1(g)(1)(ii)(A) and the authorization for the Commissioner to provide automatic extensions in § 301.6056-1(g)(1)(ii)(B).

3. *Elimination of Transitional Good Faith Relief*

As noted in the Background section of this preamble, the preambles to the regulations under sections 6055 and 6056 provided that the IRS would grant transitional good faith relief by not imposing penalties under sections 6721 and 6722 on reporting entities for the reporting of 2015 health coverage and offers of coverage if those entities could show that they made good faith efforts to comply with the information reporting requirements. *See* T.D. 9660; T.D. 9661. The Treasury Department and the IRS extended that transitional good faith relief for years 2015 through 2019 in the series of notices that extended the due dates for the requirements for furnishing statements to individuals under sections 6055 and 6056 for those years. *See* Notice 2016-04; Notice 2016-70; Notice 2018-06; Notice 2018-94; Notice 2019-63; and Notice 2020-76. In Notice 2020-76, the Treasury Department and the IRS stated that 2020 was the last year that transitional good faith relief would be provided. Thus, the transitional good faith relief from penalties under sections 6721 and 6722 for the reporting of incorrect or incomplete information on information returns or statements is not available for reporting for tax year 2021 and subsequent years.

This good faith relief was intended to be transitional to accommodate public concerns with implementing the then newly enacted reporting requirements under the ACA. These reporting requirements have now been in place for six years, and transitional relief is no longer appropriate. Some commenters requested that the relief be extended due to continued difficulty in understanding the reporting requirements, periodic changes to the ACA, and the uncertainty related to the COVID-19 pandemic. Although the Treasury Department and the IRS are sympathetic to those concerns, additional good faith relief is not necessary to address them. The reasonable cause exception under section 6724 already provides adequate relief from penalties under sections 6721 and 6722 for filers who have reasonable cause for failing to timely or accurately complete their reporting requirements. Therefore, the Treasury Department and the IRS will discontinue the transitional good faith relief after tax year 2020.

4. *Renewed Comment Request on the Section 6055 2016 Proposed Regulations*

In Notice 2015-68, the Treasury Department and the IRS announced that they intended to propose regulations under section 6055 that would: (1) provide that health insurance issuers must report coverage in a catastrophic plan; (2) allow filers reporting on insured group health plans to use a truncated TIN to identify the employer on the statement furnished to a taxpayer; and (3) specify when a provider of minimum essential coverage is not required to report duplicative or supplemental coverage. The notice also invited comments on issues relating to TIN solicitation and provided that until the issuance of additional guidance, reporting entities would not be subject to penalties for failure to report a TIN if they met certain requirements. Finally, the notice advised that governments of United States possessions or territories are not required to report coverage under Medicaid and the Children's Health Insurance Program (CHIP) and that a state government agency sponsoring coverage under the Basic Health Program is required to report that coverage.

On August 2, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-103058-16) in the **Federal Register** (81 FR 50671) (2016 proposed regulations). Consistent with Notice 2015-68, the 2016 proposed regulations proposed to address catastrophic health coverage, truncated TINs, and duplicative or supplemental coverage. With regard to TIN solicitations, the 2016 proposed regulations incorporated the penalty relief in Notice 2015-68, with certain revisions to the requirements in response to comments. The 2016 proposed regulations also proposed to incorporate the guidance in Notice 2015-68 related to United States possessions or territories and reporting regarding the Basic Health Program. The 2016 proposed regulations provided that, until the regulations were finalized, reporting entities could rely on the guidance in Notice 2015-68. In addition, any issuer that voluntarily files returns or furnishes statements on catastrophic coverage before final regulations are issued will not be subject to penalties for those returns or statements. *See* Notice 2017-41, 2017-34 I.R.B. 211 (Aug. 21, 2017).

The Treasury Department and the IRS received 16 comments on the 2016 proposed regulations but have not issued a Treasury Decision finalizing the 2016 proposed regulations. No public hearing was requested or held. The Treasury Department and the IRS are renewing their request for comments on all aspects of the 2016 proposed regulations and, after considering the comments received, intend to finalize the 2016 proposed regulations as part of any Treasury Decision finalizing these proposed regulations. Written or electronic comments must be received by February 4, 2022.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this preamble are published in the Internal Revenue 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.

Proposed Applicability Date

The regulations under § 1.5000A-2, once final, are proposed to apply for months beginning after September 28, 2020. For months beginning on or after January 1, 2020, and before September 28, 2020, taxpayers may continue to rely on Notice 2020-66. Taxpayers may rely on § 1.5000A-2 of these proposed regulations for months beginning after September 28, 2020, and before the date a Treasury Decision finalizing these regulations is published in the **Federal Register**. The regulations under §§ 1.6055-1 and 301.6056-1, once final, are proposed to apply for calendar years beginning after December 31, 2021. Taxpayers may rely on §§ 1.6055-1 and 301.6056-1 of these proposed regulations for calendar years beginning after December 31, 2020, and before the date a Treasury Decision finalizing the regulations is published in the **Federal Register**. See the 2016 proposed regulations for the proposed applicability dates of those proposed rules.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

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 Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations.

II. *Paperwork Reduction Act*

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

There is no collection of information contained in these proposed regulations. The collections of information contained in §§ 1.6055-1 and 301.6056-1 were previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and are associated with control numbers 1545-2251 (associated with Form 1095-C) and 1545-2252 (associated with Form 1095-B).

The Paperwork Reduction Act (44 U.S.C. 3501-3520) relates to information collection requests by any government agency. A collection of information generally means the "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (1) answers to identical questions posted to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States, or (2) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes." 44 U.S.C. 3502(3). A collection of information is commonly referred to as a reporting, recordkeeping, or disclosure requirement.

These proposed regulations do not require a reporting entity to provide any information to the Federal government, to maintain specific records, or to disclose any additional information that the reporting entity did not already have a requirement to disclose.

III. *Initial Regulatory Flexibility Analysis*

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." 5 U.S.C. 603(a). The term "small entities" is defined in 5 U.S.C. 601 to mean "small business," "small organization," and "small governmental jurisdiction," which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is "small" and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* Title 13, Part 121 of the Code of Federal Regulations (titled "Small Business Size Regulations"). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* Title 13, Part 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The Treasury Department and the IRS conclude that, although the overall impact of these proposed regulations will substantially reduce the burden on small entities, these proposed regulations, if finalized, will impact a substantial number of small entities and the economic impact on those small entities will be significant. As a result, although the impact of these regulations is positive for small entities, an initial regulatory flexibility analysis is required.

Description of the reasons why the agency action is being considered.

The proposed regulations under § 1.5000A-2 propose to make permanent the guidance in Notice 2020-66 regarding whether certain Medicaid coverage of COVID-19 testing and diagnostic services is minimum essential coverage. The proposed regulations under §§ 1.6055-1 and 301.6056-1 propose to make permanent the extension of time to furnish Forms 1095-B and 1095-C to responsible individuals and employees that has been provided every year since 2015. The proposed regulations under § 1.6055-1 also allow reporting entities to furnish the statement required by section 6055 by providing notice on their website and by providing the statement to the responsible individual upon request.

The proposed regulations under § 1.5000A-2 will ensure that taxpayers have accurate guidance when determining whether they have minimum essential coverage, which in turn will assist taxpayers in determining whether they qualify for the premium tax credit. The proposed regulations under §§ 1.6055-1 and 301.6056-1 will reduce the burden on reporting entities by extending the time to satisfy their reporting obligations with regard to health care coverage without worrying whether the penalty under section 6722 will be imposed. The extension should result in increased timely and accurate reporting. Those proposed regulations also reduce the burden on reporting entities by providing a low-cost option to satisfy the reporting obligation under section 6055 at a time when responsible individuals do not need the information to complete their returns.

Statement of the objectives of, and the legal basis for, the proposed rule.

The principal objectives of the proposed regulations are to provide taxpayers with definitive guidance of what constitutes, or does not constitute, minimum essential coverage, to provide reporting entities with a sufficient amount of time to complete and furnish accurate statements to responsible individuals and full-time employees, and to offer reporting entities under section 6055 a minimally burdensome option by which to furnish the required statement. The legal basis for defining minimum essential coverage is section 5000A(f)(1)(E), which provides the Secretary of the Treasury or her delegate (Secretary) with the authority to determine what types of health coverage constitute minimum essential coverage. The legal basis for the extended due date was originally set forth in the series of notices referenced in the Explanation of Provisions section above, under which the Treasury Department and the IRS extended the dates for furnishing statements to responsible individuals and full-time employees, providing that taxpayers that satisfy the furnishing requirement by the extended due date will not be subject to penalties under sections 6721 and 6722. Section 6724(a) provides that no penalty is imposed under section 6721 or 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect. Section 7803(a)(2)(A) gives the Commissioner the power to administer, manage, conduct, direct, and supervise the execution and application of internal revenue laws. That same legal basis applies for these proposed regulations. Additionally, §§ 1.6055-1(g)(4)(i)(B) and 301.6056-1(g)(1)(ii) provide the Secretary with the authority to provide extensions of time to furnish statements under sections 6055 and 6056. Regarding the form of the statement to be furnished, sections 6055(b)(1)(A) and 6056(b)(1) provide the Secretary with the authority to prescribe the form of the return that is the basis for the furnishing requirements in sections 6055(c) and 6056(c).

Description and estimate (where feasible) of the number of small entities subject to the proposed rule.

The proposed regulations apply to health insurance issuers, self-insured employers, government agencies, and other providers of minimum essential coverage required to furnish individual statements regarding such coverage under section 6055 and ALE members that are required to furnish information relating to health insurance that the ALE offers to its full-time employees under section 6056. An estimate of the number of small entities subject to the proposed regulations is not feasible because a correlation between small taxpayers and this type of reporting cannot be made. The proposed regulations affect all industries. Taxpayers using any NAICS code could be subject to the proposed regulations.

Description of the projected reporting, recordkeeping, and related requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

As discussed in the Paperwork Reduction Act section above, these proposed regulations do not impose any reporting, recordkeeping, or similar requirements on any small entities.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The proposed regulations do not duplicate, overlap, or conflict with any Federal statutes or other rules.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities.

The Treasury Department and the IRS have determined that, without a legislative change, there are no viable alternatives to the provisions in the proposed regulations that would enable reporting entities to continue to satisfy their reporting obligations with a lesser burden.

Accordingly, the Treasury Department and the IRS conclude that the provisions of the proposed regulations will most effectively promote sound tax administration. The revisions to the definition of what is not minimum essential coverage in § 1.5000A-2 will provide concrete advice to ensure that taxpayers can adequately determine whether they have minimum essential coverage. An automatic extension of time to furnish statements under proposed §§ 1.6055-1(g)(4)(i) and 301.6056-1(g)(1) will assist in timely and more accurate reporting. Last, the additional electronic manner of furnishing a statement in proposed § 1.6055-1(g)(4)(ii)(B), at a time when the shared responsibility payment amount is zero, will help reporting entities reduce costs, while still satisfying their statutory reporting obligations. Accordingly, implementation of these proposed regulations will increase tax compliance by providing definitive guidance and will allow reporting entities the time needed to furnish timely and accurate statements, with minimal production and distribution burden regarding the furnishing.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations or the 2016 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"** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations, as well as all aspects of the 2016 proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request. All comments, including comments on the 2016 proposed regulations, should reference REG-109128-21.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 I.R.B. 1 (Apr. 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Gerald Semasek, Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, IRS proposes to amend 26 CFR parts 1 and 301 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 1.5000A-2 is amended by:

1. Revising paragraph (b)(2)(vii) and (viii);

2. Adding paragraph (b)(2)(ix).

The revisions and addition read as follows:

§ 1.5000A-2 Minimum essential coverage.

* * * * *

(b) * * *

(2) * * *

(vii) Coverage under section 1079(a), 1086(c)(1), or 1086(d)(1) of title 10, U.S.C., that is solely limited to space available care in a facility of the uniformed services for individuals excluded from TRICARE coverage for care from private sector providers;

(viii) Coverage under section 1074a and 1074b of title 10, U.S.C., for an injury, illness, or disease incurred or aggravated in the line of duty for individuals who are not on active duty; and

(ix) Medicaid coverage limited to COVID-19 testing and diagnostic services provided under section 6004(a)(3) of the Families First Coronavirus Response Act, Pub. L. 116-127, 134 Stat. 178 (March 18, 2020).

Par. 3. Section 1.5000A-5 is amended by revising paragraph (c) to read as follows:

§ 1.5000A-5 Administration and procedure.

* * * * *

(c) *Applicability date.* Except as otherwise provided in this paragraph (c), this section and § 1.5000A-1 through 1.5000A-4 apply for months beginning after December 31, 2013. Section 1.5000A-2(b)(2)(ix) applies for months beginning after September 28, 2020.

Par. 4. Section 1.6055-1 is amended by:

1. Revising the first sentence of paragraph (g)(1);

2. Revising paragraph (g)(4)(i) and (ii);

3. Revising paragraph (j).

The revisions read as follows:

§ 1.6055-1 Information reporting for minimum essential coverage.

* * * * *

(g) * * * Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, every person required to file a return under this section must furnish to the responsible individual identified on the return a written statement. * * *

* * * * *

(4) * * * (i) *Time for furnishing*—Except as otherwise provided in this paragraph (g)(4)(i), a reporting entity must furnish the statements required under paragraph (g)(1) of this section on or before January 31 of the year following the calendar year in which the minimum essential coverage is provided. Reporting entities are granted an automatic extension of time not exceeding 30 days in which to furnish these statements.

(ii) *Manner of furnishing*—(A) *In general.* Except as otherwise provided in paragraph (g)(4)(ii)(B) of this section, if mailed, the statement must be sent to the responsible individual's last known permanent address or, if no permanent address is known, to the individual's temporary address. For purposes of this paragraph (g)(4)(ii)(A), a reporting entity's first class mailing to the last known permanent address, or if no permanent address is known, the temporary address, discharges the requirement to furnish the statement. A reporting entity may furnish the statement electronically if the requirements of § 1.6055-2 are satisfied.

(B) *Alternative manner of furnishing.* A reporting entity shall be treated as furnishing the statement in a timely manner under this paragraph (g)(4) if the shared responsibility payment amount under section 5000A(c) for the calendar year in which the minimum essential coverage is provided is zero and the reporting entity satisfies the requirements in this paragraph (g)(4)(ii)(B). If the reporting entity is an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section related to that plan, the applicable large employer member may use the alternative manner of furnishing described in this paragraph (g)(4)(ii)(B) for statements to non-full-time employees and non-employees who are enrolled in the applicable large employer's self-insured group health plan. A reporting entity may use the alternative manner of furnishing described in this paragraph (g)(4)(ii)(B) only if the reporting entity:

(1) Provides clear and conspicuous notice, in a location on its website that is reasonably accessible to all responsible individuals, stating that responsible individuals may receive a copy of their statement upon request. The notice must include an email address, a physical address to which a request for a statement may be sent, and a telephone number that responsible individuals may use to contact the reporting entity with any questions. A notice posted on a reporting entity's website will satisfy the requirements of this paragraph (g)(4)(ii)(B)(*1*) if it is written in plain, non-technical terms and with letters of a font size large enough, including any visual clues or graphical figures, to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage. For example, a reporting entity's website provides a clear and conspicuous notice if it includes a statement on the main page -- or a link on the main page, reading "Tax Information", to a secondary page that includes a statement -- in capital letters, "IMPORTANT HEALTH COVERAGE TAX DOCUMENTS"; explains how responsible individuals may request a copy of Form 1095-B, Health Coverage, (or, for an applicable large employer member that sponsors a self-insured group health plan and makes a return in accordance with paragraph (f)(2)(i) of this section, explains how non-full-time employees and non-employees who are enrolled in the plan may request a copy of Form 1095-C, Employer-Provided Health Insurance Offer and Coverage); and includes the reporting entity's email address, mailing address, and telephone number;

(2) Retains the notice in the same location on its website through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday or legal holiday); and

(3) Furnishes the statement to a requesting responsible individual within 30 days of the date the request is received. To satisfy the requirement of this paragraph (g)(4)(ii)(B)(*3*), a reporting entity may furnish the statement electronically pursuant to § 1.6055-2(a)(2) through (a)(6).

* * * * *

(j) *Applicability date.* Except as otherwise provided in this paragraph (j), this section applies for calendar years beginning after December 31, 2014. Paragraphs (g)(1), (g)(4)(i), and (g)(4)(ii) of this section apply for calendar years beginning after December 31, 2021, but reporting entities may choose to apply paragraphs (g)(1), (g)(4)(i), and (g)(4)(ii) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (j), paragraph (g)(4), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014 and beginning before January 1, 2022.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

* * * * *

Par. 6. Section 301.6056-1 is amended by revising paragraphs (g)(1) and (m) to read as follows:

§ **301.6056-1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans**.

* * * * *

(g) * * * (1) *Time for furnishing*--Except as otherwise provided in this paragraph (g)(1), each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding the calendar year in accordance with applicable Internal Revenue Service procedures and instructions. Applicable large employers are granted an automatic extension of time not exceeding 30 days in which to furnish these statements.

* * * * *

(m) *Applicability date.* Except as otherwise provided in this paragraph (m), this section applies for calendar years beginning after December 31, 2014. Paragraph (g)(1) of this section applies for calendar years beginning after December 31, 2021, but applicable large employers may choose to apply paragraph (g)(1) of this section for calendar years beginning after December 31, 2020. Except as otherwise provided in this paragraph (m), paragraph (g)(1), as contained in 26 CFR part 1 edition revised as of April 1, 2021, applies to calendar years ending after December 31, 2014 and beginning before January 1, 2022.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 3, 2021, 8:45 a.m., and published in the issue of the Federal Register for December 6, 2021, 86 F.R. 68939)

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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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/*.

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