INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2026–5
January 26, 2026

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

REG-112829-25, page 452.

These proposed regulations would amend regulations under section 3406 to change the threshold for when certain third party settlement organizations (TPSOs) are required to perform backup withholding. These proposed regulations would clarify that in the case of certain payments made through third parties, the amount subject to backup withholding under section 3406 is determined by taking into account the exception for de minimis payments by TPSOs in section 6050W(e). These proposed regulations would also clarify the amount subject to backup withholding and clarify situations when the threshold does not apply. The proposed regulations reflect recent changes to the statutory law.

ADMINISTRATIVE, INCOME TAX

REG-113515-25, page 455.

This document contains proposed regulations regarding the deduction for certain taxpayers for an amount up to $10,000 of qualified passenger vehicle loan interest. This document also contains proposed regulations regarding new information reporting requirements for certain persons who, in a trade or business, receive from any individual interest aggregating $600 or more for any calendar year on a specified passenger vehicle loan, including applicable penalties for failures to file information returns or furnish payee statements as required. The proposed regulations would affect taxpayers that may deduct qualified passenger vehicle loan interest, and also persons subject to these information reporting requirements. This document also provides notice of a public hearing on these proposed regulations.

ADMINISTRATIVE, EMPLOYMENT TAX, EXCISE TAX, INCOME TAX

T.D. 10039, page 403.

These final regulations contain amendments to provisions of 26 CFR part 1 (Income Tax Regulations) under section 6417 of the Internal Revenue Code (Code) and 26 CFR part 301 (Procedure and Administration Regulations) under section 7701 of the Code that address the Federal tax treatment of an entity wholly owned by one or more Indian Tribal governments within the meaning of section 7701(a)(40) that is organized or incorporated under the laws of the Tribe or Tribes that own it (final regulations). Specifically, the final regulations provide that such an entity is not recognized as an entity separate from its owner for Federal income tax purposes, but is recognized as separate for employment and excise tax purposes. Additionally, the final regulations provide that such entities, as well as corporations incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203, are treated solely for purposes of section 6417 (“Elective payment of applicable credits”) as instrumentalities of the Indian Tribal government(s) that own them.

EXCISE TAX

Announcement 2026-2, page 447.

Announcement 2026-2 provides important information for taxpayers who are liable for the tax on petroleum under § 4611 of the Internal Revenue Code.

Finding Lists begin on page ii.

REG-103430-24, page 447.
These proposed regulations would amend the Branded Prescription Drug Fee Regulations regarding the annual fee imposed on covered entities engaged in the business of manufacturing or importing certain branded prescription drugs by section 9008 of the Patient Protection and Affordable Care Act, as amended. These proposed regulations reflect statutory changes made to Medicare Part D that, in turn, affect the calculation of the branded prescription drug fee.

INCOME TAX

T.D. 10040, page 416.
This document contains final regulations regarding the exclusion from gross income of certain Tribal general welfare benefits. The regulations address the requirements that apply to determine whether the benefits an Indian Tribal government program provides qualify as Tribal general welfare benefits. These regulations affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants.

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

26 CFR 1.6417-1: Elective payment election of applicable credits; 26 CFR 301.7701-1: Classification of organizations for federal tax purposes

T.D. 10039

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 301

Entities Wholly Owned by Indian Tribal Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations regarding the Federal tax classification of entities wholly owned by Indian Tribal governments (Tribes). The final regulations provide that entities that are wholly owned by Tribes and organized or incorporated under the laws of one or more of the Tribes that own them generally are not recognized as separate entities for Federal tax purposes. The final regulations also provide that such entities, as well as certain Tribal corporations chartered by the Department of the Interior (DOI), are recognized as separate entities for Federal employment and certain Federal excise tax purposes. In addition, the final regulations provide that, for purposes of making elective payment elections (including determining eligibility for and the consequences of such elections) for energy credits under the Inflation Reduction Act of 2022, each of these types of Tribal entities is treated as an instrumentality of one or more Indian Tribal governments.

DATES: *Effective date*: These regulations are effective on January 15, 2026.

Applicability dates: For dates of applicability, *see* §§ 301.7701-1(f) and 1.6417-1(q).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, contact Iris Chung of the Office of Associate Chief Counsel (Passthroughs, Trusts, and Estates) at (202) 317-5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to provisions of 26 CFR part 1 (Income Tax Regulations) under section 6417 of the Internal Revenue Code (Code) and 26 CFR part 301 (Procedure and Administration Regulations) under section 7701 of the Code that address the Federal tax treatment of certain Tribal entities wholly owned by one or more Indian Tribal governments[1] (final regulations).

Section 6417(h) provides an express delegation of authority to the Secretary of the Treasury or the Secretary's delegate (Secretary) relating to elective payment elections under section 6417 (section 6417 elections), stating, "[t]he Secretary shall issue such regulations or other guidance as may be necessary to carry out the purposes of this section, including guidance to ensure that the amount of the payment or deemed payment made under this section is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c))."

Section 7701(a)(40) provides an express delegation of authority to the Secretary related to identifying Indian Tribal governments for Federal tax purposes, stating, "[t]he term 'Indian tribal government' means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions."

Finally, section 7805(a) of the Code provides an express delegation of authority to the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. *Overview of Prior Guidance*

The Federal government has long recognized the unique aspects of Tribal sovereignty and Tribal sovereign immunity. Tribes themselves are not subject to Federal income tax under the Code.[2] IRS guidance on the issue in the 1960s raised questions about the extent to which Tribal corporations incorporated under section 17 of the Indian Reorganization Act of 1934 (IRA), as amended, 25 U.S.C. 5124 (section 17 corporations) or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203 (section 3 corporations) should share the Tribe's Federal income tax status. In response, the IRS published further guidance and issued proposed regulations in 1996 on the treatment of section 17 corporations and section 3 corporations for Federal tax purposes. *See* the notice of proposed rulemaking, *Simplification of Entity Classification Rules* (PS–43–95), published in the ***Federal Register*** (61 FR 21989) on May 13, 1996 (explaining the basis for the

[1] The term "Indian Tribal government," also referred to as a "Tribe" herein, is defined as a federally recognized Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454, 108 Stat. 4791 (List Act). Pursuant to the List Act, the Secretary of the Interior is required to publish annually a list of all federally recognized Tribes. This definition is also consistent with Revenue Procedure 2008-55 (2008-39 I.R.B. 768), which provides that the Treasury Department and the IRS utilize current or future lists of federally recognized Tribes published annually under the List Act by the DOI Bureau of Indian Affairs, for identification of Indian Tribal governments for purposes of section 7701(a)(40). *See* 89 FR 944 (January 8, 2024) for the most current list published by the DOI, Bureau of Indian Affairs.

[2] *See* Rev. Rul. 67-284, 1967-2 C.B. 55. However, Tribes generally are subject to Federal employment taxes. Employment taxes refers to Federal Insurance Contributions Act (FICA) (consisting of both social security and Medicare taxes), Federal Unemployment Tax Act (FUTA), and Income Tax Withholding. Section 3306(c)(7) of the Code provides an exception from FUTA taxes under certain circumstances. Further, subject to applicable law, including statutes (such as section 7871 of the Code) and treaties or agreements with the United States, Tribes are subject to Federal excise taxes. *See* Rev. Rul. 94-81, 1994-2 C.B. 412.

proposed rule later adopted in § 301.7701-1(a)(3)).

On December 18, 1996, the Department of the Treasury (Treasury Department) and the IRS published final regulations (TD 8697) in the ***Federal Register*** (61 FR 66584) under section 7701, known as the entity classification regulations. These regulations (at § 301.7701-1(a)(3)) make clear that entities formed under local laws are not always recognized as separate entities for Federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for Federal tax purposes if it is an integral part of the State. Similarly, these regulations (until their amendment by this Treasury decision) provided that section 17 corporations and section 3 corporations are not recognized as separate entities for Federal tax purposes. These regulations, however, did not specifically address whether an entity organized or incorporated under Tribal law and wholly owned by a Tribe (that is, a wholly owned Tribal entity) is recognized as a separate entity for Federal tax purposes.

The preamble to TD 8697 stated that the IRS received a number of comments asking for clarification of the tax treatment of wholly owned Tribal entities. 61 FR 66584. The preamble also indicated that the Treasury Department and the IRS continued to study the issue and would issue additional guidance, if necessary. *Id.* at 66585-86.

II. *Tribal Consultation*

Over the past several decades, Tribes have sought clarity concerning the Federal tax status of wholly owned Tribal entities, in part to provide certainty for Tribal economic development and to support the generation of revenue for Indian Tribal governments. To obtain Tribal input on the issue before publishing the proposed regulations, and in accordance with Executive Order 13175 (November 6, 2000), "Consultation and Coordination with Indian Tribal Governments," and the Treasury Department's Tribal Consultation Policy (80 FR 57434, September 23, 2015), *superseded by* Treasury Order 112-04 (November 22, 2023), the Treasury Department and the IRS held Tribal consultations on the issue on June 21 and June 22, 2023, October 8 and 10, 2019, and a listening session on December 3, 2019.

During Tribal consultations, Tribes have explained that they view incorporating corporations under Tribal law as an exercise of their inherent sovereign authority to generate governmental revenue, self-govern the use of that revenue according to their own laws, and self-determine the use of that revenue for their citizenry. Tribes highlighted that incorporating corporations under Tribal law enables Tribes to create entities that meet their emerging revenue opportunities, establish guidelines for the operation of these entities that are culturally appropriate and protect Tribal assets, and dissolve them when they are no longer needed. Tribes also highlighted that clarifying the status of corporations incorporated under Tribal law is consistent with recent Federal policy to promote Tribal sovereignty, self-governance, and self-determination in economic development activities.

In contrast, Tribes highlighted that section 17 and section 3 corporations are not always sufficient to meet their needs. The incorporation process for these entities is a lengthy multi-step Federal process that subjects Tribal authority to Federal oversight and approval and results in increased administrative costs to Tribes. In addition, an act of Congress is required to dissolve the chartered entity.

This issue has taken on increased salience in recent years with the enactment of laws that extend greater access to capital and new economic opportunities to certain governments (including Indian Tribal governments), tax-exempt organizations, and other entities. Tribes have reiterated their requests for guidance through meetings of the Treasury Tribal Advisory Committee and other Tribal consultations.

III. *Proposed Regulations*

In light of the considerations of Tribal sovereignty and self-determination described previously, on October 9, 2024, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-113628-21) in the ***Federal Register*** (89 FR 81871), which provided proposed guidance under sections 6417 and 7701 (proposed regulations). *See* the preamble to the proposed regulations for additional information regarding the developments leading to this rulemaking.

The proposed regulations proposed to amend the existing section 7701 regulations to make clear that entities wholly owned by Tribes and organized, incorporated, or authorized under the laws of the Tribes that own them generally are not recognized as separate entities for Federal tax purposes. As has been the case with Tribes and section 17 corporations or section 3 corporations, the proposed regulations proposed that an entity wholly owned by one or more Indian Tribal governments, within the meaning of section 7701(a)(40), that is organized or incorporated under the laws of the Tribe or Tribes that own the entity, or organized or incorporated under the laws of one or more of the owning Tribes and authorized by all of the other owning Tribes (wholly owned Tribal entity), would not be recognized as a separate entity for Federal tax purposes (and thus not subject to Federal income tax). The use of the term "organized" includes the creation of Tribal entities other than corporations. For instance, a single member limited liability company (LLC) organized under the laws of the Tribe that owns the LLC would be a wholly owned Tribal entity covered by the proposed regulations. Accordingly, such wholly owned entities generally would be viewed as one and the same as the Tribes that own them for Federal income tax purposes and therefore are not subject to Federal income tax.

In addition, the proposed regulations proposed to amend the existing section 6417 regulations to provide that wholly owned Tribal entities, section 17 corporations, and section 3 corporations are treated, for purposes of making section 6417 elections (including determining eligibility for and the consequences of such elections), as instrumentalities of the Indian Tribal government(s) that wholly own them. As a result, the wholly owned Tribal entity itself, rather than the Indian Tribal government(s) owning the entity, would be required to make a section 6417 election for an applicable credit determined with respect to any applicable credit property held directly by the wholly owned Tribal entity.

A. *Wholly Owned Tribal Entity Requirements Under Proposed Regulations*

1. Tribal law

The proposed regulations recognized that Tribal law is established by each individual Tribe. The notice of proposed rulemaking stated that, where multiple Tribes work together to establish an entity that is owned by more than one Tribe, each Tribe would need to provide for the entity under its own laws.

2. Wholly owned

The notice of proposed rulemaking noted that, as is the case for determining the ownership of all corporations (including a corporation wholly owned by a State or other government), the determination of whether an outside investor (a person other than a Tribe) holds equity in a Tribal entity, such that it would fail to be wholly owned by one or more Indian Tribal governments for Federal tax purposes, would take into account principles of Federal tax law, such as the substance over form doctrine, debt versus equity analyses, and the economic substance doctrine.

Under the proposed regulations, an entity could satisfy the wholly owned requirement through a multi-Tribe ownership structure, so long as the entity is organized or incorporated under each Tribe's laws. Proposed § 301.7701-1(a)(4)(iii)(D) (*Example 4*) illustrates an example of the organizational structure of such an entity.

The proposed regulations did not address an entity formed under Tribal law that was not also wholly owned by one or more Indian Tribal governments for Federal tax purposes.

IV. *Elective Payment Elections*

Under 26 CFR 1.6417-1(f) as of April 1, 2025, section 17 corporations and section 3 corporations were treated as "disregarded entities" for purposes of section 6417, and the applicable entity owner of a disregarded entity that directly holds applicable credit property was required to make a section 6417 election for applicable credits determined with respect to such property pursuant to § 1.6417-2(a)(1)(ii). Under the proposed regulations, for purposes of making a section 6417 election (including determining eligibility for and the consequences of such election), entities described in proposed § 301.7701-1(a)(4)(i) (that is, section 17 corporations, section 3 corporations, and wholly owned Tribal entities), would be treated as instrumentalities of Indian Tribal governments. This change would mean that an entity described in proposed § 301.7701-1(a)(4)(i) that directly owns applicable credit property, rather than the entity's owner or owners, would make the section 6417 election. Such an entity generally would do so by filing a Form 990-T, *Exempt Organization Business Income Tax Return*, as described in § 1.6417-1(b)(2), using its own name and employer identification number.

Given that proposed § 301.7701-1(a)(4)(i) generally provided that an entity owned by multiple Tribes is not recognized as a separate entity from those Tribes for Federal income tax purposes, treating the entity as a "disregarded entity" for section 6417 purposes would have required each of the entity's owners to make a section 6417 election with respect to an applicable credit determined with respect to an applicable credit property owned directly by the entity. That approach would have been administratively burdensome and complex for the Tribes that own the entity as well as for the IRS. Given the need for coordination among these Tribes in making consistent tax filings, that approach could also have resulted in cases in which the amount of the total payments or deemed payments claimed under section 6417 might not be commensurate with the amount of the underlying credit. In addition, even for an entity owned by a single Tribe, the entity directly owning the applicable credit property may be better positioned to fulfill the pre-filing registration and other requirements to make the section 6417 election. Accordingly, the proposed regulations were intended to simplify the filing obligations for Tribes and their wholly owned entities and ensure that the amount of any payment or deemed payment made under section 6417 will be commensurate with the amount of the credit that would be otherwise allowable.

In general, the determination of whether an entity is an agency or instrumentality is analyzed on a facts and circumstances basis. In determining whether an entity is an agency or instrumentality for Federal tax purposes, Federal courts have applied the six-factor test in Rev. Rul. 57-128, 1957-1 C.B. 311, which generally provides guidance on whether an entity is an instrumentality for purposes of the exemptions from employment taxes under sections 3121(b)(7) and 3306(c)(7) of the Code. *See, e.g., Rose v. Long Island Railroad Pension Plan,* 828 F.2d 910, 918 (2d Cir. 1987), *cert. denied,* 485 U.S. 936 (1988); *Berini v. Federal Reserve Bank of St. Louis, Eighth District,* 37 Employee Benefits Cas. 1072, 420 F. Supp. 2d 1021 (E.D. Mo. 2005).

The special rule in proposed § 1.6417-1(c)(7) is informed in part by administrative considerations and would be issued under the express delegation of authority in section 6417(h) to promulgate rules that carry out the purposes of section 6417 and ensure that the amount of the payment or deemed payment made thereunder is commensurate with the amount of the underlying credit. No inferences should be drawn from the instrumentality treatment in proposed § 1.6417-1(c)(7) as to whether any particular entity is or is not an instrumentality for any other Federal tax purpose.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS conducted Tribal consultations on December 16 -18, 2024, to obtain additional input on questions involving the proposed regulations. The content of these consultations is published in a Tribal consultation summary available at: *https://home.treasury.gov/system/files/136/Tax-Status-of-Tribally-Chartered-Corporations-Consultation-Summary.pdf*. In addition, the Treasury Department and the IRS received written comments in response to the proposed regulations. A public hearing on the proposed regulations was held on January 17, 2025. Copies of written comments and the list of speakers at the public hearing are available at *https://www.regulations.gov* or upon request.

After full consideration of all comments received on the proposed regulations, including through the Tribal consultations, and the testimony presented at

the public hearing, this Treasury decision adopts the proposed regulations as final regulations with clarifying changes and modifications as described in this Summary of Comments and Explanation of Revisions. Overall, commenters largely supported the proposed regulations' recognition of a Tribe's inherent authority to create businesses under Tribal law and that wholly owned Tribal entities should have parity with federally chartered Tribal corporations.

Section I of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable to § 301.7701-1. Section II of this Summary of Comments and Explanation of Revisions addresses the comments and revisions applicable to § 1.6417-1.

Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations for which no comments were received are adopted without substantive change. Comments that merely summarize the proposed regulations, recommend statutory revisions to section 7701, section 6417, or other statutes, address issues that are outside the scope of this rulemaking (such as proposed changes to other guidance), or recommend changes to IRS forms are beyond the scope of these regulations and are not adopted. In addition, comments that are related to executive orders and prior guidance described in the preamble to the proposed regulations are beyond the scope of these regulations and are not adopted. The final regulations include non-substantive modifications, including modifications that promote consistency across rules and examples, rearrange provisions, and improve the overall clarity of the guidance. Such non-substantive modifications are not addressed in this Summary of Comments and Explanation of Revisions.

I. *Wholly Owned Tribal Entities Under the Final Regulations*

The final regulations under section 7701 provide that a wholly owned Tribal entity (including a single member LLC organized under the laws of the Tribe that owns it) is not recognized as a separate entity for Federal income tax purposes, but is recognized as separate and treated as a corporation for Federal employment tax purposes and certain Federal excise tax purposes. The final regulations also provide that section 17 corporations and section 3 corporations are recognized as entities separate from the Tribe(s) that own these entities for Federal employment and certain Federal excise tax purposes.

A. Multi-Tribe ownership

The majority of commenters expressed support for the recognition that Tribes may organize or incorporate an inter-Tribal entity serving multiple Tribes. However, some commenters stated that it is impractical and unworkable to require that an inter-Tribal entity wholly owned by more than one Indian Tribal government (within the meaning of section 7701(a)(40) of the Code) be organized or incorporated under the laws of each of the Indian Tribal governments with an ownership stake in the entity. Commenters stated that the rules should provide that an inter-Tribal entity with a single charter authorized by each Tribe's governing body, or other body or official acting pursuant to authority delegated by the Tribe's governing body, shares the tax status of the Tribe(s) that own it. These commenters recommended that, although authorized under each Tribe's legislative or administrative process, the inter-Tribal entity charter should allow for a choice of law or forum clause that subjects the inter-Tribal entity to the corporate or limited liability company laws of just a single Tribe. To clarify the proposed regulations, the same commenters requested amendments to the language of the regulations to require that the inter-Tribal entity be authorized under each owner Tribe's law and to allow Tribes to adopt their choice of law and forum. Additionally, a commenter requested the regulations be amended to allow Tribes to enter into co-ownership arrangements with respect to existing entities previously organized and incorporated under the laws of one or more Tribes.

Other commenters suggested that entities owned solely by multiple Tribal governments should be disregarded where (a) the entity is formed under the laws of one of the member Tribes, (b) the Tribe's laws permit ownership by the other Tribes, and (c) each owner Tribe agrees to such outcome by resolution or other suitable document.

Based on these comments, the final regulations provide that an inter-Tribal entity is not recognized as a separate entity when organized or incorporated exclusively under the laws of one or more of the Indian Tribal governments that own it. The final regulations also add a sentence that clarifies that whether an entity is organized or incorporated under the laws of one or more Indian Tribal government(s) is determined without regard to any specified choice of law or forum. These changes are intended to minimize the administrative burden on Tribes seeking to form or acquire interests in inter-Tribal entities that would generally not be recognized as separate entities under these final regulations.

The word "exclusively," as used in these regulations, means that the entity must be formed under the laws of one or more of the Indian Tribal governments that own it and not the laws of an Indian Tribal government that does not have an interest in the entity or the laws of a state or foreign government. Therefore, an entity formed solely under the laws of one owning Indian Tribal government that is also owned by several other Indian Tribal governments would be considered as organized or incorporated exclusively under the laws of one or more of the Indian Tribal governments that own it and would generally not be recognized as a separate entity for Federal tax purposes.

B. State-recognized Tribes

One commenter expressed concern that entities organized or incorporated under the laws of a Tribe that is not federally recognized but recognized by a State (State- recognized Tribe) would not be covered under these proposed regulations and requested clarity as to how the result might change, if at all, in proposed § 301.7701-1(a)(4)(iii)(D) (*Example 4*) if one or more of the four participating Tribes were State-recognized Tribes.

The United States has a government-to-government relationship with and recognizes the sovereignty of federally recognized Tribes. Revenue Procedure 2008-55 (2008-39 I.R.B. 768) treats all federally recognized Tribes as Indian

Tribal governments under section 7701(a)(40). Federally recognized Tribes are not subject to Federal income taxes. Section 301.7701-1(a)(3) has long provided that section 17 corporations and section 3 corporations chartered under Federal law and wholly owned by federally recognized Tribes are not recognized as separate entities for Federal tax purposes. These final regulations extend the same treatment to entities organized or incorporated under Tribal law and wholly owned by Tribes. Because section 17 corporations, section 3 corporations, and wholly owned Tribal entities are not recognized as separate entities, they, like the Tribes that own them, are not subject to Federal income tax.

Corporations wholly owned by State-recognized Tribes were not covered by the proposed regulations and are not covered by these final regulations. If one or more of the four participating Tribes in § 301.7701-1(a)(4)(iii)(D) (*Example 4*) were a State-recognized Tribe or an entity created by a State-recognized Tribe, then the jointly owned corporation would not satisfy the requirements of § 301.7701-1(a)(4) and would be respected as a separate legal entity that could be subject to Federal income taxation.

C. State-chartered Tribally owned entities

Some commenters suggested that not only entities wholly owned by Indian Tribal governments and organized or incorporated under the laws of their Indian Tribal government owner, section 3, or section 17, but also Tribally owned entities organized under State law should be treated as not separate from the Tribe for Federal tax purposes. The Treasury Department and the IRS have previously ruled that a corporation organized by an Indian Tribe under State law is subject to Federal income tax on the income earned in the conduct of a commercial business on and off the Tribe's reservation. See Rev. Rul. 94-16, situation 3, 1994-1 C.B. 19 (1994). The commenters proposed that the relevant consideration for Federal income tax purposes is not which government created the corporate entity but, rather, the tax status of the owner. Commenters explained the advantages of State-chartered entities to include that their structure is more familiar to outside investors and offers a broader spectrum of opportunities, particularly for business ventures outside of the Tribe's reservation. These regulations only address the Federal tax treatment of entities chartered by DOI or under Tribal law. Accordingly, the Federal tax treatment of State-chartered entities is outside the scope of these regulations, and, therefore, the final regulations do not adopt this comment.

D. Majority-owned entities

Many commenters recommended extending Federal income tax exemption to entities with 51 percent or greater ownership by Tribes so that they are on parity with State and local governments to receive the same tax advantages afforded to State and local government entities in public-private partnerships. Commenters also requested clarifying guidance on the tax treatment of partially owned entities, including distinctions between wholly owned, partially owned, and majority owned entities.

As these matters are outside the scope of the guidance contained in the proposed regulations that these regulations finalize, the final regulations do not adopt these comments. The Treasury Department and the IRS continue to consider possible guidance on the Federal tax treatment of corporations incorporated under Tribal law that are owned in part by persons other than Tribes. The Treasury Department and the IRS would conduct Tribal consultation prior to issuing any guidance in that area.

E. Wholly owned Tribal entities as separate from the Tribe(s)

Some commenters suggested that wholly owned corporations incorporated under Tribal law should be considered exempt from Federal income tax without the fiction that such corporations are not separate from the parent Tribe. These commenters explained that Revenue Ruling 94-16, 1994-1 C.B. 19, does not rely on this concept. The commenters indicated that section 17 corporations share the same tax status as the Tribe without relying on a fiction that the section 17 corporation is not separate from the Tribe. As support, the commenters indicated that Federal law permits a Tribe to organize both section 16 corporations and section 17 corporations, separate classes of entities with differing powers, purpose, and function. Commenters further explained that if a corporation incorporated under Tribal law is not distinct from the Tribal government, this could prohibit Tribes from qualifying a wholly owned Tribal entity for section 501(c)(3) status and, thus, would require Tribes to charter nonprofit corporations under State law, contrary to Federal policy.

Under the existing framework of the section 7701 regulations, an entity recognized as separate from the Tribe does not share the same tax status as the Tribe. Thus, in order to be an entity not subject to Federal income tax under those regulations, section 17 corporations and section 3 corporations cannot be recognized as separate and distinct from the Tribe for Federal income tax purposes. These final regulations treat wholly owned Tribal corporations similarly to section 17 corporations and section 3 corporations. The commenter is correct that a wholly owned corporation incorporated under Tribal law that is not separate and distinct from the Tribal government cannot qualify for section 501(c)(3) status. However, there is nothing in these regulations to prevent Tribes from creating non-stock Tribal law entities that are described in section 501(c)(3), nor would doing so be contrary to Federal policy.

F. Limited liability companies

Commenters requested the addition of clarifying language to confirm that LLCs that qualify as wholly owned Tribal entities are not recognized as separate entities for Federal income tax purposes and, therefore, would not be subject to Federal income tax. The commenters indicated that confusion arises because an entity can be classified as one type of entity for local law purposes such as an LLC or partnership, and then make an entity classification election by filing Form 8832, *Entity Classification Election*, with the IRS to be taxed differently for Federal tax purposes. A majority of commenters supported the addition to the final regulations of a separate illustrative example of an LLC that qualifies as a wholly owned Tribal

entity that is not regarded as a separate entity and, therefore, not subject to Federal income tax. Other commenters suggested that it is unnecessary for the proposed regulations to apply to entities other than corporations that qualify as wholly owned Tribal entities. Those commenters explained that since the section 7701 regulations treat a domestic eligible entity with a single owner as disregarded unless the owner otherwise elects, many Tribes have created LLCs that qualify as wholly owned Tribal entities with the understanding that the rules under the existing regulations apply. Commenters expressed concern that adopting a rule that automatically disregards the separateness of all wholly owned Tribal entities for Federal tax purposes disrupts that understanding.

The treatment of limited liability companies for Federal tax purposes is determined under the general classification rules of § 301.7701-3(a). However, the term "organized" used in § 301.7701-1(a)(4)(i) is meant to apply to LLCs organized under Tribal law that are wholly owned by one or more Tribe(s) (Tribally organized LLC), which is consistent with both the preamble to the proposed regulations and proposed § 301.7701-1(a)(4)(iii)(C).

Comments indicate that taxpayers understand that the proposed regulations would treat a Tribally organized LLC with a single member as not separate from the Tribe for Federal tax purposes, and therefore not subject to Federal income tax under these final regulations. Therefore, the final regulations do not adopt these comments.

However, the Treasury Department and the IRS understand the need for certainty in this area. Therefore, the final regulations adopt the general comments that the examples provided in the regulation should explicitly state that the rules apply equally to Tribally organized LLCs.

G. Multi-tier entity structures

Many commenters requested clarification in the final regulations that the treatment of wholly owned Tribal entities as not separate entities from their Tribal owners applies equally to subsidiary entities. Similarly, many commenters also suggested revising proposed § 301.7701-1(a)(4)(iii)(B) (*Example 2*) to indicate that it involves a holding company and a subsidiary. A few commenters also suggested adding an example of a multi-tier partnership entity similar to proposed § 301.7701-1(a)(4)(iii)(B) (*Example 2*).

Proposed § 301.7701-1(a)(4) did not expressly state that entities that are owned through a chain of entities that themselves are not recognized for Federal tax purposes are not recognized as separate entities for Federal tax purposes. In order to ensure clarity on this point, the final regulations add language in § 301.7701-1(a)(4) to clarify that the wholly owned requirement can be met through ownership by other entities not recognized as separate under § 301.7701-1(a)(4).

The final regulations, in § 301.7701-1(a)(4)(iii)(B) (*Example 2*), illustrate that in a tiered structure where Corporation Z is wholly owned by Corporation X and Corporation X is wholly owned by Tribe B, where both Corporation Z and Corporation X are organized or incorporated exclusively under the laws of Tribe B, both entities are not recognized as separate from Tribe B for Federal tax purposes and are not subject to Federal income tax. This example was intended to be a general illustration of the proposed rule that subsidiaries in a tiered entity structure of wholly owned Tribal entities are not recognized as separate entities for Federal tax purposes and are, therefore, exempt from Federal income tax. Revising the example as suggested by the commenters to specify that proposed § 301.7701-1(a)(4)(iii)(B) (*Example 2*) involves a holding company and a subsidiary would unnecessarily narrow the scope and relevancy of this example, which was intended to be a general illustration. Therefore, the final regulations do not adopt this comment.

H. Partnerships with non-Tribally owned entities

One commenter requested adding an example to confirm that a Tribally organized LLC would retain its status as not regarded when it enters into a partnership with a third-party for-profit corporation formed under State law. Though the final regulations do not add such an example, the Treasury Department and the IRS confirm that the Federal tax status of a Tribally organized LLC would not be affected by holding an interest in a partnership regardless of who the other partners in the partnership were.

I. Section 17 corporation

A commenter recommended clarifying that a section 17 corporation is a federally chartered corporation created through a lengthy incorporation process for a corporation with the DOI and the eventual approval of such corporation's charter.

These final regulations do not adopt the recommendation in this comment concerning detailing the processes by which a section 17 corporation is created because the regulations do not modify or otherwise affect the incorporation process of section 17 corporations and section 3 corporations. They do provide certainty that wholly owned Tribal entities are accorded the same tax treatment as section 17 corporations and section 3 corporations. The final regulations do, however, adopt the recommendation to change the description of section 17 corporations and section 3 corporations to reflect that they are federally chartered corporations.

J. Tribal entity formation

Several commenters also requested clarification that entities formed under resolutions or interim measures, rather than formal ordinances, are also afforded Federal income tax exemption if established under Tribal law. The proposed regulations did not address the specific mechanisms or administrative processes by which Tribes organize or incorporate a wholly owned entity under their sovereign laws. While the final regulations do not specifically adopt these comments by providing the requested clarification, the Treasury Department and the IRS confirm that any acts to organize or incorporate a wholly owned Tribal entity under the laws of the Tribes would satisfy the requirements of being "organized under Tribal law" for such entity to not be recognized as a separate entity from the Tribe under § 301.7701-1(a)(4)(i).

K. Not subject to Federal income tax

A commenter recommended expressly stating in the text of proposed § 301.7701-1(a)(4)(i) that section 17 corporations,

section 3 corporations, and wholly owned Tribal entities are not subject to Federal income tax on income earned by them in the conduct of commercial business, investment, and/or other activities on or off the organizing Tribe's reservation or Tribes' reservations (as applicable). The commenter suggested that, although proposed § 301.7701-1(a)(4)(iii)(A) through (C) (*Examples 1* through *3*) illustrated that entities wholly owned by one or more Tribes and organized or incorporated exclusively under the laws of such Tribe or Tribes are both not recognized as separate entities for Federal tax purposes and not subject to Federal income tax, additional language explicitly stating that such entities are not subject to Federal income tax is necessary in proposed § 301.7701-1(a)(4)(i) for consistency and to avoid any ambiguity on this issue.

This commenter also indicated that the use of the phrase "in the conduct of commercial business" in connection with the statement of exemption from Federal income tax in the preamble to the proposed regulations creates uncertainty as to the scope of the exemption from Federal income tax of section 17 corporations and section 3 corporations, creating the possibility of disputes regarding whether income from investments or other activities or sources is excluded from the exemption from Federal income tax. Thus, the commenter requests clarification in the final regulations on the scope of the exemption from Federal income tax for section 17 corporations and section 3 corporations.

The Treasury Department and the IRS adopt the recommendation and added language to § 301.7701-1(a)(4)(i) to clarify that such entities are not subject to Federal income tax. As such, the source of their income is not relevant because their Federal tax status is not based on the source or type of income earned. Accordingly, the final regulations do not comment on the nature or source of income excluded from Federal income tax derived by section 17 corporations, section 3 corporations, or wholly owned Tribal entities.

L. Federal income tax refunds

Some commenters requested that the IRS defer to Tribes' sole discretion to determine whether wholly owned Tribal entities that have been in existence for decades have consistently applied § 301.7701-1(a)(4) and relied on that provision for tax years prior to the final regulations' publication date. By providing such deference, these commenters suggest, the IRS would respect Tribal sovereignty and self-governance, and reduce administrative burdens. To that effect, some commenters suggested developing a specific streamlined refund process for wholly owned Tribal entities that may have paid Federal income taxes for a period before the final regulations' publication date.

While the final regulations do not adopt the foregoing comments, the Treasury Department and the IRS confirm that Federal income tax refund requests may be processed under the general principles of tax administration. In particular, wholly owned Tribal entities that choose to apply the final regulations retroactively may seek income tax refunds by filing Form 1120-X, *Amended U.S. Corporation Income Tax Return*, for tax years for which the applicable period of limitations is open and obtain the assistance of the Indian Tribal Governments office of the Tax Exempt and Government Entities Division of the IRS to process their refund requests.

M. Federal excise tax

1. Entity classification

The majority of commenters recommended that the final regulations treat section 17 corporations, section 3 corporations, and wholly owned Tribal entities as entities that are separate from the Tribe(s) that own these entities for Federal excise tax purposes because Tribes create these entities to limit the risk of liability to the Tribes themselves. The commenters' suggestion would be consistent with the treatment of disregarded entities as separate from their owners for purposes of certain Federal excise taxes under the special rule in § 301.7701-2(c)(2)(v). Additionally, the Background section of the preamble to the proposed regulations notes at footnote 2 that while Tribes are not subject to Federal income tax, they generally are subject to Federal excise taxes absent a rule (such as section 7871 of the Code) providing otherwise. Other commenters requested that the final regulations allow Tribes to elect to treat a wholly owned entity as either regarded or disregarded for Federal excise tax purposes. These commenters asserted that Tribes have a sovereign right to elect specific Federal tax treatment.

In addition, several commenters expressed concern that the rules applying to "business entities" in § 301.7701-2(c)(2)(i) and (v) may not include section 17 corporations, section 3 corporations, or wholly owned Tribal entities. Section 301.7701-2(a) defines a "business entity" as an entity recognized for Federal tax purposes, and § 301.7701-1(a)(3), as of April 1, 2025, provided that section 17 corporations and section 3 corporations were not "recognized" for Federal tax purposes. Similarly, proposed § 301.7701-1(a)(4)(i) generally would not have recognized section 17 corporations, section 3 corporations, or wholly owned Tribal entities as separate entities for Federal tax purposes. These commenters requested that the final regulations explicitly treat these three types of Tribal entities as separate entities for Federal excise tax purposes. Specifically, commenters suggested modifying § 301.7701-2(c)(2)(v) to apply both to business entities described in § 301.7701-2(c)(2)(i) and to Tribal entities described in proposed § 301.7701-1(a)(4)(i). In conjunction with this change, commenters also suggested modifying proposed § 301.7701-1(a)(4)(i) to provide an exception for cases where the (newly modified) special rule relating to Federal excise taxes at § 301.7701-2(c)(2)(v) applies to Tribal entities.

The Treasury Department and the IRS agree with the recommendation of the majority of commenters to treat section 17 corporations, section 3 corporations, and wholly owned Tribal entities as entities separate from the Tribe(s) that own them for Federal excise tax purposes. The final regulations do not adopt these commenters' specific recommendation to amend § 301.7701-2(c)(2)(v) because the rules of § 301.7701-2 apply solely to "business entities." Instead, the final regulations provide for this separate entity treatment in § 301.7701-1. Specifically, while the final regulations in § 301.7701-1(a)(4)(i) provide the general rule that section 17 corporations, section 3 corporations,

and wholly owned Tribal entities are not recognized as separate entities for Federal tax purposes, the final regulations in § 301.7701-1(a)(4)(iii) provide an exception under which such entities are treated as separate entities for certain Federal excise tax purposes under rules identical to those of § 301.7701-2(c)(2)(v). This aligns the rules applicable to section 17 corporations, section 3 corporations, and wholly owned Tribal entities with the existing rules under § 301.7701-2(c)(2)(v) that treat disregarded entities as separate from their owners for certain Federal excise tax purposes.

The Treasury Department and the IRS decline to adopt the suggestion of some commenters that Tribes be allowed to elect the treatment of wholly owned Tribal entities for Federal excise tax purposes. Instead, as explained in the previous paragraph, the final regulations provide that wholly owned Tribal entities (as well as section 17 corporations and section 3 corporations) will, in all cases, be regarded as separate entities for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v). This approach is consistent with most commenters' requests and aligns with the existing Federal excise tax regime under § 301.7701-2(c)(2)(v).

This approach also avoids a number of administrative difficulties that taxpayers and the IRS have experienced with respect to disregarded entities generally, due to the interaction of the disregarded entity rules and certain Federal excise tax provisions. Many Federal excise tax provisions rely on State law, rather than Federal law, to determine when tax attaches or whether to allow an excise tax credit or refund. Federal excise taxes are generally transaction-based, and State law often governs one or more aspects of a transaction, such as when title to an article passes. As such, difficulties arose prior to the 2007 regulations, TD 9356 (72 FR 45891, August 16, 2007), when an entity that was regarded under State law, but disregarded under Federal tax law, engaged in transactions subject to a Federal excise tax. To address these problems, in 2007, the Treasury Department and the IRS promulgated § 301.7701-2(c)(2)(v) to treat wholly owned business entities otherwise disregarded for Federal tax purposes as separate from their owners for certain Federal excise tax purposes. *See* TD 9356 (72 FR 45891, August 16, 2007) (adopting final regulations and stating no comments were received regarding the excise tax provisions of the proposed regulations); REG-114371-05 (70 FR 60475-60476, October 18, 2005) (preamble to proposed § 301.7701-2(c)(2)(v), explaining reasons for the change).

To prevent similar problems with respect to Tribal entities, the final regulations adopt separate Federal excise tax treatment, identical to that of § 301.7701-2(c)(2)(v), for section 17 corporations, section 3 corporations, and wholly owned Tribal entities. Having all wholly owned Tribal entities on a uniform system for Federal excise tax purposes that conforms with the existing § 301.7701-2(c)(2)(v) rules avoids inconsistency and promotes sound tax administration.

Finally, other commenters requested that wholly owned Tribal entities be not recognized as separate entities for excise tax exemption purposes but recognized as separate entities for excise tax liability purposes. These commenters requested that the final regulations allow Tribes to extend their sovereign privileges, such as a tax exemption, to their wholly owned entities while also permitting Tribes to shield their assets from potential liabilities by forming business entities. The Treasury Department and the IRS decline to adopt this suggestion because excise tax exemptions, such as those provided in section 7871, are outside the scope of this rulemaking.

2. Section 7871

In expressing their views on the classification of Tribal entities as separate from the Tribe for Federal excise tax purposes, some commenters expressed concern about the potential impact of such treatment on the section 7871 exemption from certain Federal excise taxes. Those commenters stated that section 17 corporations, section 3 corporations, and wholly owned Tribal entities should be explicitly permitted to claim Federal excise tax exemptions to the same extent as Tribes under section 7871. Some of those commenters suggested that language be added to proposed § 301.7701-1(a)(4) to provide that section 17 corporations, section 3 corporations, and wholly owned Tribal entities are treated as an "Indian Tribal government" for purposes of section 7871 and obsolete § 305.7871-1. Other commenters requested that such entities be deemed a "subdivision" for purposes of section 7871.

The final regulations do not adopt these commenters' suggestions, as section 7871 and any regulations thereunder are outside the scope of this rulemaking. The proposed regulations did not address section 7871 or obsolete § 305.7871-1. Accordingly, the final regulations do not address the existing law under section 7871 or the availability of the section 7871(a)(2) exemption from certain Federal excise taxes for Tribes, section 17 corporations, section 3 corporations, or wholly owned Tribal entities.

N. Employment tax

Prior to the publication of this Treasury decision, § 301.7701-1(a)(3) provided that section 17 corporations and section 3 corporations are not recognized as separate entities for Federal tax purposes. However, the regulations did not specifically address whether a wholly owned Tribal entity is recognized as a separate entity for Federal employment tax purposes.

In general, employment tax responsibilities rest with an employer. Employers are required to deduct and withhold Federal income taxes and Federal Insurance Contributions Act (FICA) taxes from their employees' wages under sections 3402(a) and 3102(a) of the Code, and are separately liable for their share of FICA taxes as well as for Federal Unemployment Tax Act (FUTA) taxes under sections 3111 and 3301 of the Code. These Federal income tax withholding, FICA, and FUTA taxes are collectively referred to herein as "Federal employment taxes." Sections 3403, 3102(b), 3111, and 3301 provide that the employer is the person liable for the withholding and payment of Federal employment taxes. In addition, the employer is required to make timely tax deposits, file Federal employment tax returns, and issue wage statements (Forms W-2) to employees, which are collectively referred to herein as "other Federal employment tax obligations."

An employer is generally defined as the person for whom an individual per-

forms services as an employee. *See* sections 3401(d), 3121(d), and 3306(a) of the Code. If an entity were not recognized as separate from its owner for Federal employment tax purposes, the owner of the entity would be treated as the employer for purposes of Federal employment tax liabilities and all other Federal employment tax obligations related to wages paid to employees performing services for the disregarded entity. In the context of wholly owned Tribal entities, the IRS has not previously issued guidance regarding their employment tax treatment.

Outside the context of wholly owned Tribal entities, § 301.7701-2(c)(2)(iv)(A) and (B) treat business entities that are disregarded for Federal tax purposes as separate corporations for purposes of Federal employment taxes and related reporting requirements. Specifically, certain other single-owner eligible entities (under §§ 301.7701-1 through 301.7701-3) that are disregarded as entities separate from their owners for other Federal tax purposes are treated as entities separate from their owners for Federal employment tax purposes. *See* § 301.7701-2(c)(2)(iv)(A) and (B).

Several commenters requested a provision treating wholly owned Tribal entities separately for employment tax purposes to ensure that such entities can assume direct responsibility without burdening the Tribes that own them. The final regulations adopt these comments and treat wholly owned tribal entities as separate from their Tribal owners for Federal employment tax purposes. As discussed above, this approach is consistent with the treatment of disregarded entities in § 301.7701-2(c)(2)(iv)(A) and (B), which generally are disregarded as separate from their owners for Federal tax purposes, but regarded as separate for Federal employment tax purposes. Further, this approach would generally not subject Tribes to liability for Federal employment taxes owed with respect to employees performing services for their wholly owned Tribal entities, a result that many commenters support. This approach also minimizes administrative burdens, particularly for inter-Tribal entities.

Other commenters expressly requested that FICA and FUTA tax benefits applicable to Tribes be applied to wholly owned Tribal entities. Another commenter suggested that the final regulations should confirm that wholly owned Tribal entities share their owner's Federal tax exemption benefits from certain Federal employment taxes and provide a wide range of hypothetical examples.

There are some Federal employment tax provisions that specifically apply to services performed in the employ of a Tribe. For example, an exception from FUTA taxes exists for service performed in the employ of a Tribe, or any instrumentality that is wholly owned by a Tribe. *See* section 3306(c)(7). Section 3306(u) provides that, for FUTA purposes, the term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (codified at 25 U.S.C. 5304(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe. 25 U.S.C 5304(e) provides that "Indian Tribe" means, inter alia, any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Accordingly, even though wholly owned Tribal entities are treated as separate from the Tribes for employment tax purposes, they remain eligible for the FUTA tax exception in section 3306(c)(7) because section 3306(u) makes it clear that for purposes of FUTA tax, the term "Indian Tribe" has the meaning given to such term by 25 U.S.C. 5304(e) and includes "any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe."

As an example, if a Tribe establishes a wholly owned Tribal entity, under the final regulations, it will generally be treated as a separate corporation for Federal employment tax purposes, but it will be treated as an Indian Tribe for purposes of the FUTA tax exception provided by section 3306(c)(7) because it is a subdivision, subsidiary, or business enterprise wholly owned by the Tribe as defined in section 3306(u).

II. *Elective Payment Elections*

The final regulations provide that wholly owned Tribal entities, section 17 corporations, and section 3 corporations are treated, for purposes of making section 6417 elections (including determining eligibility for and the consequences of such elections), as instrumentalities of the Indian Tribal government(s) that wholly own them. This is the same rule contained in proposed § 1.6417-1, which stated that an entity described in § 301.7701-1(a)(4)(i) is treated as an instrumentality of the Indian Tribal government(s) or subdivision(s) thereof that own(s) it.

Commenters generally supported the proposed rule treating wholly owned Tribal entities as instrumentalities of the Tribes that own them for purposes of the section 6417 elective payment election. Some commenters requested clarification on the application of the elective payment election rules when an applicable credit is generated by a wholly owned Tribal entity jointly owned by multiple Tribes. As a clarification, a wholly owned Tribal entity that is jointly owned by multiple Tribes would be treated as an instrumentality for purposes of section 6417. The wholly owned Tribal entity will determine any applicable credit generated by the Tribal entity's activities and make the elective payment election for any applicable credit so determined. This avoids each Tribe having to separately determine a credit and separately make an elective payment election. By following the procedural rules in the section 6417 final regulations, TD 9988 (89 FR 17584, March 11, 2024), the wholly owned Tribal entity generally will make the elective payment election by completing pre-filing registration and then filing a return including a completed Form 990-T, *Exempt Organization Business Income Tax Return,* as described in § 1.6417-1(b)(2), using its own name and employer identification number, any relevant source credit form(s), Form 3800, *General Business Credit* (or its successor), and any additional information, including supporting calculations, required in instructions to the relevant forms. Any refund resulting from the elective payment election would be paid to the wholly owned Tribal entity. This treatment should reduce overall complexity for Tribes and the IRS as it reduces the number of necessary credit calculations and elective payment elections and also helps ensure any elective payment amount is commen-

surate with the amount of the otherwise allowable credit.

Another commenter suggested that the proposed regulations be revised to allow Tribes the choice of having the Tribe or the wholly owned Tribal entity make the elective payment election because in some cases it may be impractical for the wholly owned Tribal entity to do so. The final regulations do not adopt this suggestion, consistent with the view of most commenters who supported the rule providing that the wholly owned Tribal entity that is treated as an instrumentality must make the election. There also are additional administrative benefits gained for both Tribes and the IRS by having certainty on how to file elective payment elections. For example, it will be clear that the wholly owned Tribal entity makes the elective payment election when an entity is wholly owned by multiple tribes. Thus, the final regulations provide that a wholly owned Tribal entity is treated as an instrumentality of an Indian Tribal government and such instrumentality (and not the Indian Tribal government) would make the elective payment election.

A commenter suggested that, rather than being treated as a payment of tax, the elective payment amount should be treated as a grant and paid prior to the time a project is placed in service. The statutory text of section 6417(a) expressly requires the entity making an elective payment election with respect to an applicable credit to be treated as making a payment of tax equal to the amount of such credit. Furthermore, the statutory text of section 6417(d)(4) controls the timing of an elective payment and provides that the payment is treated as being made by the applicable entity on the later of the due date for the return or the date the return is actually filed. As this comment could only be adopted if statutory revisions were made, these final regulations do not adopt the commenter's suggestions.

Several commenters recommended that Tribes be given the option to monetize credits through transferability under section 6418 of the Code, rather than only being able to make elective payment elections under section 6417. The commenters also suggested additional changes to the section 6418 rules if Tribes were allowed to make transfers. Tribal governments (and their instrumentalities, pursuant to §1.6417-1(c)(7)) are listed as applicable entities under section 6417(d)(1)(A)(iv) and section 6418(f)(2) expressly provides that an eligible taxpayer for section 6418 is any taxpayer not listed in section 6417(d)(1)(A). Thus, Tribal governments (and their instrumentalities) are only allowed to make elective payment elections under section 6417. As the comment requesting the option to use section 6418 and the other comments suggesting additional section 6418 changes would require statutory revisions, these final regulations do not adopt the commenters' suggestions.

Applicability Dates

The final regulations apply to taxable periods, or taxable years for purposes of section 6417, beginning on or after January 1, 2026. The final regulations provide that section 17 corporations, section 3 corporations, and wholly owned Tribal entities are treated as instrumentalities for purposes of making a section 6417 election, and as entities separate from their owners for the Federal employment and excise tax purposes identified in § 301.7701-2(c)(2)(iv) and (v). Accordingly, each such entity must have its own employer identification number (EIN) for these purposes. Each such entity must separately calculate, report, and pay all employment tax obligations identified in § 301.7701-2(c)(2)(iv) with respect to its employees under its own name and EIN for wages paid on or after January 1, 2026. With respect to taxable periods beginning on or after January 1, 2026, each such entity must separately report, calculate, and pay taxes for any purpose identified in § 301.7701-2(c)(2)(v) under its own name and EIN. To ensure that taxpayers have sufficient time to make any necessary changes to their systems in response to these final regulations, the final regulations apply only to taxable periods beginning on or after January 1, 2026.

For Federal income tax purposes only, an entity may choose to apply § 301.7701-1(a)(4) to taxable periods beginning before January 1, 2026, for which the applicable period of limitations is open.

For section 6417 purposes, an entity described in § 301.7701-1(a)(4)(i) may choose to apply § 1.6417-1(c)(7) and (f) to taxable years beginning before January 1, 2026, but only if the Indian Tribal government(s) that own the entity also apply § 1.6417-1(c)(7) and (f) consistently with such entity for all such taxable years.

Special Analyses

I. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This final rule would neither impose substantial, direct compliance costs on Indian Tribal governments nor preempt Tribal law within the meaning of the Executive order.

II. *Regulatory Planning and Review*

The Office of Management and Budget's Office of Information and Regulatory Analysis has determined that this regulation is not significant and is not subject to review under section 6(b) of Executive Order 12866. Therefore, a regulatory impact assessment is not required.

The Executive Order 14192 designation for this final rule is anticipated to be deregulatory.

III. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these regulations contain reporting and recordkeeping requirements. The recordkeeping requirements mentioned within these final regulations are considered general tax records under § 1.6001-1(e). These records are required for the IRS to validate that taxpayers have met the regulatory requirements and are entitled to make an elective payment election and to verify the Federal tax classification of entities described in these final regulations. For PRA purposes, general tax records are already approved by OMB under 1545-0047 for tax-exempt organizations and government entities.

These regulations also mention reporting requirements related to making elections under section 6417. These elections will be made by taxpayers on Forms 990-T, and credit calculations will be made on Form 3800 and supporting forms. These forms are approved under 1545-0047 for tax-exempt organizations and government entities.

IV. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary of the Treasury hereby certifies that the final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act. These final regulations would affect entities that are wholly owned by Tribes. Additionally, no added burden is created through these final regulations; rather, these final regulations would expand the definition of an eligible entity for section 6417 of the Code but does not expand the requirements for entities to make the elective payment election. Although data is not readily available about the number of small entities that are potentially affected by this rule, it is possible that a substantial number of small entities may be affected.

To the extent the entities described in these regulations make elections under section 6417, the Treasury Department and the IRS certify the final regulatory flexibility analysis undertaken in TD 9988 (89 FR 17584, March 11, 2024).

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this Treasury decision was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

V. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandate Reform Act of 1995 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 Indian Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments or by the private sector in excess of that threshold.

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (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. These final regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

VII. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

The Revenue Rulings and Revenue Procedure 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 *https://www.irs.gov*.

Drafting Information

The principal author of these final regulations is the Office of Associate Chief Counsel (Passthroughs, Trusts, and Estates). However, 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.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

* * * * *

Par. 2. Section 1.6417-1 is amended by:

1. Revising paragraph (c) introductory text;

2. Removing the semicolons from the end of paragraphs (c)(1)(ii) and (c)(2) through (5) and adding periods in their places;

3. Removing the language "; and" from the end of paragraph (c)(6) and adding a period in its place; and

4. Revising paragraphs (c)(7), (f), and (q).

The revisions read as follows:

§ 1.6417-1 Elective payment election of applicable credits.

* * * * *

(c) *Applicable entity.* The term *applicable entity* means any entity described in paragraphs (c)(1) through (7) of this section.
* * * * *

(7) An agency or instrumentality of any applicable entity described in paragraph (c)(1)(ii) or (c)(2) or (3) of this section. For purposes of making an elective payment election under section 6417 (including determining eligibility for and the consequences of such election), an entity described in § 301.7701-1(a)(4)(i) of this chapter is treated as an instrumentality of the Indian Tribal government(s) or subdivision(s) thereof that own(s) it.
* * * * *

(f) *Disregarded entity*. The term *disregarded entity* means an entity that is disregarded as, or not recognized as, an entity separate from its owner for Federal income tax purposes under § 301.7701-1(a)(3) or §§ 301.7701-2 and 301.7701-3 of this chapter. *See* paragraph (c)(7) of this section regarding entities described in § 301.7701-1(a)(4)(i) of this chapter.
* * * * *

(q) *Applicability dates*—(1) *In general*. Except as provided in paragraph (q)(2) of this section, this section applies to taxable years ending on or after March 11, 2024. For taxable years ending before March 11, 2024, taxpayers may choose to apply the rules of this section and §§ 1.6417-2 through 1.6417-4 and 1.6417-6, provided the taxpayers apply the rules in their entirety and in a consistent manner.

(2) *Paragraphs (c)(7) and (f) of this section*. Paragraphs (c)(7) and (f) of this section apply to taxable years beginning on or after January 1, 2026. For taxable years beginning before January 1, 2026, an entity described in § 301.7701-1(a)(4)(i) of this chapter may choose to apply paragraphs (c)(7) and (f) of this section, but only if the Indian Tribal government(s) that own the entity also apply paragraphs (c)(7) and (f) of this section consistently with such entity for all such taxable years. For the rules that apply to entities that do not choose to apply paragraphs (c)(7) and (f) of this section in accordance with the preceding sentence for taxable years beginning before January 1, 2026, see § 1.6417-1 as contained in 26 CFR part 1, revised April 1, 2025.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding an entry for § 301.7701-1(a)(4) in numerical order to read in part as follows:

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

Section 301.7701-1(a)(4) also issued under 26 U.S.C. 7701(a)(40).
* * * * *

Par. 4. Section 301.7701-1 is amended by:

1. Revising paragraph (a)(3);
2. Redesignating paragraph (a)(4) as paragraph (a)(5);
3. Adding a new paragraph (a)(4); and
4. Revising paragraph (f).

The revisions and addition read as follows:

§ 301.7701-1 Classification of organizations for federal tax purposes.

(a) * * *

(3) *Certain State and local law entities not recognized*. An entity formed under State or local law is not always recognized as a separate entity for Federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for Federal tax purposes if it is an integral part of the State.

(4) *Certain Tribal entities*—(i) *In general*—(A) *Rule*. Except as provided in paragraphs (a)(4)(ii) and (iii) of this section, section 17 corporations, section 3 corporations, and wholly owned Tribal entities (as defined, respectively, in paragraphs (a)(4)(i)(B) through (D) of this section) are not recognized as separate entities for Federal tax purposes and, therefore, are not subject to Federal income tax.

(B) *Definition of section 17 corporation*. The term *section 17 corporation* means a federally chartered corporation incorporated under section 17 of the Indian Reorganization Act of 1934, as amended (25 U.S.C. 5124), by the Bureau of Indian Affairs, as the authorized delegate of the Secretary of the Interior.

(C) *Definition of section 3 corporation*. The term *section 3 corporation* means a federally chartered corporation incorporated under section 3 of the Oklahoma Indian Welfare Act, as amended (25 U.S.C. 5203), by the Bureau of Indian Affairs, as the authorized delegate of the Secretary of the Interior.

(D) *Definition of wholly owned Tribal entity.* The term *wholly owned Tribal entity* means an entity wholly owned by one or more Indian Tribal governments (within the meaning of section 7701(a)(40) of the Code), directly or through other entities that are not recognized as separate entities for Federal income tax purposes, that is organized or incorporated exclusively under the laws of one or more of the owning Indian Tribal governments. Whether an entity is organized or incorporated under the laws of one or more Indian Tribal government(s) is determined without regard to any specified choice of law or forum.

(ii) *Elections under section 6417*. *See* § 1.6417-1(c)(7) of this chapter for the treatment of section 17 corporations, section 3 corporations, and wholly owned Tribal entities described in paragraph (a)(4)(i) of this section for the purposes of making an elective payment election under section 6417 of the Code (section 6417 election), including determining eligibility for and the consequences of such election.

(iii) *Federal employment taxes and excise taxes.* Section 17 corporations, section 3 corporations, and wholly owned Tribal entities are treated as separate entities for Federal employment and certain Federal excise tax purposes in a manner identical to the treatment described in § 301.7701-2(c)(2)(iv) and (v).

(iv) *Examples*. The following examples illustrate the application of paragraphs (a)(4)(i) through (iii) of this section. For purposes of these examples, all references to a Tribe are references to an Indian Tribal government within the meaning of section 7701(a)(40).

(A) *Example 1.* Tribe B incorporates Corporation X pursuant to Tribe B's Corporations Ordinance, which governs the purpose, formation, and operation of commercial entities. Tribe B owns all the shares of Corporation X. Corporation X is therefore wholly owned by Tribe B and organized or incorporated under the laws of Tribe B. As a result, Corporation X is not recognized as a separate entity from Tribe B for Federal tax purposes, except for the purposes described in § 1.6417-1(c)(7) of this chapter and paragraph (a)(4)(iii) of this section. Accordingly, Corporation X is not subject to Federal income tax. Under § 1.6417-1(c)(7) of this chapter, Corporation X is treated as an

instrumentality of Tribe B for purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation X, rather than Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit (as defined in section 6417(b)) relating to property held or activities conducted by Corporation X. Corporation X is treated as a corporation separate from its owner for Federal employment tax purposes governed under subtitle C of the Internal Revenue Code, and as separate from its owner for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v)(A). The analysis would be the same if Tribe B had organized its business as a single member limited liability company (LLC) pursuant to the Tribe's business code instead of incorporating Corporation X.

(B) *Example 2*. The facts are the same as in paragraph (a)(4)(iv)(A) of this section (*Example 1*), except that the board of Corporation X, pursuant to Tribe B's Corporations Ordinance, organizes a subsidiary, Corporation Z, to pursue a limited line of new business. Corporation X owns all the shares of Corporation Z. Corporation Z is therefore wholly owned by Tribe B and organized or incorporated under the laws of Tribe B. As a result, neither Corporation X nor Corporation Z is recognized as an entity separate from Tribe B for Federal tax purposes, except for the purposes described in § 1.6417-1(c)(7) of this chapter and paragraph (a)(4)(iii) of this section. Accordingly, Corporation Z is not subject to Federal income tax. Under § 1.6417-1(c)(7) of this chapter, Corporation X and Corporation Z are each treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation Z, rather than Corporation X or Tribe B, is the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation Z. As in paragraph (a)(4)(iv)(A) of this section (*Example 1*), Corporation X would continue to be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation X. Both Corporation X and Corporation Z are treated as corporations separate from their owner for Federal employment tax purposes governed under subtitle C of the Internal Revenue Code, and as separate from their owner for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v)(A). The analysis would be the same if Tribe B had organized its businesses as single member LLCs pursuant to the Tribe's business code instead of incorporating Corporations X and Z.

(C) *Example 3*. Tribe B incorporates a section 17 corporation. The section 17 corporation subsequently incorporates Corporation J pursuant to Tribe B's Corporations Ordinance, which governs the purpose, formation, and operation of commercial entities. The section 17 corporation owns all the shares of Corporation J. Corporation J is therefore treated as wholly owned by Tribe B and organized or incorporated under the laws of Tribe B. As a result, Corporation J is not recognized as a separate entity from Tribe B for Federal tax purposes, except for the purposes described in § 1.6417-1(c)(7) of this chapter and paragraph (a)(4)(iii) of this section. Accordingly, neither the section 17 corporation nor Corporation J is subject to Federal income tax. Under § 1.6417-1(c)(7) of this chapter, the section 17 corporation and Corporation J are each treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, the section 17 corporation, rather than Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by the section 17 corporation. In addition, Corporation J, rather than Tribe B or the section 17 corporation, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation J. Both the section 17 corporation and Corporation J are treated as corporations separate from their owner for Federal employment tax purposes governed under subtitle C of the Internal Revenue Code, and as separate from their owner for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v)(A). The analysis would be the same if the section 17 corporation had organized its business as a single member LLC pursuant to the Tribe's business code instead of incorporating Corporation J.

(D) *Example 4*. Tribe A, Tribe B, Tribe C, and Tribe D through resolutions approved by their respective Indian Tribal governments incorporate Corporation K which is chartered under the Corporations Ordinance of Tribe A. Each Tribe owns 25% of the shares of Corporation K. Corporation K is incorporated under the laws of one of its owners, Tribe A. As a result, Corporation K is a wholly owned Tribal entity and is not recognized as a separate entity from the Tribes for Federal tax purposes, except for the purposes described in § 1.6417-1(c)(7) of this chapter and paragraph (a)(4)(iii) of this section. Accordingly, Corporation K is not subject to Federal income tax. Under § 1.6417-1(c)(7) of this chapter, Corporation K is treated as an instrumentality of Tribe A, Tribe B, Tribe C, and Tribe D for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporation K, rather than Tribe A, Tribe B, Tribe C, or Tribe D, would be the applicable entity for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporation K. Corporation K is treated as a corporation separate from its owners for Federal employment tax purposes governed under subtitle C of the Internal Revenue Code, and as separate from its owners for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v)(A). The analysis would be the same if Tribe A, Tribe B, Tribe C, and Tribe D had organized their business as an LLC pursuant to Tribe A's business code instead of incorporating Corporation K.

(E) *Example 5*. Tribe A incorporates Corporation L pursuant to Tribe A's Corporations Ordinance, which governs the purpose, formation, and operation of commercial entities. Corporation L subsequently incorporates Corporation M pursuant to Tribe A's Corporations Ordinance. Tribe A owns all the shares of Corporation L, and Corporation L owns all the shares of Corporation M. Corporations L and M are therefore wholly owned by Tribe A and organized or incorporated under the laws of Tribe A. In a later year, Tribe B, in agreement with Tribe A, acquires some, but not all, shares of Corporation M. Corporations L and M continue to be considered as wholly owned by Indian Tribal governments and were incorporated under the laws of an Indian Tribal government that owns them. As a result, neither Corporation L nor Corporation M is recognized as a separate entity from the Tribes that own them for Federal tax purposes, except for the purposes described in § 1.6417-1(c)(7) of this chapter and paragraph (a)(4)(iii) of this section. Accordingly, Corporations L and M are not subject to Federal income tax. Under § 1.6417-1(c)(7) of this chapter, Corporation L is treated as an instrumentality of Tribe A, and Corporation M is treated as an instrumentality of Tribe A and Tribe B, for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Corporations L and M, rather than Tribe A or Tribe B, would be the applicable entities for purposes of making a section 6417 election for any applicable credit relating to property held or activities conducted by Corporations L and M, respectively. Both Corporation L and Corporation M are treated as corporations separate from their owners for Federal employment tax purposes governed under subtitle C of the Internal Revenue Code, and as separate from their owners for the Federal excise tax purposes identified in § 301.7701-2(c)(2)(v)(A). The analysis would be the same if Tribe A had organized its businesses as LLCs pursuant to Tribe A's business code instead of incorporating Corporations L and M, and had Tribe B acquired a membership interest instead of stock.

* * * * *

(f) *Applicability dates*—(1) *In general*. Except as provided in paragraph (f)(2) of this section, the rules of this section are applicable as of January 1, 1997.

(2) *Exceptions*—(i) *Paragraph (a)(4) of this section*. The rules of paragraph (a)(4) of this section apply to taxable periods beginning on or after January 1, 2026. An entity may choose to apply paragraph (a)(4) of this section to taxable periods beginning before January 1, 2026, for which the applicable period of limitations is open.

(ii) *Paragraph (c) of this section.* The rules of paragraph (c) of this section are applicable on January 5, 2009.

Frank J. Bisignano,
Chief Executive Officer.

Approved: November 12, 2025.

Kenneth J. Kies,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register December 15, 2025, 8:45 a.m., and published in the issue of the Federal Register for December 16, 2025, 90 FR 58151)

T.D. 10040

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Tribal General Welfare Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations regarding the exclusion from gross income of certain Tribal general welfare benefits. The regulations address the requirements that apply to determine whether the benefits an Indian Tribal government program provides qualify as Tribal general welfare benefits. These regulations affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants.

DATES: *Effective date*: These final regulations are effective on December 16, 2025.

Applicability date: These final regulations apply for taxable years beginning after December 16, 2025.

FOR FURTHER INFORMATION CONTACT: Jonathan A. Dunlap at (202) 317-4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 139E and 7872 of the Internal Revenue Code (Code).

Section 139E(c)(3) provides an express delegation of authority for the Secretary of the Treasury or the Secretary's delegate (Secretary), "in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2014), [to] establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs."

The regulations are also issued under the express delegations of authority under sections 7805(a) and 7872(i) of the Code. Section 7805(a) authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue." Section 7872(i) authorizes the Secretary to "prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including…regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower."

Background

I. *The Tribal General Welfare Exclusion Act of 2014*

The Tribal General Welfare Exclusion Act of 2014 (Act), Public Law 113-168, 128 Stat. 1883 (2014), as enacted on September 26, 2014, among other things, amended the Code by adding section 139E. Under section 139E, gross income of an individual does not include the value of any "Indian general welfare benefit." Section 139E(b) defines an Indian general welfare benefit as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program, but only if: (1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe, and (2) the benefits provided under such program are (A) are available to any Tribal member who meets such guidelines, (B) for the promotion of general welfare, (C) not lavish or extravagant, and (D) not compensation for services. Further, section 139E(c)(5) provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture "shall not be treated as compensation for services" for purposes of section 139E. This preamble and the final regulations refer to an Indian general welfare benefit as a "Tribal General Welfare Benefit."

Section 2(c) of the Act provides that ambiguities in section 139E are to be resolved in favor of Indian Tribal governments. Section 2(c) of the Act also requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

Section 2(d)(1) of the Act provides that section 139E applies to taxable years for which the period of limitation on refund or credit under section 6511 of the Code has not expired. Section 2(d)(2) of the Act provides that if the period of limitation on a credit or refund resulting from the enactment of section 139E expires before the end of the 1-year period beginning on the date of the enactment of the Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

Section 3 of the Act requires the Secretary of the Treasury to establish a Tribal Advisory Committee. The Department of the Treasury Tribal Advisory Committee (TTAC) held its inaugural meeting on June 20, 2019. Under section 3(b) of the Act, the TTAC's mandate is to advise the Secretary of the Treasury on matters relating to the taxation of Indians, and the Secretary of the Treasury is required to consult with the TTAC to establish and require training and education for internal revenue field agents who administer and enforce internal revenue laws. This includes (A) training and education with respect to Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made by the Act.

Section 4(a) of the Act requires the Secretary of the Treasury to temporarily suspend "all audits and examinations of Indian tribal governments and members of Tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian tribal government under the general welfare exclusion" until the training and education previously described is completed. Section 4(a) further provides that the running of the period of limitation under section 6501 of the Code with respect to Indian Tribal governments and members of Indian Tribes is suspended during the period in which such audits and examinations are suspended.

II. *Prior Guidance*

Revenue Procedure 2014-35 (2014-26 I.R.B. 1110), which was issued before section 139E was enacted, provided safe harbors under which the IRS conclusively presumed the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal government programs that meet the safe harbor requirements. In addition, the revenue procedure provided that the IRS will not assert that recipients of benefits under a safe harbor must include the value of those benefits in gross income or that the benefits are subject to the information reporting requirements of section 6041 of the Code.

Following the enactment of section 139E, the Department of Treasury (Treasury Department) and the IRS published Notice 2015-34 (2015-18 I.R.B. 942), providing guidance to taxpayers regarding the effect of section 139E on Revenue Procedure 2014-35. Notice 2015-34 provides that taxpayers can rely on Revenue Procedure 2014-35 for the safe harbors under which certain benefits provided by Indian Tribal government programs may be excluded from gross income under the administrative general welfare exclusion. Additionally, Notice 2015-34 requested comments on issues that future guidance might address regarding the implementation of section 139E and other parts of the Act.

On June 16, 2021, the TTAC's General Welfare Exclusion Subcommittee (TTAC GWE Subcommittee) submitted to the TTAC a report (TTAC Report) containing the TTAC GWE Subcommittee's interpretation of the core principles underlying section 139E, and an Appendix containing draft proposed regulations interpreting section 139E (TTAC draft proposed regulations), consistent with those core principles. On October 26, 2022, the TTAC formally recommended and approved the TTAC Report to be submitted for the record and published for Tribal comment.

The Treasury Department sent a Tribal consultation letter, dated October 27, 2022 (2022 Dear Tribal Leader Letter), to Tribal leaders to request consultation on the Act and the TTAC Report. The 2022 Dear Tribal Leader Letter announced consultation meetings to be held on December 14, 15, and 16, 2022 (December 2022 Consultations), to discuss the Act and the TTAC Report. In response to the 2022 Dear Tribal Leader Letter, and after the December 2022 Consultations, the Treasury Department received 65 written comments from Tribes and two Tribal organizations (collectively, 2022 Tribal Comments).

On September 17, 2024, following extensive consultation with TTAC, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-106851-21) in the ***Federal Register*** (89 FR 75990) under section 139E (proposed regulations). The proposed regulations reflect consideration of the TTAC Report, December 2022 Consultations, 2022 Tribal Comments, and consultation with the TTAC and the TTAC GWE Subcommittee.

The Treasury Department sent a Tribal consultation letter, dated September 13, 2024 (2024 Dear Tribal Leader Letter), to Tribal leaders to request consultation on the proposed regulations. The 2024 Dear Tribal Leader Letter announced consultation meetings to be held on November 18, 19, and 20, 2024 (November 2024 Consultations), to discuss the proposed regulations. In response to the 2024 Dear Tribal Leader Letter and after the November 2024 Consultations, the Treasury Department received 103 written comments from Tribes and Tribal organizations (collectively, 2024 Tribal Comments).

A public hearing on the proposed regulations was held on January 13, 2025, at which five speakers provided testimony. The Treasury Department and the IRS received 41 public comments in response to the notice of proposed rulemaking. Copies of the comments are available for public inspection at *http://www.regulations.gov* or upon request.

After considering all of the public comments, 2024 Tribal Comments, speaker outlines, and testimony (collectively, comments) received in response to the proposed regulations, and extensive consultation with the TTAC GWE Subcommittee, the Treasury Department and the IRS adopt the proposed regulations, as revised in response to such comments, as final regulations. The comments and the revisions are discussed in the following Summary of Comments and Explanation of Revisions section of this preamble.

The Treasury Department and the IRS emphasize that the scope of tribal general welfare under section 139E and these regulations is broader than the scope of general welfare under the administrative general welfare doctrine, which is generally limited to governmental programs providing benefits based on need. This broader scope is due both to specific language in section 139E itself, such as the language in section 139E(c)(5) providing that certain benefits for participating in certain cultural or ceremonial activities shall not be treated as compensation, and to the language in section 2(c) of the Act providing that ambiguities in the Act are to be resolved in favor of Indian Tribal governments and that deference must be given to Indian Tribal governments with respect to the programs they determine are to benefit the general welfare of the tribal community. Accordingly, section 139E and these final regulations do not provide any basis for analyzing the applicability of the administrative general welfare doctrine to any benefit.

Summary of Comments and Explanation of Revisions

I. *Overview*

This Summary of Comments and Explanation of Revisions summarizes the formal written public comments submitted in response to the proposed regulations; comments made at the public hearing announced in the preamble to the

proposed regulations and held on January 13, 2025; written Tribal comments provided in connection with Treasury Tribal consultations; and comments made in connection with the TTAC GWE Subcommittee consultations addressing the proposed regulations. Comments merely summarizing or interpreting the proposed regulations generally are not discussed in this preamble.

Most of the commenters expressed general approval of the proposed regulations and support for the deference provided for Tribal sovereignty; Tribal self-determination; Tribal self-governance; and the diverse traditions, governance structures, cultures, geographies, and economic conditions of Tribal Nations and their citizens. Several commenters appreciated the clarity provided in the proposed regulations, noting that the lack of guidance on this topic has hampered Tribal general welfare programs and that the regulations will enable Tribes to review and update existing Tribal general welfare programs to meet the requirements of section 139E. One commenter underscored the importance of excluding benefit amounts for housing and education, which are designed to address the negative impacts of prior policies, from tax.

A few commenters expressed opposition to all Federal taxation of Tribes; opposition to what a commenter describes as the proposed regulations' "racist, paternalistic, ethnocentric, contrary to international law, and contrary to self-determination" character and the proposed regulations' purported failure to put Tribal general welfare issues under the sole jurisdiction of Tribes; opposition to purported interference with Congressional intent regarding the taxation, self-determination, and self-governance of Tribes; opposition to changes to current regulations; and opposition to the placement of arbitrary barriers on Tribal general welfare.

The Treasury Department and the IRS have engaged in extensive consultation with the TTAC and Tribal leaders, prior to and following the issuance of the proposed regulations. The Treasury Department and the IRS have worked to address all concerns expressed in public comments and consultation to the extent permitted by the Act and section 139E. The comments received are addressed in more detail in parts II through X of this Summary of Comments and Explanation of Revisions.

Many commenters supported the deference provided to Indian Tribal governments in the proposed regulations and the acknowledgment that Tribal governments are best positioned to define, establish, and administer general welfare programs for their citizens, particularly with regard to Tribal determinations of the promotion of the general welfare and the identification of activities as having cultural significance. These commenters further appreciated that this approach recognizes the Indian Tribal governments' inherent sovereignty, right to self-determination, and right to self-governance.

A few commenters referred to section 2(c) of the Act as evincing Congressional intent for deference to be given to Indian Tribal governments in the design and implementation of their general welfare programs without undue interference from the Federal government. Some commenters recommended that section 2(c) of the Act be specifically included in the final regulations because it is a key foundation of the Act and would be important to understanding section 139E and the regulations in the future.

The Treasury Department and the IRS agree with commenters that section 2(c) of the Act is central to the interpretation of section 139E and that ambiguities in section 139E must be resolved in favor of Indian Tribal governments and deference to Indian Tribal governments must be provided for the programs that are administered and authorized by the Tribe to benefit the general welfare of the Tribal community. The Treasury Department and the IRS applied section 2(c) of the Act when drafting these regulations in a manner that provides deference to Indian Tribal governments and interprets ambiguities in section 139E in favor of the Indian Tribal governments. Notwithstanding that section 2(c) of the Act supplied these central principles that were used when drafting these final regulations, the Treasury Department and the IRS agree with commenters that it is helpful to include the language from section 2(c) of the Act in new §1.139E-1(f) and remaining paragraphs are renumbered accordingly. Section 1.139E-1(f) thus ensures the Congressional intent of deference to Tribes for programs administered and authorized under the Act is preserved when interpreting section 139E.

II. *Section 139E Definitions*

A. *Definition of Indian Tribal Government*

Under section 7701(a)(40)(A) of the Code, the term "Indian Tribal government" when used in the Code and "where not otherwise distinctly expressed or manifestly incompatible with the intent thereof,"[1] means "the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions." Section 7701(a)(40)(B) further provides that "[n]o determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871 [of the Code]. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people."

Section 139E(c)(1) of the Code expressly provides a broader meaning of the term "Indian Tribal government" for purposes of section 139E. The broader meaning is arrived at by adding two additional sets of entities to the Code's general definition of "Indian Tribal government." The first set of additional entities includes "any agencies or instrumentalities of an Indian Tribal government." The second set of additional entities includes "any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)." An entity described in this second set of

[1] Per the flush language of section 7701(a), each definition provided therein is generally applicable under provisions of the Code "where not otherwise distinctly expressed or manifestly incompatible with the intent thereof."

additional entities is referred to in this preamble as an "Alaska Native regional or village corporation."

Proposed §1.139E-1(b)(4) addressed only the first set of entities included in the definition of Indian Tribal government in section 139E(c)(1) and clarified that for purposes of proposed §1.139E-1, the term "Indian Tribal Government" has the meaning provided in section 7701(a)(40) of the Code, and, as provided in section 139E(c)(1), also includes agencies and instrumentalities of such Indian Tribal governments. The proposed regulations did not address Alaska Native regional or village corporations in the definition of Indian Tribal government for purposes of the rules in §1.139E-1. Instead, the proposed regulations reserved proposed §1.139E-2 for future rules to clarify the application of section 139E to benefits provided by Alaska Native regional or village corporations.

While one commenter expressed support for the application of the proposed regulations to "Alaska Native Americans," several commenters objected to the omission of Alaska Native regional or village corporations from the definition of Indian Tribal government and from consultation prior to the issuance of the proposed regulations. These commenters argued that Alaska Native regional or village corporations should have been included in the definition in proposed §1.139E-1 and invited to participate in the Tribal consultation, and that their omission is contrary to Congressional intent, the statutory language of section 139E, the holding in *Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. 338 (2021), the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, 88 Stat. 2203 (1975), and Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 9, 2000).

These commenters expressed concern that the omission of Alaska Native regional or village corporations from this definition may suggest section 139E is not applicable to Alaska Native regional or village corporations, with one commenter suggesting shareholders of Alaska Native regional or village corporations who are not otherwise members of Tribes could be disproportionately impacted.

One commenter requested consultation with Alaska Native regional or village corporations be held immediately and that the Treasury Department and the IRS publish a proposed regulation under §1.139E-2 with notice and comment on such regulation prior to issuing final regulations under §1.139E-1.

The Treasury Department and the IRS understand the concerns raised by these comments and agree with commenters that section 139E(c)(1) includes Alaska Native regional or village corporations in the definition of Indian Tribal government for purposes of section 139E. The omission of Alaska Native regional or village corporations from the definition of Indian Tribal government in proposed §1.139E-1 was never intended to suggest Indian general welfare benefits cannot be provided by an Alaska Native regional or village corporation to or on behalf of its members (or any spouse or dependent of such members). Thus, the Treasury Department and the IRS agree that section 139E permits Alaska Native regional or village corporations to provide Indian general welfare benefits, and that other provisions of the Act also apply to Alaska Native regional or village corporations.

The Treasury Department and the IRS therefore held consultation with Alaska Native regional or village corporations on section 139E on July 29, 2025. The feedback received during this consultation will help the Treasury Department and the IRS determine what customizations of the rules in §1.139E-1 may be useful in promulgating regulations under §1.139E-2 that will apply specifically to Alaska Native regional or village corporations and make more clear their ability to provide benefits under section 139E. As part of this consultation, the Treasury Department and the IRS asked questions of Alaska Native regional or village corporations, the answers to which will inform the drafting of regulations tailored to the needs of Alaska Native regional or village corporations to implement section 139E more effectively. The Treasury Department and the IRS expect the process of promulgating additional final regulations under §1.139E-2 will be similar to the process used to promulgate §1.139E-1 applicable to Federally recognized Tribes.

Accordingly, these final regulations under §1.139E-1 do not include Alaska Native regional or village corporations in the definition of Indian Tribal government found in §1.139E-1(b)(4). However, *see* part X.B. of this Summary of Comments and Explanation of Revisions for a discussion of the consultation and the ability of Alaska Native regional or village corporations to choose to apply the rules of §1.139E-1 as included in this Treasury decision pending the promulgation of additional regulations under §1.139E-2.

B. *Definition of Tribe*

Proposed §1.139E-1(b)(7) would define "Tribe" as any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Alaska Native regional or village corporations are excluded from this definition of Tribe.

Two commenters requested Alaska Native regional or village corporations be included in the definition of Tribe in §1.139E-1(b)(7) of the final regulations.

The Treasury Department and the IRS decline to modify the definition of Tribe in §1.139E-1(b)(7) of these final regulations because subsequent guidance promulgated at §1.139E-2 will specifically address the application of the requirements of section 139E to Alaska Native regional or village corporations. The Treasury Department and the IRS acknowledge that Alaska Native regional or village corporations can have programs that qualify to provide general welfare benefits that are excludible from gross income under section 139E. However, the Treasury Department and the IRS intend to issue future guidance specific to the unique circumstances of Alaska Native regional or village corporations. *See*, however, part X.B. of this Summary of Comments and Explanation of Revisions for further discussion of the consultation with Alaska Native regional or village corporations and the ability of an Alaska Native regional or village corporation to choose to apply the rules of §1.139E-1 as included in this Treasury decision pending the promulga-

tion of additional final regulations under §1.139E-2.

C. *Definition of Tribal Program Participant*

1. In General

Proposed §1.139E-1(b)(8) would provide that the term "Tribal program participant" means a Tribal member, spouse of a Tribal member within the meaning of §301.7701-18 of the Procedure and Administration Regulations (26 CFR part 301), spouse of a Tribal member under applicable Tribal law, dependent of a Tribal member, or other individual who has been determined by the Indian Tribal government to be eligible for a Tribal general welfare benefit because such individual is, with respect to a Tribal member, an ancestor, descendant, former spouse, widow or widower, legally recognized domestic partner or former domestic partner.

Most commenters supported the breadth of, and deference provided by, the definition of Tribal program participant in proposed §1.139E-1(b)(8) and supported the use of Tribal law to determine eligible program participants. Some commenters requested that Indian Tribal government programs be able to cover additional categories of recipients, including unenrolled individuals in the community; step-parents, custodians, guardians, and foster parents of an Indian child; and other members of the same household. Commenters broadly requested Tribes be able to define the categories listed in the Tribal program participant definition in the proposed regulations.

The Treasury Department and the IRS generally decline to expand the definition of Tribal program participant in these final regulations to individuals that are unenrolled members of the Tribal community. These individuals are neither members of an Indian Tribe (or any spouse or dependent of such a member) as described under section 139E(b), nor "qualified nonmembers" under Revenue Procedure 2014-35. The Treasury Department and the IRS have determined the statutory language and legislative history generally do not support an extension of section 139E beyond the individuals provided in the definition of Tribal program participant under proposed §1.139E-1(b)(8).

However, the Treasury Department and the IRS have determined the definition of Tribal program participant should be clarified to include an individual for whom a Tribal member is a caregiver authorized under Tribal or State law. The Treasury Department and the IRS understand a Tribal member may be legally authorized or required to be a caregiver for an individual even though such individual is not otherwise eligible to receive payments under the Indian Tribal government program. This definitional change from the proposed regulations is a clarification of the deference given to Indian Tribal government programs to determine whether providing benefits to a Tribal member to care for such individuals is for the promotion of general welfare.

2. Special rule for Ceremonial or Cultural Activities

Proposed §1.139E-1(b)(8)(ii) would provide that, solely for purposes of proposed §1.139E-1(e), the definition of Tribal program participant may include a member or citizen of a Tribe other than the Tribe that establishes or maintains the Indian Tribal government program that provides the Tribal general welfare benefit.

One commenter recommended that proposed §1.139E-1(b)(8)(ii) should be revised to include benefits provided by an Indian Tribal government program, according to the custom of certain Tribes, to the spouse of a member or citizen of a different Tribe. Other commenters requested that final §1.139E-1(b)(8)(ii) apply to indigenous people from outside the United States, including Canada, Mexico, and South America, if these individuals participate in a Tribe's ceremonial and cultural activities for the transmission of Tribal culture.

Accordingly, §1.139E-1(b)(8)(ii) of these final regulations provides that, solely for purposes of §1.139E-1(e), relating to cultural or ceremonial activities, the definition of "Tribal program participant" includes, in addition to a member or citizen of a different Tribe, other individuals described in §1.139E-1(b)(8)(i). For purposes of this addition, in applying paragraph §1.139E-1(b)(8)(i), such member or citizen of another Tribe will be treated as a Tribal Member. The Treasury Department and the IRS understand that a member or citizen of another Tribe, the spouse and certain other family members of the member or citizen of another Tribe, may also participate in another Tribe's cultural or ceremonial activities. As such, these final regulations broaden the special rule of §1.139E-1(b)(8)(ii), which continues to apply solely for purposes of §1.139E-1(e).

However, the Treasury Department and the IRS have determined that the benefits that section 139E refers to are those provided to or on behalf of members of a Tribe (or any spouse or dependent of such a member). "Tribe" is defined by reference to section 45A(c)(6) of the Code, which generally refers to Federally recognized Tribes. Accordingly, §1.139E-1(b)(8)(ii) of these final regulations does not expand the reference to members or citizens of a different Tribe to include members or citizens of non-Federally recognized Tribes whether located in or outside of the United States.

D. *Definition of Dependent*

Proposed §1.139E-1(b)(10) would define the term "dependent" in accordance with section 139E(c)(2). However, for ease of readability, the proposed regulations would not cite the specific Code sections but instead would describe the rules for determining who is a dependent under section 152(a) of the Code without regard to section 152(b)(1), (b)(2), and (d)(1)(B).

Several commenters recommended that Tribes should be given broad deference, or "sole discretion," to define the term dependent under Tribal law for purposes of section 139E and the final regulations, or otherwise provide a presumption that the Indian Tribal government's definition of dependent is valid. These commenters highlighted that dependent may be defined differently under the law of each Indian Tribal government, or that a Tribe may lack sufficient information to determine whether a general welfare program recipient, including a non-member child, is eligible for benefits under section 139E and the proposed regulations.

The Treasury Department and the IRS decline to change the definition of depen-

dent in these final regulations, as this term is expressly defined in section 139E(c)(2). The statute unambiguously defines dependent, as provided in section 152 as modified by section 139E(c)(2). However, these final regulations clarify that for purposes of section 139E the term dependent has the meaning provided in section 152 determined without regard to section 152(b)(1), (b)(2), and (d)(1)(B).

III. *Indian Tribal Government Program*

Proposed §1.139E-1(c) would provide certain requirements that a program must meet to constitute an "Indian Tribal government program" for purposes of section 139E and the proposed regulations. These requirements are: (1) the program must be established by an Indian Tribal government, (2) the program must be administered under specified guidelines, and (3) the program cannot discriminate in favor of members of the governing body. Each requirement is discussed in more detail in this part III.

A. *Program Must be Established*

Proposed §1.139E-1(c)(2) would provide that a program must be established by an Indian Tribal government. The program may be established by Tribal custom, government practice, or formal action of the Indian Tribal government under applicable Tribal law. The proposed regulations also would provide that, to the extent permitted by applicable Tribal law, an Indian Tribal government may delegate authority to establish general welfare programs to a designated individual or entity of the Indian Tribal government. Moreover, the proposed regulations would provide that an Indian Tribal government is not required to set forth the program in a written document unless applicable Tribal law requires a writing as part of the formal actions of the Indian Tribal government.

Many commenters approved of the flexible program documentation requirements, noting that this flexibility reflects respect for the diverse traditions and governance structures of Tribal nations by allowing programs to be established through Tribal customs, practices, or formal written policies. These commenters noted that such respect is essential to meaningful self-determination. However, one commenter recommended that the final regulations include guidance on what documentation is necessary for programs established before the documentation standards provided in the proposed regulations, and recommended that Indian Tribal governments be permitted to affirm or establish multiple existing programs with a single, blanket action. The commenter also requested the final regulations recognize Tribal laws that provide a less formal path to establish programs.

The Treasury Department and the IRS have determined that no modifications are needed in these final regulations to the text used in proposed §1.139E-1(c)(2). Section 139E(c)(4) and §1.139E-1(c)(2) allow a program to be established by Tribal custom or government practice, and defer to Tribal law to determine what formal action, if any, of the Indian Tribal government is necessary to establish a program. Section 1.139E-1(c)(2) provides deference to the Indian Tribal government to determine whether a program is to be established by Tribal custom or government practice, or by formal action of the Indian Tribal government. Thus, in general, the Treasury Department and the IRS would respect an Indian Tribal government's action of affirming or establishing multiple existing programs with a single formal action as satisfying §1.139E-1(c)(2) if such action is permitted by Tribal law.

The Treasury Department and the IRS also decline to depart from the language of the proposed regulation to provide examples of less formal ways that may be used to establish a program because §1.139E-1(c)(2) already provides that "formal action" means authorization of the program pursuant to Tribal law. The Treasury Department and the IRS intend that §1.139E-1(c)(2) provides deference to the Indian Tribal government, subject to the application of its Tribal laws, to determine the process required to establish programs.

B. *Program Must be Administered Under Specified Guidelines*

Proposed §1.139E-1(c)(3) would provide the requirements for the administration of the program under specified guidelines. In general, the specified guidelines of the program represent the framework for the program's operations. Under proposed §1.139E-1(c)(3), the specified guidelines of the program must include, at a minimum, a description of the program to provide Tribal general welfare benefits, the benefits provided by the program (including how the benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program. While Indian Tribal governments may choose to set forth the specified guidelines in writing, an Indian Tribal government program is not required to memorialize the specified guidelines in a writing.

Many commenters approved of the flexibility in the proposed regulations to develop program guidelines, which is essential to meaningful self-determination, and recommended that the final regulations not add additional requirements that could negatively impact the deference to Tribes and the recognition of their varied and unique governance structures. To that end, one commenter recommended that the final regulations provide that Indian Tribal governments have the sole discretion to determine the form and content of specified guidelines, consistent with Tribal law.

Section 139E(b)(1) provides that an Indian Tribal government program must be administered under specified guidelines. However, the Treasury Department and the IRS acknowledge that Indian Tribal governments are entitled to deference for the programs they establish and administer. Proposed §1.139E-1(c)(3) would also provide that in addition to the minimum details described above, the Indian Tribal government may provide additional details in the program's specified guidelines and choose to memorialize this information in a writing. However, proposed §1.139E-1(c)(3) would not require the specified guidelines to be in writing.

Several commenters requested clarification or removal of one of the minimum requirements for specified guidelines in proposed §1.139E-1(c)(3). Specifically, these commenters considered the parenthetical phrase, "(including how benefits are determined)," to be ambiguous. The commenters suggested the phrase is

either redundant with the requirement for a description of the "eligibility requirements," or alternatively requires an Indian Tribal government to provide detailed justification of any benefits provided, contrary to the general deference provided to Indian Tribal governments in the proposed regulations.

The parenthetical phrase in proposed §1.139E-1(c)(3), "(including how benefits are determined)," was intended by the Treasury Department and the IRS to require the specified guidelines of a program to include information as to how the type of benefit provided under the program would promote the Indian Tribal government's general welfare goal. The Treasury Department and the IRS acknowledge many commenters found the language to be unclear and have determined that the language is unnecessary because its intent is adequately addressed by the other specified guidelines. Thus, §1.139E-1(c)(3) of the final regulations states in relevant part that the "specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the eligibility requirements for the program, a description of the type of benefits authorized by the program, and the process for receiving benefits under the program."

One commenter expressed further concern that proposed §1.139E-1(c)(3) is ambiguous in its application or applicability to programs created prior to the issuance of proposed or final regulations under section 139E, or programs for which the requirements are set forth in several documents or actions, as may be required to meet the acute needs of the community.

The specified guidelines provided in §1.139E-1(c)(3) are minimum program guidelines that are fundamental to the operation of a Tribal general welfare program under section 139E. The Treasury Department and the IRS understand that some transition time may be necessary to ensure Indian Tribal government programs meet both the establishment and the administration requirements (including the specified guidelines requirement). Section 1.139E-1(c)(3) does not provide guidance on transition for existing programs because transitional rules are more broadly provided elsewhere in these regulations. Specifically, §1.139E-1(h) provides that Indian Tribal governments and Tribal program participants will be required to apply the final regulations to taxable years of Tribal program participants that begin on or after January 1, 2027, while also allowing Indian Tribal governments the ability to choose to apply the rules of §1.139E-1, in their entirety, to benefits provided to Tribal program participants in prior taxable years. The Treasury Department and the IRS believe this applicability date provides Indian Tribal governments a reasonable transition period to make any program adjustments or updates that may be necessary for their programs to satisfy the requirements of §1.139E-1.

The Treasury Department and the IRS emphasize that §1.139E-1(c)(3) does not require the specified guidelines to be in writing or otherwise prescribe how the Indian Tribal government program retains its specified guidelines. Thus, the program may satisfy the specified guidelines requirement in §1.139E-1(c)(3) with a single written document, several documents, or non-written guidelines. Section 1.139E-1(c)(3) is intended to provide broad deference to Indian Tribal governments to determine how such specified guidelines are created, maintained, or modified.

C. *Program Cannot Discriminate in Favor of Members of the Governing Body of the Tribe*

Proposed §1.139E-1(c)(4) would provide that an Indian Tribal government program may not discriminate in favor of members of the governing body of the Tribe (non-discrimination requirement). A governing body is generally the legislative body of the Tribe, such as the Tribal council, or the representative equivalent of the legislative body of the Tribe. However, proposed §1.139E-1(c)(4)(ii) would treat a program as being in compliance with the non-discrimination requirement if the governing body of the Tribe consists of the entire adult membership of the Tribe, referred to as a "general council Tribe."

Proposed §1.139E-1(c)(4)(iii) would provide a facts and circumstances test to determine whether a program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. For example, the administration of a program would discriminate in favor of members of the governing body if, based on the facts and circumstances, the benefits provided during the taxable year disproportionately favor members of the governing body of the Tribe. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by the members of the governing body would fail to satisfy the non-discrimination requirement.

Commenters indicated that it is unlikely that an Indian Tribal government would differentiate benefits or establish a general welfare program solely for its governing body because it contradicts the intent of a general welfare program to provide for the well-being of Tribal members. In addition, commenters recommended changes from the language of proposed §1.139E-1(c)(4) to prevent potential unintended consequences for situations where a program benefit would be available to any eligible Tribal member but, in a particular point of time, the only eligible beneficiaries of a particular Tribal general welfare benefit are members of the Indian Tribal government or their family members. The commenters provided an example of a tuition assistance program in which one individual beneficiary may qualify for benefits in the taxable year, and such individual is a family member of a Tribal government official. Commenters requested clarification on the application of proposed §1.139E-1(c)(4) where benefit distributions vary annually but may have the appearance in any given year that distributions disproportionately benefit certain Tribal members. These commenters emphasized that §1.139E-1(c)(4) should evaluate an Indian Tribal government program based on its structure and historical administration, and whether such program is designed and administered to avoid discrimination in favor of a Tribe's governing body. Finally, one commenter requested clarification that benefits provided to former members of Tribal governing bodies to compensate for sacrificing Social Security benefit credits during their terms of service are not considered either compensation for current services

or discriminatory in favor of such recipients such that they would fail to satisfy section 139E under the final regulations.

The Treasury Department and the IRS agree with commenters that clarification would be helpful on how the facts and circumstances test in proposed §1.139E-1(c)(4) applies in certain situations. The Treasury Department and the IRS understand that there may be instances when, in a given year, a program distributes benefit payments disproportionately to members of the governing body or their families even though the program does not by its terms disproportionately favor members of the governing body and, in most other years, does not disproportionately favor members of the governing body. The facts and circumstances test provides flexibility to account for an anomalous year where a program otherwise does not disproportionately favor members of the governing body. Nevertheless, the Treasury Department and the IRS agree that clarifying language in §1.139E-1(c)(4) would be helpful. Accordingly, these final regulations revise §1.139E-1(c)(4)(iii) to provide that a program discriminates in favor of members of the governing body of the Tribe if, based on the totality of the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body.

The Treasury Department and the IRS do not provide any clarification in response to the comment regarding a specific fact pattern involving benefits provided to former members of Tribal governing bodies because there are not sufficient facts to address the comment. However, the Treasury Department and the IRS affirm that section 139E(b)(1) and §1.139E-1(c)(4) provide that an Indian Tribal government program cannot discriminate in favor of members of the governing body.

D. *No Limitation on Source of Funds*

Proposed §1.139E-1(c)(5) would provide that benefits under the Indian Tribal government program may be funded by any source of revenue or funds, including funds derived from levies, taxes, and service fees; settlements; revenues from Tribally-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal government program. Proposed §1.139E-1(c)(5)(ii) also specifically would permit the funding of Indian Tribal government programs with net gaming revenues. However, the preamble to the proposed regulations noted that an Indian Tribal government is permitted to restrict the source and amount of funds available to provide benefits under the Indian Tribal government program.

Several commenters appreciated that the enumeration of permissible sources in proposed §1.139E-1(c)(5) was not all-inclusive or limiting but recommended that the list explicitly include "grantor trusts" and deferred benefit accounts as permissible sources of funding. *See* part III.D.2. of this Summary of Comments and Explanation of Revisions for a discussion of the use of trusts in Tribal general welfare programs.

1. Benefits Funded by Net Gaming Revenues

Proposed §1.139E-1(c)(5)(ii) would provide that benefits under the Indian Tribal government program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act (25 U.S.C. 2701-2721) (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or the regulations. Proposed §1.139E-1(c)(5)(ii) further would provide that, for purposes of section 139E, a payment is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a Revenue Allocation Plan (RAP) that is approved by the Department of the Interior (DOI).

Several commenters approved of proposed §1.139E-1(c)(5) providing that Tribes may use any revenue source for general welfare programs, including gaming revenue, because the rule supports Tribal sovereignty regarding the use of a Tribe's financial resources. However, several commenters requested that the final regulations confirm the Treasury Department and the IRS will defer to, or give sole discretion to, Indian Tribal governments with respect to allocations under an approved RAP as between per capita payments and Tribal general welfare programs. Conversely, some commenters expressed concern that DOI may evaluate a program's compliance under section 139E and urged the Treasury Department and the IRS to communicate these concerns with DOI and the National Indian Gaming Commission (NIGC).

In response to the comments received, these final regulations differ from proposed §1.139E-1(c)(5)(ii) in providing that for purposes of section 139E and these regulations, the determination of whether a payment is a per capita payment is based on the RAP that is in effect (that is, approved by DOI) at the time the per capita payment is made to the recipient. The clarification is made because the Treasury Department and the IRS are aware that Indian Tribal governments may modify a RAP and IGRA trusts over the years. As discussed in part III.D.2. of this Summary of Comments and Explanation of Revisions, for purposes of section 139E, whether a distribution from a grantor trust owned by the Indian Tribal government is a general welfare payment is determined when the payment is distributed to the Tribal program participant.

In the view of the Treasury Department and the IRS, the language in proposed §1.139E-1(c)(5)(ii) would provide deference to an Indian Tribal government's determinations of how net gaming revenue is allocated. Specifically, §1.139E-1(c)(5)(ii) provides that, for purposes of section 139E and these regulations, a payment is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a RAP that is approved by the DOI. Similarly, for an Indian Tribal government without a RAP, the determination of the Indian Tribal government that the payment is not a per capita payment is controlling for Federal income tax purposes. Thus, for purposes of section 139E and §1.139E-1(c)(5)(ii), the IRS will defer to the Indian Tribal government's determination that the allocation of net gaming revenues is classified as general welfare, or conversely a per capita payment made pursuant to a RAP.

The Treasury Department and the IRS confirm that DOI and NIGC do not

have jurisdiction over the determination of whether a program satisfies section 139E and these regulations. The Treasury Department and the IRS have jurisdiction over interpretation of the Internal Revenue Code (26 U.S.C. 1 et seq.), and the IRS is the agency responsible for determining whether a program satisfies the requirements of section 139E and these regulations. The Treasury Department and the IRS plan to communicate the commenters' concerns with DOI and NIGC and ensure open dialogue will continue in the future over jurisdictional responsibilities of the respective agencies.

2. Benefits Paid as Distributions from a Grantor Trust

The proposed regulations would not provide guidance on distributions from grantor trusts. In part V.C. of the Explanation of Provisions section of the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether additional guidance under section 139E or other Code sections is needed to address the tax treatment of deferred benefits or benefits paid from trust arrangements, and, if so, what specific fact patterns should be addressed.

Most commenters requested that the final regulations include guidance on grantor trusts because many Tribes use grantor trusts and deferred benefit arrangements for flexibility and for the ability to leverage the principal amount of general welfare benefits over a longer period of time, such as with elder care, mortgage, and education benefits. Commenters generally disagreed that Revenue Procedure 2011-56 (2011-49 I.R.B. 834) adequately addresses the use of grantor trusts for excluded Tribal general welfare benefits because that guidance refers to taxable, but tax-deferred, per capita payments under IGRA.

Several commenters recommended that, for purposes of section 139E, amounts held in grantor trusts owned by the Indian Tribal government should be treated like any other Tribal accounts because the Tribe is the owner of the Tribal general welfare benefits until they are disbursed. Commenters note grantor trusts are a tool that may be used to deliver Tribal general welfare benefits if the trust distributions are administered pursuant to the Indian Tribal government program. Many commenters requested that the final regulations confirm that Tribes may use grantor trusts to fund Indian Tribal government programs, and that any interest and capital gains earned by the trust also are treated as Tribal general welfare payments at the time the program distributes a payment from the grantor trust to the Tribal program participant. For example, one commenter requested clarity on whether distributions from grantor trust accounts that are paid out at the age of majority are Tribal general welfare benefits under section 139E such that distributions of the grantor trust's interest and earnings are also excludable from income at the time of distribution.

Some commenters discussed grantor trusts and IGRA. For example, some commenters suggested that grantor trust distributions should be excluded under section 139E if the grantor trust distributions are Tribal general welfare benefits under section 139E and not otherwise treated as per capita distributions under the Tribe's RAP. The commenter requested that final regulations provide that Tribes may place funds in a grantor trust, identified to specific member subaccounts, that generally conform to existing guidance for IGRA minors' trusts, for future use for general welfare purposes, without Federal income tax consequence to the beneficiary. One commenter also requested guidance on whether a distribution from such a trust could be excluded under section 139E if made pursuant to a plan under section 529, a medical savings plan, a plan under an Indian Tribal government program, or other similar plan.

One commenter recommended that Revenue Procedure 2011-56 be modified to expand the safe harbor to provide additional provisions that can satisfy the safe harbors for trust programs that provide taxable benefits to minors and certain other individuals. Additionally, many commenters requested guidance on how trusts involving taxable income can be restructured to provide Tribal general welfare benefits.

Finally, some commenters requested that the language of proposed §1.139E-1(c)(5) be expanded to include grantor trusts as a permissible funding source for an Indian Tribal government program. Commenters noted grantor trusts are an important tool used to care for Tribal members, and it is a glaring omission to not include grantor trusts in proposed §1.139E-1(c)(5) that could lead to possible negative inferences. Several commenters described using gaming revenues to fund grantor trusts for minors and members with legal disabilities and being permitted under IGRA to make distributions to their parents or legal guardians to pay health, education, and welfare benefits for the benefits of such minors and certain other individuals. One of these commenters noted that this use of trusts indicates Tribes are free to use trust funds to provide Tribal general welfare benefits just as they are free to use any other revenue source.

The Treasury Department and the IRS agree with commenters that a benefit distributed from certain grantor trusts can be a Tribal general welfare benefit under section 139E if the benefit otherwise satisfies the requirements of §1.139E-1(d), and that additional guidance on the use of grantor trusts would be helpful. Accordingly, these final regulations include express language regarding distributions from grantor trusts in new §1.139E-1(c)(5)(iii). New §1.139E-1(c)(5)(iii), which applies to a trust or the portion of a trust of which the Indian Tribal government is treated as the owner under sections 671 through 677 of the Code, provides that a benefit distributed by a trust that otherwise satisfies the requirements of §1.139E-1(d) is a Tribal General Welfare Benefit under section 139E. Conversely, a distribution from a grantor trust, or portion thereof, will not be considered a Tribal general welfare benefit to the extent the distribution, or portion thereof, fails to satisfy section 139E and the regulations. Section 1.139E-1(c)(5)(iii) further provides that the determination of whether a benefit distributed by a grantor trust is a Tribal general welfare benefit is made at the time the benefit is distributed from the grantor trust to the Tribal program participant. Thus, for example, a distribution from the grantor trust that is paid to an individual as compensation (determined at the time of distribution) would not be excludible under section 139E (unless the exception

relating to cultural or ceremonial activities applies).

The Treasury Department and the IRS have determined that providing additional safe harbors under Revenue Procedure 2011-56 is outside the scope of this regulation. Revenue Procedure 2011-56 provides a safe harbor under which the IRS treats a Tribe as the grantor and owner of a trust for the receipt of Tribal gaming revenues under IGRA for the benefit of minors and certain other individuals. That guidance provides rules addressing trusts under IGRA that are not affected by these final regulations.

Commenters requested clarification on the Federal income tax treatment of grantor trust distributions when the Indian Tribal government has previously set up a minor's trust under IGRA for per capita payments but subsequently distributes general welfare payments from such trust to the Tribal program participant. The Treasury Department and the IRS have generally determined that where an IGRA trust satisfies Revenue Procedure 2011-56 and is treated as owned by the Indian Tribal government, the Indian Tribal government may subsequently determine distributions from the trust are for general welfare purposes under section 139E to the extent that DOI approval is otherwise received to modify a RAP or IGRA trust, as applicable. In general, the date of distribution from the IGRA trust is the relevant time at which to determine whether the payment is a Tribal general welfare benefit or a per capita payment. The Indian Tribal government, subject to DOI approvals of RAPs or IGRA trusts, has sole discretion to determine whether a payment is a per capita payment for purposes of section 139E and these regulations.

3. Deferred Benefits

Some commenters requested that the final regulations provide that Tribal members have the right to defer or disclaim current, smaller, general welfare benefits in exchange for the Tribe funding future, larger general welfare benefits for more-costly needs. One of these commenters noted the importance of flexibility to allow Tribal members to prioritize assistance that meets their specific needs. Some commenters noted they agree with the TTAC proposal that complex IRS deferred compensation rules, like constructive receipt, should not apply to deferred general welfare benefits.

The Treasury Department and the IRS do not agree with the suggestion that Federal income tax principles, such as the constructive receipt doctrine, should be inapplicable to deferred general welfare benefits. The language of section 139E does not provide an exception for treating amounts that, under ordinary Federal income tax principles (such as principles of constructive receipt), are actually or constructively transferred to or for the benefit of a Tribal program participant in one taxable year as being transferred in a later taxable year. The Treasury Department and the IRS note that, as a general matter, a Tribal program participant's election to defer a Tribal general welfare benefit that is made before the Tribal program participant would have rights to the Tribal general welfare benefit under Tribal law would not be treated as constructively received by the Tribal program participant for Federal income tax purposes.

E. *Recordkeeping Requirements of the Tribal Program Participant*

The preamble to the proposed regulations stated, under the general recordkeeping requirements of section 6001, that Tribal program participants are required to maintain records sufficient to show that the value of a Tribal general welfare benefit received from an Indian Tribal government program is excludible from gross income. Under section 6001 and §1.6001-1(a), taxpayers are required to maintain records sufficient to establish the amount of gross income or other matters required to be shown by them in any return of income tax.

Many commenters expressed confusion regarding substantiation requirements that Tribal program participants may have for benefits received from Indian Tribal government programs. One commenter expressed appreciation that Tribes and Tribal program participants, in the commenter's interpretation of the proposed regulations, were not required to keep receipts to substantiate benefits. However, other commenters recommended that the final regulations expressly provide that Tribal program participants will not be subject to additional substantiation requirements such as maintaining receipts or other proof not otherwise required by the Indian Tribal government program. Further, some of these commenters pointed out that the Treasury Department stated at Tribal consultations that receipts were not needed to substantiate the benefit. In general, commenters explained that imposing additional substantiation requirements on Indian Tribal governments and Tribal program participants would create administrative burdens and contradict the Act's objective of streamlining Tribal program administration.

Some commenters referred to the TTAC Report, which proposes that individual members should not be required to submit receipts to prove general welfare expenses if there is sufficient documentation of an Indian Tribal government's general welfare program, including written program guidelines, and that compliance should be presumed for Tribal program participants where the Indian Tribal government can show benefit amounts are reasonably calculated to meet general welfare needs and the method of distribution to members is reasonably expected to achieve program goals. Other commenters proposed that the IRS should use an Indian Tribal government's year-end compliance certificates confirming general welfare expenses at or above program benefit levels and any corroborating program documentation as sufficient substantiation of a Tribal program participant's benefits. Finally, a commenter recommended that complete deference be given to Indian Tribal government determinations for the administration of program benefits such that the Tribal program participant's substantiation of Tribal general welfare benefits for Federal income tax purposes is satisfied.

Many commenters requested that the Treasury Department and the IRS maintain the deference to Indian Tribal government program methods for substantiation of general welfare program benefits so long as an Indian Tribal government implements its general welfare program consistent with written program guidelines that meet the criteria of section 139E. These commenters suggested addressing only situations where additional substantiation may be required. Some commenters

noted that substantiation requirements for benefits add administrative costs to Indian Tribal governments.

These final regulations do not impose additional recordkeeping requirements on Tribal program participants. However, section 6001 and §1.6001-1 generally require a taxpayer to maintain records to establish the amount of gross income reported on the taxpayer's tax return. This requirement is independent of the exclusion provided under section 139E. Notwithstanding the previous sentence, the Treasury Department and the IRS confirm that individuals are not required to maintain personal receipts to substantiate that a benefit provided under an Indian Tribal government program was used by the recipient for the purpose for which it was provided. Deference is given to the Indian Tribal government with regard to the general welfare programs it administers and, accordingly, what requirements a Tribal program participant may need to satisfy in order to receive program benefits.

Accordingly, the Treasury Department and the IRS do not prescribe any specific types of documentation that a Tribal program participant would be required to retain to substantiate that a particular benefit is a Tribal general welfare benefit excludable from gross income under section 139E. Nonetheless, corroborating program documentation, such as a written description of the Indian Tribal government program, an application or acceptance letter into the program, or any year-end compliance certificates of the Indian Tribal government may satisfy the requirements of section 6001 and §1.6001-1. Moreover, Tribal program participants may choose to ask the Indian Tribal government for clarification on whether the benefit is intended to be a Tribal general welfare benefit under section 139E.

IV. *Tribal General Welfare Benefits*

A. *Benefits Must be for the Promotion of General Welfare within the Meaning of Section 139E*

1. Deference to Tribes in Determining Promotion of General Welfare

Proposed §1.139E-1(d)(2)(i) would provide that a benefit provided under an Indian Tribal government program must be for the promotion of general welfare, and that the Indian Tribal government determines that a benefit is for the promotion of general welfare at the time it establishes the program. Proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal government's determination that a benefit is for the promotion of general welfare. Proposed §1.139E-1(d)(2)(i) would provide that Tribal general welfare benefits may be provided without regard to financial or other need of Tribal program participants and may be provided on a uniform or pro rata basis.

Commenters generally appreciated the deference provided to Indian Tribal governments for establishing programs to promote the general welfare. Commenters noted that Indian Tribal governments are uniquely positioned to assess the distinct cultural, social, and economic needs of their Tribes and Tribal program participants, and structure their general welfare programs accordingly. Several commenters also appreciated that Indian Tribal governments have sole discretion to determine whether a benefit is for the promotion of general welfare.

One commenter requested the Treasury Department and the IRS to clarify in the final regulations that the following additional activities are considered to be for the promotion of the general welfare: recovery from cultural or lifeway losses experienced due to non-Tribal policies, such as termination or forced relocation (as determined by the administering Tribe); the advancement of Tribal self-determination (as determined by the administering Tribe); and the promotion of individual and collective self-sufficiency (as determined by the administering Tribe). Some commenters requested the final regulations confirm that Tribal general welfare benefits may include student loan debt repayment programs.

In response to these suggestions for clarification, the Treasury Department and the IRS reiterate the sole discretion standard is consistent with the deference required under section 2(c) of the Act. The examples in §1.139E-1(d)(2) merely provide illustrative examples of benefits an Indian Tribal government may provide. Accordingly, the Treasury Department and the IRS affirm the types of programs described in the preceding paragraph are not contrary to the standard provided in §1.139E-1(d)(2), if an Indian Tribal government has determined such benefit is for the promotion of the general welfare and the program satisfies the other requirements in section 139E.

2. Examples of Promotion of General Welfare

Proposed §1.139E-1(d)(2)(ii) would provide non-exhaustive examples of programs that an Indian Tribal government may determine, in its sole discretion, distribute benefits that are for the promotion of the general welfare, as required under proposed §1.139E-1(d)(2).

One commenter recommended additional clarification to proposed §1.139E-1(d)(2)(ii) to make clear that the examples provided are not an exhaustive list of types of programs that would be for the promotion of general welfare. Other commenters pointed out a typographical error in proposed §1.139E-1(d)(2)(ii)(B) and requested clarification on additional specific types of permissible program payments.

The Treasury Department and the IRS agree with commenters that the examples in proposed §1.139E-1(d)(2)(ii) are intended to be non-exhaustive. The Treasury Department and the IRS clarify that the programs described in §1.139E-1(d)(2)(ii) of these final regulations are a non-exhaustive list of examples of programs that an Indian Tribal government may determine are for the promotion of general welfare for purposes of section 139E. Thus, these regulations reaffirm that the Indian Tribal government has the sole discretion to determine what program benefits are for the promotion of general welfare of Tribal program participants.

In addition, the Treasury Department and the IRS have changed the language used in some of the examples in proposed §1.139E-1(d)(2)(ii) to respond to comments. For example, §1.139E-1(d)(2)(ii)(B) (education programs) corrects a typographical error in the proposed regulations and includes textbooks as an

example of school supplies. In response to comments, §1.139E-1(d)(2)(ii)(D) (transportation programs) of these final regulations does not include the word "substantiated" before "mileage," and lacks the language that would limit fares for public transportation to specific origins and destinations. In addition, §1.139E-1(d)(2)(ii)(A) (housing programs) of these final regulations removes the reference to benefits that may not be used for any trade or business because of the changes provided in §1.139E-1(d)(2) for business grants. *See* part IV.A.5. of this Summary of Comments and Explanation of Revisions. Finally, §1.139E-1(d)(2)(ii)(G) of these final regulations (cultural and religious programs) removes the reference to section 168(j) as providing the definition of "Indian reservations." These final regulations remove this reference because Indian reservations are subject to varying definitions under Federal law, and it is unnecessary to prescribe a definition in this rule. In sum, the changes to the language in §1.139E-1(d)(2)(ii) are intended to remove limiting language that could be viewed by an Indian Tribal government as constraining its discretion to determine that program benefits are for the promotion of general welfare.

Some commenters requested that benefits or assistance provided after a Tribally declared disaster be included as an example of a promotion of general welfare purpose in proposed §1.139E-1(d)(2). For example, an Indian Tribal government may declare a disaster that may not qualify as a Federally declared disaster. One commenter recommended clarifying that "assistance in an emergency" is intended to include events that are not otherwise qualified disasters.

The Treasury Department and the IRS have determined no changes are necessary in these final regulations to the language of proposed §1.139E-1(d)(2) to include references to Tribally declared disasters. The Treasury Department and the IRS agree with commenters that benefits provided to Tribal program participants as a result of a Tribally declared disaster are benefits that would be described in §1.139E-1(d)(2). However, a governmentally declared disaster is not a requirement of §1.139E-1(d)(2). Indian Tribal governments have the sole discretion to determine whether a benefit is for the promotion of general welfare for purposes of section 139E. Section 1.139E-1(d)(2) broadly describes "assistance for disasters or other emergency situations" and does not limit an Indian Tribal government's determination of what benefits are needed to be provided to Tribal program participants in the event of emergency situations. The Treasury Department and the IRS decline to include a reference to Tribally declared disasters because it may be viewed as a limitation on the types of disasters that could satisfy §1.139E-1(d)(2).

3. Prizes and Awards

Many commenters requested clarification that section 139E can apply to prizes and awards provided pursuant to Indian Tribal government programs at powwows or similar ceremonial activities. Commenters argued that powwow prizes and awards constitute Tribal general welfare benefits because they are designed to encourage participation at ceremonial and cultural events and foster the exchange of Tribal culture and traditions. One commenter shared an example of a cultural event to promote cultural and traditional practices in which awards are given to only some of the dancers who are performing dances traditional to their Tribe. Similarly, the commenter provided an example of a Tribe holding a social event in which door prizes are provided to a few individuals in order to promote participation at social activities among Tribal members.

Some commenters explained that the IRS has, in the past, treated powwow prizes for cultural or ceremonial activities as taxable under section 74 of the Code. These commenters expressed concern that the IRS may continue to treat these payments as taxable prizes and awards under section 74.

The Treasury Department and the IRS agree with commenters that prizes and awards provided by an Indian Tribal government program as part of a cultural or ceremonial program or activity could be a Tribal general welfare benefit if the benefit otherwise satisfies section 139E and these regulations. These final regulations differ from proposed §1.139E-1(d)(2)(ii)(G) by including examples of prizes or awards provided as part of cultural or ceremonial activities that an Indian Tribal government may determine are for the promotion of general welfare for purposes of section 139E. Specifically, the final regulations provide that an Indian Tribal government program may provide cash or property as a prize or award in connection with cultural, social, religious, or community activities, and such prize or award could be a Tribal general welfare benefit if it is determined by the Indian Tribal government to be for the promotion of general welfare and the other requirements of section 139E and these regulations are otherwise satisfied.

In addition, §1.139E-1(e)(2) provides that a prize or award that would otherwise be compensation for services may qualify for the exception in section 139E(c)(5) and §1.139E-1(e) if the prize or award is provided as a benefit to, or on behalf of, a Tribal program participant for the Tribal program participant's participation in cultural or ceremonial activities for the transmission of Tribal culture. For example, if an Indian Tribal government program that supports cultural or ceremonial activities, including powwows, provides a prize or award to a Tribal program participant of such program who performs dances as part of a powwow, the prize or award would be a Tribal general welfare benefit if the other requirements of §1.139E-1(d) are met.

4. Indian Tribal Government's Discretion to Provide Benefits in Equal Amounts

Proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal government's determination that a benefit is for the promotion of general welfare. Consistent with this approach, proposed §1.139E-1(d)(2)(i) would provide that an Indian Tribal government program may provide Tribal general welfare benefits on a uniform or prorata basis to Tribal program participants.

One commenter urged clarification that an Indian Tribal government program may also provide benefits based on a schedule that authorizes unequal payment amounts based on reasonable criteria applicable to all qualifying Tribal members. For exam-

ple, a program may provide different benefit amounts to larger families than smaller families.

The Treasury Department and the IRS decline to adopt the comments to change proposed §1.139E-1(d)(2)(i) because the Treasury Department and the IRS have determined that the language of proposed §1.139E-1(d)(2)(i) provides broad deference to an Indian Tribal government to determine whether a benefit is for the promotion of the general welfare for purposes section 139E and is given the discretion to determine whether benefits should be paid. In sum, proposed §1.139E-1(d)(2)(i) provides flexibility to an Indian Tribal government to determine whether program benefits are best allocated to Tribal program participants on an equal basis or in in varying amounts. Because an Indian Tribal government has sole discretion to determine whether a benefit is for the promotion of general welfare for purposes of section 139E, a program that provides a benefit in an unequal amount, such as providing different benefit amounts to larger families than smaller families, would be permitted under proposed §1.139E-1(d)(2)(i). Accordingly, proposed §1.139E-1(d)(2)(i) is finalized without modification.

5. Economic Development Benefits

The proposed regulations would not address payments provided in connection with business ventures of Tribal program participants. Part V.B. of the Explanation of Provisions in the preamble to the proposed regulations stated that the administrative general welfare exclusion and Revenue Procedure 2014-35 generally do not apply to payments made to businesses. Similarly, the preamble to the proposed regulations stated that section 139E applies only to individuals and not businesses. However, the preamble to the proposed regulations stated that Revenue Ruling 77-77 (1977-1 C.B. 11) holds there is a limited exception to the rule that the administrative general welfare doctrine does not apply to businesses. Revenue Ruling 77-77 provides that a grant made by an Indian Tribal government to a Tribal member to expand an Indian-owned business on or near a reservation is excluded from the Tribal member's gross income under the administrative general welfare exclusion.

(a) Revenue Ruling 77-77

Many commenters disagreed with the characterization by the Treasury Department and the IRS of Revenue Ruling 77-77 as constituting a narrow exception to the administrative general welfare exclusion. Several commenters similarly disagreed with the assertion that the administrative general welfare exclusion does not apply to economic development assistance or payments to businesses, including sole proprietors, because such payments are not based on individual or family need. Many commenters also refer to other situations where the IRS has applied the administrative general welfare exclusion to Tribal general welfare benefits for the purpose of economic development assistance. *See* PLR 199924026 and COVID-19 FAQs on the IRS website at *https://www.irs.gov/newsroom/faqs-for-payments-by-indian-tribal-governments-and-alaska-native-corporations-to-individuals-under-covid-relief-legislation*.

The Treasury Department and the IRS have determined that the preamble to the proposed regulations accurately described the *administrative* general welfare exclusion (not section 139E) and its inapplicability to payments made to businesses. However, the Treasury Department and the IRS are aware that Revenue Ruling 77-77 and recent COVID-19 FAQs refer to the administrative general welfare exclusion applying to certain business grants made by an Indian Tribal government to expand an Indian-owned business on or near a reservation. The Treasury Department and the IRS have determined this guidance remains applicable when applying the administrative general welfare exclusion specific to Indian Tribal governments.

(b) Business Grants under Section 139E

Commenters requested that the Treasury Department and the IRS specify that benefits provided by the Indian Tribal government to Tribal members to start, operate, develop, or expand businesses constitute Tribal general welfare benefits provided to promote the general welfare of the community. Commenters generally argued section 139E should be viewed broadly to include promotion of general welfare of individuals and needs of the Tribal community. Similarly, some commenters pointed to the Act to support this broad interpretation of section 139E. Commenters also argued such economic development promotes the general welfare of Tribes and their Tribal communities by promoting self-sufficiency in light of the difficulties faced by Tribes in generating revenue and attracting capital and businesses onto reservations, and Tribal goals of promoting stable employment and economic opportunities. Finally, commenters requested clarification on whether an Indian Tribal government program could provide benefits to encourage business activity on or near a reservation by providing Tribal-member-owned businesses with grants, interest-free or other below-market loans, or reimbursements for employment taxes.

Commenters also argued the scope of program eligibility for grants to businesses should not be limited to Tribal citizens. Rather, a commenter suggested that the Tribe should be able to provide general welfare benefits to any persons consistent with Tribal law. Similarly, commenters requested that the term "Indian-owned enterprise" should not be defined by the IRS.

The Treasury Department and the IRS have reconsidered the issue of Tribal general welfare payments made to Tribal program participants to support businesses and agree that it would be helpful to clarify in §1.139E-1(d)(2) of these final regulations that an Indian Tribal government program may provide benefits to support, develop, operate, expand, or start certain trades or businesses. Consistent with the proposed regulations, §1.139E-1(d)(2)(i) broadly provides that the Indian Tribal government has sole discretion to determine that a benefit is for the promotion of general welfare at the time it establishes the Indian Tribal government program. The Treasury Department and the IRS agree with commenters that section 2(c) of the Act provides broad deference to Indian Tribal governments for the Indian Tribal government programs administered and authorized by the Tribes to determine the general welfare programs that are provided in their communities.

The Treasury Department and the IRS agree with commenters that the term "Indian-owned enterprise" should not be defined in these regulations. Moreover, these regulations do not restrict Indian Tribal government programs to support or expand Indian-owned businesses on or near a reservation. Section 1.139E-1(d)(2) provides broad deference to Indian Tribal governments to determine whether benefits are for the promotion of general welfare.

However, section 139E is an exclusion from the gross income of individuals and therefore is limited to benefits provided to, or on behalf of, the individuals described in section 139E(b) and §1.139E-1(b)(8). *See* discussion of Tribal program participant in part II.C. of this Summary of Comments and Explanation of Revisions. Accordingly, these final regulations provide that any Tribal general welfare benefit provided to support, develop, operate, expand, or start a trade or business must be provided to, or on behalf of, an individual that is a Tribal program participant. Thus, an Indian Tribal government program may not provide benefits under the program to an entity, regardless of whether it is owned by a Tribal program participant.

Similarly, the Treasury Department and the IRS have determined that the language "on behalf of" is not intended to apply to program benefits provided by an Indian Tribal government program to non-individuals, such as a business entity owned by a Tribal program participant. Rather, the Treasury Department and the IRS interpret the statutory language "on behalf of" to address situations such as where an Indian Tribal government program pays rent directly to a landlord on behalf of a Tribal member tenant who operates a trade or business as a sole proprietorship.

The final regulations also provide an example of general welfare programs to support businesses. The Treasury Department and the IRS agree with commenters that program benefits to Tribal program participants, as individuals, in the form of non-reimbursable grants, interest-free or other below-market loans, or amounts paid to a Tribal program participant that are equivalent to the employment taxes imposed on the Tribal program participant as an employer, may qualify for section 139E.

In addition, the final regulations provide that section 7872 of the Code generally does not apply to a loan from an Indian Tribal government to a Tribal program participant pursuant to an Indian Tribal government program. The Treasury Department and the IRS believe that such loans are a class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower. The Treasury Department and the IRS have expanded the proposed regulations by adding §§1.139E-1(d)(6) and 1.7872-5(b)(17) to these final regulations.

B. *Benefits Cannot Be Lavish or Extravagant*

Proposed §1.139E-1(d)(4) would provide a facts and circumstances test to determine whether a Tribal program benefit is lavish or extravagant under section 139E. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. Proposed §1.139E-1(d)(4) would also provide a presumption that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program.

1. Facts and Circumstances Standard

Some commenters expressed support for the general approach of a facts and circumstances test in proposed §1.139E-1(d)(4). Commenters noted Tribal governments are uniquely qualified to assess what constitutes lavish or extravagant within their cultural and economic context, and factors such as geographic location, cost-of-living variations, and the cultural significance of certain expenditures are best understood by Tribal leaders. Commenters noted that the proposed regulations would recognize Tribal sovereignty by considering a Tribe's cultural practices and economic condition and would be consistent with the Act's explicit mandate for deference to Indian Tribal governments.

Some commenters suggested changes to proposed §1.139E-1(d)(4) to ensure that the enumerated factors for the facts and circumstances test are not treated as exhaustive factors. Also, commenters requested that the regulations provide Indian Tribal governments with the flexibility to adapt the definition of lavish or extravagant as economic and cultural conditions evolve. Moreover, some commenters requested that the determination of whether a benefit is lavish or extravagant be made at the time a program is implemented, authorized, or modified, rather than at the time a benefit is provided.

Other commenters recommended that the Treasury Department and the IRS defer entirely to Indian Tribal governments on whether a Tribal general welfare benefit is lavish or extravagant regardless of whether a program is in writing. These commenters expressed concern that the evaluation by the IRS of a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors would result in an intrusion on an Indian Tribal government's sovereignty. Some commenters recommended express language in §1.139E-1(d)(4) providing that the IRS will accept and defer to any attestations of the Indian Tribal government regarding the facts and circumstances at the time the benefit is provided. Another commenter stated that the lavish or extravagant standard in section 139E(c)(3) is offensive in the context of the commenter's Tribe's historical oppression at the hands of the Federal government and long-standing and severe poverty.

The test in proposed §1.139E-1(d)(4) is intended to be a test that considers the totality of the facts and circumstances. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. However, the Treasury Department and the IRS agree with commenters that an Indian Tribal government is uniquely qualified to evaluate its culture and cultural practices, history, geographic area, traditions, resources, and economic conditions and that deference should be provided to an Indian Tribal government's attestation of the facts and circumstances at the time the benefit is provided to a Tribal program participant. Accordingly, newly renumbered §1.139E-1(d)(4)(i) of the final regulations provides that the IRS will defer

to an Indian Tribal government's attestations of facts and circumstances, regardless of whether the program is in writing, at the time the benefit is provided to the Tribal program participant. However, the deference provided in §1.139E-1(d)(4)(i) to the Indian Tribal government's attestation of facts and circumstances does not preclude the IRS from determining that a benefit is lavish or extravagant under the Indian Tribal government's attestations of the facts and circumstances at the time the benefit was provided. In addition, while the IRS would respect the Indian Tribal government's attestations of fact and circumstances, the Treasury Department and the IRS are clarifying that the IRS may also consider facts and circumstances not included in the Indian Tribal government's attestations in ascertaining whether a benefit is lavish or extravagant.

The Treasury Department and the IRS continue to be of the view that the proper time to test whether a benefit is lavish or extravagant is at the time the benefit is provided. Section 139E and §1.139E-1(a) provide that the gross income of the Tribal program participant does not include the value of any Tribal general welfare benefit provided during the year to or on behalf of the Tribal program participant. The value of the benefit, including for purposes of whether it is lavish or extravagant, is determined during the taxable year it is provided. The fact that the lavish or extravagant determination is made at the time the benefit is provided does not mean that facts and circumstances involving prior years, including facts and circumstances present at the time at which a program was implemented, authorized, or modified, cannot be taken into account in the determination made at the time the benefit is provided.

One commenter disagreed with the requirement that a benefit not be lavish or extravagant. However, section 139E(b)(2)(C) provides that a benefit, among other requirements, cannot be lavish or extravagant. Moreover, pursuant to section 139E(c)(3), the Treasury Department and the IRS consulted with TTAC regarding the lavish or extravagant standard under section 139E(b)(2)(C). Accordingly, these final regulations retain the requirement in §1.139E-1(d)(4) that a benefit cannot be lavish or extravagant as required by law.

2. Presumption

Some commenters supported the addition of the presumption in proposed §1.139E-1(d)(4) that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program. Some commenters noted that the presumption respects Tribal cultural practices and the various factors that inform a Tribe's general welfare program. These commenters mentioned that the presumption provides deference to Tribes, helps administrative flexibility, Tribal sovereignty, self-determination, and self-governance, which will enable Indian Tribal governments to maximize the benefit to the Tribe. Many commenters requested clarification on how the IRS would be able to rebut the presumption and what a written program should contain to benefit from the presumption.

Some commenters recommended the TTAC Report's approach to lavish or extravagant. The TTAC Report recommended that the term "lavish or extravagant" be defined as a relative term that depends on the unique circumstances of the Tribe, and also depends on the type of benefit being provided (such as, one-time payment or monthly assistance). The TTAC Report sets forth a non-exclusive list of circumstances that should be considered when determining if a benefit is lavish or extravagant: an Indian Tribal government's economic circumstances or factors, culture and cultural practices, history, geographic area, traditions, and resources. The TTAC Report recommends deference to Indian Tribal governments and proposes a rebuttable presumption that the benefit is not lavish or extravagant if the Indian Tribal government program meets general welfare needs or purposes, and the method of distribution is expected to achieve program goals.

Some commenters requested that the final regulations provide that a Tribe's attestation of the relevant facts and circumstances would meet any burden that may arise in connection with the presumption. These commenters stated that the IRS should not define facts and circumstances, including a Tribe's own culture, history, or tradition, in an attempt to rebut the presumption.

Some commenters requested that the frequency of payments under a program should be irrelevant in applying the presumption provided to written programs. Similarly, many commenters requested that the final regulations provide a conclusive presumption that a benefit based on the facts and circumstances provided in proposed §1.139E-1(d)(4) and administered in good faith is not lavish or extravagant. Commenters suggested that a conclusive presumption is a natural extension of the presumption provided in the proposed regulations.

The Treasury Department and the IRS decline to provide a conclusive presumption on the issue of whether a benefit is lavish or extravagant. However, the Treasury Department and the IRS have clarified the proposed regulations by providing in these final regulations that an Indian Tribal government program is afforded deference on the attestations of the facts and circumstances. This deference is afforded whether or not the specified guidelines are in writing. This deference is intended to reflect that the Tribe is in the best position to determine which factors and attestations of fact were considered when determining benefits. In particular the Tribe is in the best position to determine which facts and circumstances are specific to its culture and cultural practices, history, geographic area, traditions, resources, and economic conditions. Similarly, the presumption in the proposed regulations has been clarified. Newly renumbered §1.139E-1(d)(4)(ii) clarifies that the presumption is based on the written specified guidelines of an Indian Tribal government program that exist at the time that the benefit is provided to the Tribal program participant. This change acknowledges that the specified guidelines in Indian Tribal government programs may be modified from time to time.

C. *Benefits Cannot Be Compensation for Services.*

Section 139E(b)(2)(D) provides that benefits provided under a Tribal general welfare benefit paid under an Indian Tribal government program cannot be compensation for services, subject to exceptions discussed in part V of this Summary of Comments and Explanation of Revisions.

Proposed §1.139E-1(d)(5) would provide a reference to section 61(a) of the Code to define compensation for services and is intended to include existing law and guidance under section 61.

Several commenters argued the broad reliance on section 61 to define compensation for services lacks practical clarity for Tribal situations. Some commenters also recommended that the final regulations include the recommendations of the TTAC Report, which provide specific examples of activities that should be excluded from compensation for services. For example, the TTAC Report refers to the following as not compensation for services: (1) a benefit in connection with Tribal custom or tradition regarding community service; (2) cultural or ceremonial gifts and payments as determined by the Tribe; and (3) payments as part of training programs.

Many commenters stated that the proposed regulations lack clarity on work-training programs, and some commenters expressed concern that meaningful input from Tribes and the TTAC on this issue was not incorporated into the rules. Some commenters noted that Indian Tribal governments often consider work-training payments to participants as honorarium payments to assist their Tribal community.

One commenter requested clarity on whether support of educational and Native-language recovery is considered practical work-training and not compensation for services. The commenter noted that the IRS has previously determined this activity does not constitute compensation for services.

Some commenters argued that the final regulations should clarify that "benefits provided for cultural or ceremonial purposes, as explicitly allowed under section 139E, are not compensation for services." Several commenters also requested clarification that community service requirements will not be compensation for services because the programs are designed to foster kinship and encourage community involvement. Another commenter requested that the final regulations provide clarification that benefits provided with legitimate service ties for Tribal culture and tradition are not compensation for services. The commenter gave examples of payments (i) for neighborhood cleanup costs, (ii) for teaching the Tribal language, and (iii) to Tribal youths to cut and gather wood for elders.

One commenter argued that section 139E(b)(2)(D) is intended to prevent potential abuse by converting employee wages and vendor payments into tax-free remuneration. The commenter also requested that an Indian Tribal government be able to use a facts and circumstances test to show the benefits provided under its program are consistent with the intent of section 139E in order to rebut any interpretation by the IRS that a payment is compensation for services.

The Treasury Department and the IRS continue to be of the view that the term "compensation for services" in section 139E(b)(2)(D) is appropriately defined by reference to section 61, which generally defines "gross income" for purposes of subtitle A of the Code. Section 139E(a) provides an exclusion from gross income for the value of any Indian general welfare benefit. The Treasury Department and the IRS have determined that the general definition of gross income under section 61 is the starting point to ascertain the exclusion under section 139E. In addition, the Treasury Department and the IRS affirm that the term "compensation for services" in section 61(a)(1) is broader than services that are traditionally provided under an employment or contracted-vendor relationship. Section 1.61-2(a)(1) provides that compensation for services includes amounts that are not paid in an employment or contracted-vendor relationship.

However, the Treasury Department and the IRS are aware of the need for clarity on benefits provided that relate to cultural or ceremonial activities. For example, commenters referred to certain program benefits for community service, language preservation, and work training that are provided as part of cultural or ceremonial activities. The Treasury Department and the IRS have determined that to the extent that these specific situations constitute compensation for services, they are better addressed within the exclusion under section 139E(c)(5) and §1.139E-1(e) for activities relating to cultural or ceremonial activities.

These final regulations do not provide a facts and circumstances test to rebut an interpretation by the IRS that a payment is compensation for services. The Treasury Department and the IRS have concluded that whether a payment constitutes compensation for services is generally determined using existing guidance, and examination of all the facts. Moreover, the Treasury Department and the IRS also affirm that section 139E(c)(5) and §1.139E-1(e) are an exception to the general prohibition that prevents treating compensation for services as Tribal general welfare benefits. Facts may be presented to support the argument that the payment is not compensation for services under section 139E(b)(2)(D) or to support the payment is subject to the exception to compensation for services under section 139E(c)(5).

V. *Exception to Prohibition on Compensation for Services*

Proposed §1.139E-1(e) would provide that a benefit is not compensation for services if the benefit is provided to a Tribal program participant for the Tribal program participant's participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal government, and such benefit consists of an item of cultural significance, reimbursement of costs, or cash honorarium. Proposed §1.139E-1(e)(1)(i) would provide a non-exhaustive list of examples of cultural or ceremonial activities, including powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events. Proposed §1.139E-1(e)(2) also would provide that, in general, an Indian Tribal government has sole discretion to determine whether a benefit consists of an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the IRS will defer to this determination. However, proposed §1.139E-1(e)(2) would further provide that cash, gift cards, and vehicles generally are not considered items of cultural significance.

A. *In General*

Commenters generally expressed support for the deference provided to Tribal determinations in proposed §1.139E-1(e) regarding cultural and ceremonial activities. These commenters noted the

deference provided to Tribes supports Tribal self-determination and administrative flexibility and provides clarity regarding cultural and ceremonial activities. Other commenters expressed support for the exclusion of items of cultural significance, cash honoraria, and "ceremonial costs," consistent with section 139E(c)(5). Commenters supported the omission of the "de minimis" limitation on cash honorarium payments that was present in Revenue Procedure 2014-35. One commenter recommended finalizing proposed §1.139E-1(e) regardless of how the final regulations address the "lavish or extravagant" standard. One commenter was critical of the use of the terms "shamans, medicine men, or medicine women," in the preamble to the proposed regulations, and further described the regulation as mischaracterizing Tribal culture by confining it to the 18th and 19th century.

Similarly, some commenters requested clarification on specific benefits provided in connection with participation in cultural or ceremonial activities that may not be clearly described in proposed §1.139E-1(e). For example, commenters mentioned efforts to recover, preserve, and promote (among Tribal members) cultural practices, resources, or historic languages, efforts to teach Native languages, and efforts to create, recover, protect, and preserve cultural places or spaces. Another commenter suggested that the final regulations provide clarity that honoraria given to Tribal members who assist with setting up before or closing after a cultural or ceremonial event are included in activities described in proposed §1.139E-1(e). One commenter pointed out that cultural activities, such as singing songs, are not recognized as such by the IRS. As discussed in part IV.C. of this Summary of Comments and Explanation of Revisions, some commenters requested that certain benefits that have the legitimate purpose of promoting Tribal culture and tradition, such as community service or work-training programs that are connected to Tribal culture and tradition, should not be compensation for services.

One commenter urged that IRS agents not be able to second guess Tribal culture or traditions, and that IRS agents should be restricted from issuing requests for documents, including books and records relating to Tribal culture and traditions.

Section 1.139E-1(e) provides that Indian Tribal governments are in the best position to determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Thus, under §1.139E-1(e), Indian Tribal governments determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. The IRS would defer to determinations by the Indian Tribal government that activities undertaken in connection with a cultural or ceremonial activity, as determined by the Indian Tribal government, constitute participation in that cultural or ceremonial activity.

Section 1.139E-1(e) of the final regulations includes additional, non-exhaustive examples of cultural or ceremonial activities. In general, the Treasury Department and the IRS have determined that benefits provided to Tribal program participants for community service or work-training programs connected to Tribal culture and tradition would be activities described in §1.139E-1(e). Accordingly, the additional examples of cultural or ceremonial activities in §1.139E-1(e)(1)(i) of these final regulations include: Tribal community service events, such as neighborhood clean-ups or youth woodcutting programs to benefit elders; participation in training in traditional construction techniques; and Tribal language education.

As noted previously, one commenter expressed the view that the preamble to the proposed regulations used inappropriate terminology to describe Tribal cultural or ceremonial activities, and otherwise mischaracterized Tribal culture. The Treasury Department and the IRS affirm that there was no intention in drafting the proposed regulations to express any characterizations or generalizations regarding the culture and traditions of any Tribe or Tribes. The terminology in the proposed regulations was included in the context of a quotation from the provision of Revenue Procedure 2014-35 that excepts certain culturally significant payments from being treated as compensation for services but limits such exception to benefits received by certain religious or spiritual officials or leaders. The quotation was included in order to clarify that the proposed regulation would not contain a comparable limitation on the scope of section 139E(c)(5), and these final regulations similarly contain no such limitation.

These final regulations are intended to provide broad deference to Indian Tribal governments. To that end, the Treasury Department and the IRS affirm that the IRS will defer to an Indian Tribal government's determinations of whether an activity is a cultural or ceremonial activity for the transmission of Tribal culture, and to the definitions of whether an item is an item of cultural significance.

B. *Employment or Contracted-Vendor Relationship*

Some commenters expressed confusion regarding the discussion of employment or contracted vendor relationships in part IV.A. of the Explanation of Provisions in the preamble to the proposed regulations. The discussion included examples illustrating that payments to corporations owned by Tribal members for services provided during cultural or ceremonial activities are not excluded under section 139E, but payments made directly to the Tribal members for such services would be excludible under section 139E. These commenters requested clarification that an Indian Tribal government's formal agreement, such as a contract, with persons participating in cultural or ceremonial activities, such as with spiritual leaders, and fluent Native speakers would not prevent the application of proposed §1.139E-1(e). In addition, one commenter recommended that the regulations provide that section 139E applies to payments made in connection with participation in cultural or ceremonial activities to a pass-through entity that is wholly owned by a Tribal member.

Several commenters requested clarity on the taxability of payments made from a Tribe to its members for volunteer services that these members normally provide professionally. Some commenters argued that services provided during cultural or ceremonial gatherings should be excluded under section 139E(c)(5) even though the Tribal member may separately provide similar services in a professional capacity for compensation. Finally, one commenter recommended that activities

of an advisory group also be considered a cultural activity because some Tribal cultures use these groups to distribute Tribal decision-making power.

The mere existence of a contract between a Tribal program participant and an Indian Tribal government does not prevent the application of §1.139E-1(e). For example, a program benefit provided to a spiritual leader to perform a blessing at a ceremonial or cultural activity of the Tribe may qualify under §1.139E-1(e) if paid directly to the spiritual leader even without regard to whether the spiritual leader had a verbal or written agreement with the Indian Tribal government to perform such services.

However, the Treasury Department and the IRS continue to be of the view that the exception in section 139E(c)(5) does not broadly apply to services that are traditionally provided in an employment or contracted-vendor relationship because section 139E is an exclusion from gross income for individuals and families. However, in response to comments, the Treasury Department and the IRS clarify that the example in part IV.A. of the Explanation of Provisions in the preamble to the proposed regulations was not intended to suggest that an individual who owns a catering business is unable to receive a cash honorarium in the individual's capacity as an individual when volunteering to assist in food preparation for a cultural or ceremonial activity of the Tribe. However, the exception in section 139E(c)(5) would not apply if the individual's catering corporation received compensation in exchange for providing services to the Tribe for a cultural or ceremonial activity of the Tribe.

VI. *Examples*

A. *New Examples*

The Treasury Department and the IRS requested comments on whether additional examples should be included in the final regulations, and if so, what specific fact patterns or rules should be addressed by the additional examples. In general, comments were mixed on this issue.

Many commenters favored additional examples but did not want examples to have the unintended effect of limiting the rules or the deference provided to Indian Tribal governments or their programs. Most commenters requested that the regulations clearly confirm that examples do not limit or curtail Tribal flexibility to design Indian Tribal government programs, and many commenters suggest adding "without limitation" in all examples or stating that the examples are neither exclusive nor exhaustive. Some commenters requested that any new examples be discussed with the TTAC.

Conversely, many commenters recommended no new examples be added to the final regulations. Some commenters were concerned that additional examples could be viewed as setting limits on Tribal general welfare benefits and may not be viewed as an illustration of possible benefits.

Some commenters requested new examples in specific areas. For example, one commenter recommended that new examples would be helpful for rules that do not explicitly provide deference to Indian Tribal governments. A few commenters requested examples relating to the rules for lavish or extravagant, such as: how the facts-and-circumstances test applies particularly in relation to different geographical or economic areas (such as high-cost or low-cost areas); how the presumption could be rebutted by IRS; and examples of how "level" cash benefits interact with the "promotion of the general welfare" standard. One commenter requested an example on the interactions of a general welfare benefit under section 139E with other Federal benefits programs, such as Supplemental Security Income (SSI) and Medicaid. Finally, this commenter also requested an example on general welfare payments distributed from a trust on a pro-rata basis.

In general, the Treasury Department and the IRS have concluded it would be best to refrain from adding many new examples to these final regulations, and have added new examples only after consulting with the TTAC GWE Subcommittee. Specifically, after careful consideration, the Treasury Department and the IRS decline to add examples regarding the lavish or extravagant rules because examples may create a negative inference that limits an Indian Tribal government program. The test to determine whether a benefit is lavish or extravagant depends on the facts and circumstances, some of which are factors that would be specific to a Tribe. Finally, the Treasury Department and the IRS also decline to add an example to describe the interaction of Tribal general welfare benefits and SSI or Medicaid benefits because the definition of income for SSI or Medicaid benefits is outside the scope of these regulations.

B. *Existing Examples*

Some commenters observed that the examples in proposed §1.139E-1(d)(2)(ii) are directly from Revenue Procedure 2014-35. These commenters recommended refining these examples to help guide Tribal governments and the IRS. In addition, several commenters recommended using consistent language when referring to the examples not being an exhaustive list. For instance, commenters suggested using the words "including but not limited to" to denote the example is a non-exhaustive list.

The Treasury Department and the IRS have revised the examples in these final regulations to clarify that they are not intended to be exhaustive, and to make clear that items following the word "including" are similarly not intended to be exhaustive. The examples in §1.139E-1(d)(2)(ii) of these final regulations have also been revised to assist with readability.

VII. *Obsoletion of Revenue Procedure 2014-35*

The Treasury Department and the IRS proposed to obsolete Revenue Procedure 2014-35 after the final regulations are applicable. Comments were requested on whether the revenue procedure should be obsoleted when the final regulations become applicable, and if not, why there is a continuing need for it after the publication of final regulations.

Most commenters argued that Revenue Procedure 2014-35 is outdated and should be obsoleted when the final regulations are applicable. Some commenters noted confusion may occur if the revenue procedure is retained because some provisions of Revenue Procedure 2014-35 conflict with the Act. In particular, one commenter noted there is no need for safe harbors if

Indian Tribal governments are provided broad deference and the IRS defers to Tribal determinations under the proposed regulations. Similarly, other commenters argued that the Act, section 139E, and the proposed regulations are more flexible and provide more comprehensive guidance to Indian Tribal governments than the revenue procedure. Commenters also argued that the safe harbors are no longer needed because section 139E and the proposed regulations, unlike the administrative general welfare exclusion, do not require a showing of individual need. However, these commenters recommended a transition period to allow continued use of the revenue procedure for at least one year after the final regulations are applicable in order to give Indian Tribal governments time to comply with the final regulations.

Similarly, a few commenters noted that some Federal agencies interpret the revenue procedure's safe harbors narrowly to the detriment of benefit recipients who rely on Federal assistance. Another commenter supported obsoletion of Revenue Procedure 2014-35 but detailed the challenges the commenter has experienced with the Social Security Administration and requested that the Treasury Department confirm that Tribal general welfare benefits are needs-based assistance for purposes of eligibility standards under Social Security Administration programs.

One commenter argued that the Treasury Department and the IRS should not obsolete Revenue Procedure 2014-35 so that it remains as fallback guidance in case the final regulations are ever invalidated by a court or otherwise scaled back. Another commenter requested that language be added to the final regulations that, in addition to section 139E and these final regulations, provide that the administrative general welfare exclusion may also be available to exclude an amount from gross income.

Revenue Procedure 2014-35 will become obsolete for taxable years beginning on or after January 1, 2027, the applicability date of the final regulations, which will provide Indian Tribal governments with additional transition time to adjust or update their programs. *See* the "Effect on Other Documents" section of this preamble. The Treasury Department and the IRS agree with commenters that it would be confusing to retain the revenue procedure because these final regulations are intended to be broader than the needs-based safe harbors provided in the revenue procedure. The Treasury Department and the IRS also affirm that section 139E and these regulations do not supplant the administrative general welfare exclusion.

However, the Treasury Department and the IRS disagree that Tribal general welfare benefits are always needs-based assistance. Section 1.139E-1(d)(2)(i) expressly provides that Tribal general welfare benefits may be provided without regard to financial or other need of Tribal program participants. Nevertheless, an Indian Tribal government has broad discretion to establish and administer Indian Tribal government programs and may choose to limit a program or its benefits to Tribal program participants based on a showing of individual need.

VIII. *Audit Suspension and Administration*

The responses of the Treasury Department and the IRS to the comments discussed in parts VIII.A. and VIII.B. of this Summary of Comments and Explanation of Revisions are set forth in part VIII.C. of this Summary of Comments and Explanation of Revisions.

A. *Audit Suspension and the Education and Training Requirement*

Section 4 of the Act provides a temporary suspension of audits and examinations of Indian Tribal governments and Tribal members (or any spouse or dependent of such member) to the extent that the audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion until the education and training prescribed by section 3(b)(2) of the Act is completed. Section 3(b)(2) of the Act directs the Secretary of the Treasury, in consultation with the TTAC, to establish and require (A) training and education or internal revenue field agents who administer and enforce internal revenue laws with respect to Tribes on Federal Indian law and the Federal Government's unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made thereby.

Many commenters noted that section 4 of the Act expressly provides that the lifting of audit suspension is contingent on the completion of education and training. Many commenters requested that meaningful coordination and consultation with the TTAC occur on the education and training. Several commenters requested that the Treasury Department and the IRS use the same TTAC and Tribal consultation and coordination process to satisfy the required education and training as was used for the development of the regulations. Some of these commenters noted that consultation with the TTAC ensures that training and education materials will be drafted to focus on both the substantive rules and the sovereignty principles underlying these regulations.

Several commenters outlined a specific process for developing a training program under section 3 of the Act, which they urged the Treasury Department to adopt. Under their recommendation, the process would begin with a report prepared by the TTAC in coordination with Tribes that would be formally presented to the Treasury Department. The Treasury Department and the IRS would then work with the TTAC or an appropriate TTAC subcommittee to develop a Treasury Department and IRS proposal for the education and training program which would be the subject of Tribal consultation. The Treasury Department and the IRS would then review the comments from the Tribes and publish proposed and final regulations describing the training program, following the same process used in issuing these final regulations.

Commenters also provided general recommendations for what should be included in the required training and education of internal revenue field agents and Tribal financial officers. Some commenters requested that the training materials be made publicly available and that internal revenue field agents receive training on such topics as how to defer to Tribal determinations on whether an item is a Tribal general welfare benefit, a Tribe's customs and programmatic guidelines, and that

examples in the regulations are not exclusive examples.

Some commenters also requested that the final guidance and training materials require IRS agents to consult with the IRS Office of Indian Tribal Governments on audits involving general welfare issues due to that office's expertise with the Federal trust and treaty relationships with Federally recognized Tribes. Some commenters recommended in-person trainings for all individuals required to complete the Act's education and training requirements to foster a better understanding of the materials on Federal Indian law and Tribal-specific issues. Other commenters requested in-person audit training with Tribal representatives because not all Tribes have access to virtual training, or do not attend national or regional Tribal conferences. Another commenter requested that any IRS training manual require the IRS to consult with a Tribe during an audit and to focus on program compliance by allowing for a program to be amended rather than focusing on imposing penalties.

Commenters noted that the statutory language of section 3(b) of the Act describing the categories of persons covered by the audit suspension is narrower than the definition of Tribal program participant in the proposed regulations. Some commenters requested the audit suspension apply to any individual eligible for the exclusion of benefits under the proposed regulations. Commenters noted a lack of parity puts families of Tribal members at risk of audit. One commenter provided a personal experience in which the audit suspension was not applied to an individual's Tribally-recognized spouse who would qualify as a Tribal Program participant under the proposed regulations. Another commenter asserted that the IRS should seek input from the Tribal government that provided a general welfare benefit before penalizing an individual recipient. One commenter requested the audit suspension be extended to Alaska Native regional or village corporations.

B. *Transition Relief*

In the Comments and Public Hearing section of the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether Tribes would need time to transition existing general welfare programs to satisfy the proposed regulations before the regulations are finalized. In addition, if transition relief would be helpful, comments were also requested on the nature of the transition relief needed and any recommendations as to what relief would be helpful to Indian Tribal governments.

Many commenters favored transition relief to allow Indian Tribal governments to adopt changes to their programs after the final regulations are applicable. Commenters noted that program changes may require extensive time to implement due to changes to Tribal ordinances, and RAPs under IGRA. Commenters also noted that Tribal members and Tribal staff need training and education on program changes before such changes are implemented. One commenter requested transition relief due to the legal and financial costs associated with transitioning to a new policy.

Some commenters supported the TTAC proposal of a minimum one-year transition period after the required training and education under section 3(b) of the Act is complete. Many commenters requested specific language be added to proposed §1.139E-1(f) providing that no audits or examinations will begin prior to one year after the effective date of the regulations. Other commenters stated that a one-year transition period is a reasonable starting point but recommended that a transition period for changes to Tribal programs be provided through the end of the calendar year beginning after the final regulations are issued and education and training requirements under section 3(b) of the Act are complete. Many commenters requested relief extending the transition period on a case-by-case basis for Tribes that have initiated Tribal approval processes in a timely manner but where the Tribe cannot reasonably complete such processes within the one-year period, as well as for delays in approvals for changes to a RAP.

Another commenter requested that transition relief be provided that allows an Indian Tribal government program that is in effect during the period between the effective date of the Act and the effective date of the final regulations, and that qualifies as an Indian Tribal government program under the final regulations, be treated as satisfying the requirements of the Act. The commenter also requested that a Tribal government program adopted in good faith based on a reasonable interpretation of the Act be treated as satisfying the requirements of the Act if such program is adopted between the effective date of the Act and the effective date of the final regulations. The commenter noted that this transitional approach was taken in Notice 2006-89 (2006-43 I.R.B. 772).

Some commenters requested the regulations provide that for the first year in which audits are performed, they be conducted solely for the purpose of helping Tribes comply with the final regulations. These commenters explained that this would help focus on educating Tribes about requirements for Indian Tribal government programs and Tribal general welfare benefits, in order to support compliance rather than impose penalties.

Most commenters recommended that audits and examinations be prospective and described it as unfair to audit Tribes and Tribal members retroactively in taxable years for which there were no clear rules. Commenters requested that IRS audit and examination efforts focus on future compliance rather than penalizing past actions and urged that audits should apply only to programs and actions implemented after the regulations are finalized. Commenters argued the Act was enacted as a result of excessive IRS audits which stifled Tribes' ability to provide assistance to Tribal members. Some commenters also requested that the Treasury Department and the IRS provide formal notice providing a transition period and when audits and examinations will resume.

C. *Treasury Department and IRS Response*

Pursuant to section 4(a) of the Act, the suspension of audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member) by the IRS relating to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion will be lifted once the education and training required by section 3(b)(2) of the Act is completed. As also provided by section 4(a) of the Act, the running of any period of limita-

tions under section 6501 with respect to Indian Tribal governments and members of Tribes is also suspended until the education and training required by section 3(b)(2) of the Act is completed.

The Treasury Department and the IRS expect to begin development of education and training materials in consultation with Tribes and the TTAC soon after the effective date of this Treasury decision.

The Treasury Department and the IRS agree with the TTAC, Tribal leaders, and commenters generally that it would be in the interest of sound tax administration for IRS audits and examinations (see sections 7602 and 7605 of the Code) of issues under section 139E and these final regulations to be prospective in nature. In addition, the Treasury Department and the IRS agree with the TTAC, Tribal leaders, and commenters generally that it would be counterproductive for IRS audit and examinations of issues under section 139E and these final regulations to apply to taxable years for which there was no guidance interpreting section 139E. The Treasury Department and the IRS also agree that during the period beginning after the effective date of this Treasury decision and while the education and training required by section 3(b)(2) of the Act is ongoing, it would be most productive to allow Indian Tribal governments time to adopt changes to the general welfare programs they administer such that the programs comply with these final regulations. In addition, until such education and training are complete, the Treasury Department and the IRS intend to apply the temporary suspension of audits and examinations to Indian Tribal governments and Tribal program participants as defined in the final regulations, which, based on the comments received, is not limited to the individuals described in section 4(a) of the Act. However, the IRS may inquire as to whether a taxpayer qualifies for the audit suspension. For example, the IRS may ask questions to determine whether an individual is a Tribal program participant. Accordingly, §1.139E-1(g) also provides for the ability of the IRS to inquire into a taxpayer's eligibility for the audit suspension.

Accordingly, the Treasury Department and the IRS have determined that although these final regulations will be effective after December 16, 2025, the rules of §1.139E-1 will not be applicable to any taxable years of Tribal program participants that begin before January 1, 2027. Once the education and training required by section 3(b)(2) of the Act is complete, the Treasury Department and the IRS will publish a formal notice that the required education and training has been completed at least 30 days in advance of lifting the suspension of audits and examinations. The tolling of the period of limitations under section 6501 pursuant to section 4(a) of the Act will also end once the suspension of audits and examinations is lifted. However, in the interest of sound tax administration, once the suspension of audits and examination is lifted, the IRS does not intend to open audits or examinations (except in certain circumstances such as, for example, in the case of fraud) with respect to the exclusion of a payment or benefit under section 139E for taxable years ending before December 16, 2025.

In addition, once the suspension of audits and examinations is lifted, the IRS will apply section 139E to taxable years ending on or after December 16, 2025, and beginning before January 1, 2027, by taking into account the good faith efforts of an Indian Tribal government or Tribal program participant to comply with the requirements of section 139E in advance of the January 1, 2027, applicability date of §1.139E-1. Indian Tribal governments may also choose to apply the provisions of §1.139E-1, in their entirety, for benefits provided to Tribal program participants in taxable years that begin before January 1, 2027. In addition, Indian Tribal governments may continue to apply Revenue Procedure 2014-35 for benefits provided to Tribal program participants in taxable years that begin before January 1, 2027, as Indian Tribal governments transition any programs to comply with the final regulations in advance of January 1, 2027. However, once the final regulations become applicable for taxable years beginning on or after January 1, 2027, Revenue Procedure 2014-35 will become obsolete, and no person may rely on Revenue Procedure 2014-35 for any taxable year beginning on or after January 1, 2027.

Finally, the Treasury Department and the IRS remind Indian Tribal governments and administrators of Indian Tribal government programs that satisfy the requirements of §1.139E-1(d) that no amount of any Tribal general welfare benefit satisfying the requirements of §1.139E-1(d) that is provided by such an Indian Tribal government program to a Tribal program participant (as defined in §1.139E-1(b)(8)) should be reported on any information return (for example, Form 1099-MISC, Miscellaneous Information) or statement otherwise required to be filed with the IRS or furnished to an individual under the Code. If a Tribal program participant believes that he or she has received an information return in error, the Tribal program participant should contact the issuer for a corrected information return.

With regard to the comments on the audit suspension program and the education and training, the Treasury Department and the IRS confirm that the audit suspension described in section 4(a) of the Act continues until all the requirements of section 3(b)(2) of the Act are satisfied. Once these final regulations under section 139E are published in the ***Federal Register***, the Treasury Department and the IRS, in consultation with Tribes and the TTAC, will develop the training curriculum and conduct the required education and training under section 3(b)(2) of the Act. Only after that required education and training is complete will the audit suspension be lifted.

The Treasury Department and the IRS intend to work closely with the TTAC and consult with the TTAC GWE Subcommittee in designing and preparing the training and education program required under section 3(b)(2) of the Act. However, the Treasury Department and the IRS have determined that a notice and comment period similar to that used for regulations is not required by section 3 of the Act and would delay the implementation of these final regulations for Tribal officers and IRS agents. The Treasury Department and the IRS are aware of Executive Order 13175 and intend to hold consultations with Tribal leaders on training and education programs.

The Treasury Department and the IRS decline to adopt the recommendations in the comments related to what the required education and training may provide because the specifics of this education and training are outside the scope of these regulations. As noted in the preamble to the

proposed regulations, these regulations "do not address the education and training that will be required to be complete before the audit suspension is lifted." The Treasury Department and the IRS will continue to consult with the TTAC as required under section 3(b)(2) of the Act.

IX. *Other Issues*

A. *Coordination with other Federal Agencies/Social Welfare Programs*

Several commenters expressed concern that Tribal general welfare benefits are considered in income-based eligibility determinations for Federal assistance programs administered by other agencies, such as the Social Security Administration for Medicaid, Department of Agriculture, Housing and Urban Development, and the Department of Veteran Affairs. Most commenters requested that the Treasury Department and the IRS engage with other Federal agencies to address this issue and ensure that benefits excluded under section 139E do not affect eligibility for other Federal assistance programs. This issue is important to Tribes because it results in hardships for vulnerable Tribal citizens. Some of these commenters recommended that the Treasury Department and the IRS collaborate with the TTAC on the issue of the interaction of Tribal general welfare benefits under section 139E and eligibility requirements for other Federal assistance programs. Several commenters noted that other Federal programs should consider the Tribal canon of construction when determining eligibility based on income.

The Treasury Department and the IRS have authority to interpret and provide rules under section 139E to determine whether a benefit is excludible from gross income for Federal income tax purposes. However, the issue of whether a Tribal general welfare benefit is taken into account for purposes of other Federal benefit programs administered by other Federal agencies is outside the authority of the Treasury Department and the IRS. As such, these final regulations do not provide guidance on the treatment of Tribal general welfare benefits outside of the Internal Revenue Code (26 U.S.C. et seq.). The Treasury Department and the IRS understand the importance of this issue for Tribes and will continue to work with the TTAC and Tribes to confer with other Federal agencies to provide advice on how the Federal tax law applies to Tribal general welfare benefits.

B. *Advance Rulings*

Some commenters requested an advance ruling process be established by the IRS for Tribes to have access to an optional advance ruling program or procedures to address program design and compliance issues not directly or fully answered in the final regulations.

The Treasury Department and the IRS appreciate that Tribes want certainty on the Indian Tribal government programs to ensure the programs comply with section 139E and these final regulations. However, these final regulations do not provide a new advance ruling process for Tribes to request review of the general welfare programs for the reasons discussed below.

The IRS has a general process already in place for entities and individuals to request a letter ruling on the tax treatment of a particular transaction or program. If an Indian Tribal government receives a letter ruling from the IRS, the ruling generally is binding on the IRS. However, a letter ruling would address the Federal tax law and would not be binding in any way on other Federal or State agencies. The IRS expects the letter ruling process to be available to Indian Tribal governments after the final regulations are effective (that is, after December 16, 2025).

In addition, section 3(b)(2) of the Act requires the Treasury Department, in consultation with the TTAC, to establish training and education, with specific requirements to provide assistance to Tribal financial officers on the implementation of section 139E. The Treasury Department and the IRS expect such training and education to support Tribes in understanding the flexibility and deference provided to Indian Tribal governments in developing general welfare programs to satisfy the program and benefit requirements of section 139E and these final regulations. Moreover, the IRS Office of Indian Tribal Governments is also a resource for informal advice on issues that affect Indian Tribal governments.

C. *Appeal Process*

Some commenters requested an appeals process be provided to Tribes and Tribal members to appeal IRS field agent decisions to a team of Tribal specialists at the top of the IRS structure without waiving existing legal rights. These commenters asserted that such an appeals process would acknowledge the unique Tribal relationship with the Federal government and would help Tribes and their Tribal members avoid litigation expenses. These commenters requested that Tribal court decisions be given full faith and credit by the IRS.

The Treasury Department and the IRS do not include a separate appeals process in these final regulations because it is outside the scope of section 139E. The IRS expects that the existing appeals processes in place for entities and individuals to request the review of Federal income tax controversies would apply, including through the Independent Office of Appeals (Appeals). The IRS expects that the required education and training under section 3(b)(2) of the Act will also help IRS field agents and Tribal financial officers understand the requirements of these final regulations and the unique government-to-government relationship with the Federal government.

D. *Section 139D*

In part III.A.4. of the Explanation of Provisions in the preamble to the proposed regulations, the Treasury Department and the IRS discussed wellness and health-related programs and explained that section 139D of the Code and section 139E are independent provisions, and that section 139D does not limit the application of section 139E. The preamble discussed qualified Indian health care benefits generally and provided an example of medical care under section 213(d) of the Code. Moreover, the example described certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, that are not considered medical care under section 213(d), and concludes these are not excludible under section 139D.

Commenters expressed concern that the Treasury Department and the IRS's description of section 139D in the pro-

posed regulations is inaccurate and too narrow. Commenters requested that the Treasury Department and the IRS revise the description of section 139D to accurately reflect the exclusion from gross income for qualified Indian health care benefits. Several commenters stated that Tribes provide more than medical care under their Indian Self Determination and Education Assistance Act (ISDEAA) agreements and in the health coverage they purchase and/or provide to their members. The commenters further explained that Tribes routinely provide general health, wellness, and other preventative and health promotion services to their members through the community health representative programs, home and community-based services, community health education, and other services.

The Treasury Department and the IRS agree with commenters that the description of section 139D in the proposed regulations was too narrow and inaccurate in describing a qualified Indian health care benefit. The Treasury Department and the IRS intended for the discussion in the proposed regulations to explain that section 139E applies to a benefit independent of section 139D such that a benefit from certain wellness and health-related programs may qualify for exclusion from gross income under section 139E whether or not it also qualifies for exclusion from gross income under section 139D.

Section 139D generally provides an exclusion from gross income for any qualified Indian health care benefit. The term "qualified Indian health care benefit" is defined in section 139D(b) and some benefits may not be limited by the definition of medical care under section 213. For example, section 139D(b)(1) provides that a qualified Indian health care benefit includes any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian Tribe or Tribal organization, or through a third-party program funded by the Indian Health Service.

Amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, are not amounts paid for medical care. However, even if such benefit is not a qualified Indian health care benefit under section 139D, an Indian Tribal government may determine, under §1.139E-1(d)(2), that wellness and health-related programs are for the promotion of general welfare under section 139E. Thus, amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by a spouse or relative, may be amounts which qualify as Tribal general welfare benefits.

X. *Ongoing Consultation*

A. *Future TTAC Coordination*

Many commenters requested that the Treasury Department and the IRS continue to coordinate all changes and future guidance with the TTAC to ensure Tribal input remains at the forefront of future efforts to develop and implement the Act. Many commenters requested that the Treasury Department and the IRS maintain an open dialogue with TTAC on guidance proposals, and not mere listening sessions, so that Tribes have a meaningful role in the development of all rules that impact the Tribal general welfare exclusion both directly and through TTAC. For example, one commenter requested that the Treasury Department and the IRS meet with TTAC to jointly consider and address the comments received on the proposed regulations, and, in turn, that the TTAC share this progress with Tribes to ensure Tribal input in the guidance process. Moreover, commenters requested that the Treasury Department and the IRS maintain ongoing consultation with Tribal leaders and the TTAC as new issues arise to ensure the regulations protect Tribal sovereignty and support effective Tribal governance.

One commenter objected generally to the composition of Tribal representation on the TTAC. Conversely, some commenters shared appreciation for the Treasury Department and the IRS's collaborative approach with the TTAC and Tribes on the development of the proposed regulations. Commenters also expressed support for the work of Treasury's Office of Tribal and Native Affairs and requested permanency for the office.

The Treasury Department and the IRS agree with commenters that ongoing consultation with the TTAC is beneficial to the implementation of the Act. The Treasury Department and the IRS have engaged in extensive consultation with the TTAC GWE Subcommittee during the drafting of these final regulations with meaningful discussion of the comments received on the proposed regulation. These final regulations incorporate the recommendations of the TTAC GWE Subcommittee on these issues. Moreover, the Treasury Department and the IRS intend to continue meaningful consultation with the TTAC GWE Subcommittee to develop the training and education required by section 3(b) of the Act.

B. *Alaska Native Regional or Village Corporations*

Several commenters expressed concern that the proposed regulations do not provide guidance for Alaska Native regional or village corporations, even though Alaska Native regional or village corporations are included in section 139E(c)(1). Commenters stated the Treasury Department and the IRS are required to consult with Alaska Native regional or village corporations on the same basis as Federally recognized Tribes under Executive Order 13175. Some commenters pointed to Dear Tribal Leader Letters sent to leaders of Federally recognized Tribes and those letters were not sent to leadership of Alaska Native regional or village corporations and did not specifically address Alaska Native regional or village corporations. These commenters argued that the promise to issue guidance in the future is inadequate to satisfy the requirements of the Act and leaves out Alaska Native regional or village corporations, and Alaska Native regional or village corporations have no information when consultation will be held on section 139E and the Act. These commenters asserted that the IRS should have consulted with Alaska Native regional or village corporations to provide their leadership and other interested parties an opportunity to engage in the commenting process before deciding to omit Alaska Native regional or village corporations from the proposed regulations.

Some commenters argued that providing guidance for Alaska Native regional or village corporations in later regulations is harmful and has negative effects on Alaska Native regional or village corporations because it creates confusion and uncertainty for Alaska Native regional or village corporations and may have the potential to obscure their place in the regulatory framework, contrary to their inclusion in section 139E. One commenter notes the omission of Alaska Native regional or village corporations from the proposed regulations creates confusion as to whether section 139E applies to Alaska Native regional or village corporations and that eliminating this uncertainty should be a top priority of the Treasury Department and the IRS.

Some commenters recommended that the final regulations include Alaska Native regional or village corporations in the definitions of Indian Tribal government and Tribe in §1.139E-1. Other commenters recommended that the Treasury Department and the IRS finalize the regulations only after consultation with Alaska Native regional or village corporations on section 139E, publishing a proposed regulation applicable to Alaska Native regional or village corporations, providing notice and comment on such regulation, and solicitating specific questions of Alaska Native regional or village corporations. A commenter stated that Alaska Native regional or village corporations also provide vital general welfare benefits and services to their shareholders, such as scholarships, funding for cultural programs, improvements to healthcare access, and other essential services. Another commenter recommended that the Treasury Department and the IRS quickly promulgate proposed §1.139E-2 to address Alaska Native regional or village corporations. Several commenters mentioned that rules provided for Alaska Native regional or village corporations should be similar to those for Federally recognized Tribes in the proposed regulation, possibly with minor customizations.

One commenter acknowledged the decision of the Treasury Department and the IRS to issue separate guidance for Alaska Native regional or village corporations and Federally recognized Tribes. However, the commenter requested that the Treasury Department and the IRS include section 139E guidance for Alaska Native regional or village corporations as a priority on the Priority Guidance Plan (PGP) for the 2025-2026 plan year and that the guidance provided be similar to the guidance provided to Federally recognized Tribes under the proposed regulations. The commenter also recommended that interim guidance allow Alaska Native regional or village corporations to apply any or all of the provisions of the proposed regulation on a case-by-case basis.

In the interest of sound tax administration, the Treasury Department and the IRS have decided to continue to limit the rules of §1.139E-1 to Federally recognized Tribes. However, the Treasury Department and the IRS agree with commenters that, as provided in section 139E(c)(1), an Alaska Native regional or village corporation may provide Tribal general welfare benefits excluded from gross income under section 139E.

The Treasury Department and the IRS held a consultation with Alaska Native regional and village corporations on July 29, 2025, in order to gather input before promulgating proposed regulations under section 139E customized to the specific circumstances of Alaska Native regional or village corporations. Discussion at this consultation focused on the application of section 139E to Alaska Native regional or village corporations and what guidance specific to Alaska Native regional or village corporations' distinct Federal income tax characteristics and circumstances would be helpful. Additionally, the Treasury Department and the IRS included section 139E guidance for Alaska Native regional or village corporations as a priority on the Priority Guidance Plan for the 2025-2026 plan year, released on September 30, 2025. The current Priority Guidance Plan is available at *https://www.irs.gov/privacy-disclosure/priority-guidance-plan*.

The Treasury Department and IRS are aware that Alaska Native regional or village corporations may want more certainty regarding their general welfare programs prior to the promulgation of additional final regulations under section 139E. Accordingly, the Treasury Department and the IRS have determined that Alaska Native regional or village corporations may choose to apply the final rules in §1.139E-1 until proposed regulations that specifically address the application of the requirements of section 139E to Alaska Native regional or village corporations are published under §1.139E-2. However, an Alaska Native regional or village corporation that chooses to apply the rules in §1.139E-1 must consistently apply the rules of §1.139E-1 with respect to any general welfare benefits provided to a shareholder of the Alaska Native regional or village corporation (and the shareholder's spouse and dependents) and other Tribal program participants from general welfare programs of the Alaska Native regional or village corporation that satisfy §1.139E-1(c). These final regulations set forth the substance of the preceding two sentences at §1.139E-2. Moreover, the Treasury Department and the IRS acknowledge that section 3(b) of the Act requires education and training specific to Alaska Native regional or village corporations.

Special Analyses

I. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final regulations have a substantial direct effect on one or more Federally recognized Indian Tribes and do impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order. As a result, the Treasury Department complied with section 5(b)(2)(A) and (B) of Executive Order 13175. In compliance with section 5(b)(2)(A) of Executive Order 13175 and in response to Tribal leader requests for these final regulations, the Treasury Department and the IRS held consultations with Tribal leaders on November 18, 19, and 20, 2024, requesting assistance in addressing questions related to the Act and

the proposed regulations, which informed the development of these final regulations. The Treasury Department and the IRS also intend to conduct Tribal consultation on the required training described in section 3(b)(2) of the Act.

II. *Regulatory Planning and Review*

The Office of Information and Regulatory Analysis of the Office of Management and Budget (OMB) has determined that this regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the OMB regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

The Executive Order 14192 designation for this rule is anticipated to be deregulatory.

III. *Paperwork Reduction Act*

The collection of information contained in these regulations has been reviewed and approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under control number 1545-2328.

These regulations include third-party disclosures and recordkeeping requirements that are required to substantiate that the value of a Tribal General Welfare Benefit is excluded from a recipient's gross income.

The recordkeeping requirements in §1.139E-1(c)(3) provide that Indian Tribal government programs must be administered under specified guidelines and provide general requirements on the content of those guidelines. Written specified guidelines are not required. Additionally, Indian Tribal governments should keep records they deem appropriate to substantiate that the Tribal general welfare benefits are distributed without discriminating in favor of the governing body of the Tribe, as described in §1.139E-1(c)(4), are not lavish or extravagant, as described in §1.139E-1(d)(4), and are not compensation for services, as described in §1.139E-1(d)(5). This information will generally be used by the IRS for tax compliance purposes to ensure Indian Tribal governments are distributing Tribal general welfare benefits in accordance with §1.139E-1.

A disclosure requirement may apply to Indian Tribal governments that choose to provide notification to Tribal program participants that an Indian Tribal government program exists for which Tribal program participants may apply for benefits. These final regulations do not prescribe a specific method Indian Tribal governments must use to announce the existence of a program. An Indian Tribal government may announce Indian Tribal government programs in any manner it deems appropriate.

These final regulations do not change the general recordkeeping requirement under section 6001 or create any new recordkeeping requirements for Tribal program participants that receive a Tribal general welfare benefit.

The estimated total reporting burden for Indian Tribal governments (third-party disclosure and recordkeeping burden for Tribal entities) is as follows:

Estimated Number of Respondents: 2,296

Estimated Time per Response: 2 hours

Estimated Frequency of Response: Once or on occasion

Estimated Total Burden Hours: 4,592 hours

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the OMB.

IV. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These final regulations affect Indian Tribal governments that establish and administer Tribal general welfare programs and that distribute Tribal general welfare benefits to certain individuals. The Treasury Department and the IRS have no reliable data to determine whether Tribal general welfare programs may be established and administered through small entities, such as not-for-profit entities. Although data is not readily available about the number of small entities that will potentially be affected by these final regulations, it is possible that a substantial number of small entities may be affected. However, any impact on those entities will not be economically significant and therefore a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The impact of these final regulations can be described in the following categories. First, §1.139E-1(c) provides guidance on what criteria a program must meet in order to be an "Indian Tribal Government Program." Specifically, §1.139E-1(c) provides that the program must be established by the Indian Tribal government; administered under specified guidelines; and not discriminate in favor of members of the governing body of the Tribe. Even assuming these provisions affect a substantial number of small entities, they will not have a significant economic impact. Section 139E(b) imposes the burden of what is needed to create an Indian Tribal government program. These final regulations will provide deference to Indian Tribal governments on the types of general welfare programs established and generally defer to Indian Tribal governments on the form of the program's specified guidelines and the specific records they should maintain. As such, it is expected that the final regulations will have a minimal economic impact on Indian Tribal governments.

Second, §1.139E-1(d) will provide guidance on whether a benefit is a "Tribal General Welfare Benefit" that is excluded from an individual's gross income. Specifically, §1.139E-1(d) will require the benefit be provided pursuant to an Indian Tribal government program; be for the promotion of general welfare; be available to any eligible Tribal program participant; not be lavish or extravagant; and, except as provided in section 139E(c)(5), not be for compensation for services. Section 1.139E-1(d) will provide deference to Indian Tribal governments on the types of benefits that promote the general welfare, the individuals who are eligible for ben-

efits, and whether benefits are provided in exchange for participation in certain cultural or ceremonial activities under section 139E(c)(5) and these final regulations. It also provides that deference is given to the attestations of the facts and circumstances at the time that a benefit is provided to the Tribal program participant, and that the benefit is presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal government program that exist at the time that the benefit is provided to the Tribal program participant. As such, it is expected that the final regulations will have a minimal economic impact on Indian Tribal governments.

Third, an Indian Tribal government program may provide benefits to a Tribal program participant that are items of cultural significance, reimbursement of costs, or cash honoraria for the Tribal program participant's participation in certain cultural or ceremonial activities. *See* §1.139E-1(e). Indian Tribal governments have broad discretion to determine whether or not these benefits are provided. Even assuming this provision affects a substantial number of small entities, it will not have a significant economic impact because benefits that are items of cultural significance, reimbursement of costs, and cash honoraria are only a few types of the benefits that are permitted to be provided under section 139E and §1.139E-1. An Indian Tribal government is not required to provide these types of benefits.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

V. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, the proposed regulations (REG-106851-21) preceding this final regulation were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

VI. *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 Indian Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments, or by the private sector in excess of that threshold.

VII. *Executive Order 13132: Federalism*

Executive Order 13132 (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. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Effect on Other Documents

Revenue Procedure 2014-35 (2014-26 I.R.B. 1110) and Notice 2015-34 (2015-18 I.R.B. 942) are obsolete for taxable years beginning on or after January 1, 2027.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal authors of these regulations are Mon Lam, Jonathan Dunlap, and Thomas Brown of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries for §§1.139E-1, 1.139E-1(d)(6), 1.139E-2, and 1.7872-5(b)(17), in numerical order, to read in part, as follows:

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

* * * * *

Section 1.139E-1 also issued under 26 U.S.C. 139E.

Section 1.139E-1(d)(6) also issued under 26 U.S.C. 7872.

Section 1.139E-2 also issued under 26 U.S.C. 139E.

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Section 1.7872-5(b)(17) also issued under 26 U.S.C. 7872.

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Par. 2. Sections 1.139E-0 through 1.139E-2 are added to read as follows:

* * * * *

Sec.

1.139E-0 Table of contents.

1.139E-1 Tribal general welfare benefits.

1.139E-2 Alaska Native regional or village corporations.

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§1.139E-0 Table of contents.

This section lists the major captions for §§1.139E-1 and 1.139E-2.

§1.139E-1 Tribal general welfare benefits.

(a) Overview.

(b) Definitions.

(1) Act.

(2) Benefit.

(3) Code.

(4) Indian Tribal Government.
(5) Indian Tribal Government Program.
(6) Tribal General Welfare Benefit.
(7) Tribe.
(8) Tribal Program Participant.
(9) Tribal Member.
(10) Dependent.
(c) Indian Tribal Government Program.
(1) In general.
(2) Program must be established.
(3) Program must be administered under specified guidelines.
(4) Program cannot discriminate in favor of members of the governing body of the Tribe.
(5) No limitation on source of funds.
(d) Tribal General Welfare Benefits.
(1) In general.
(2) Benefits must be for the promotion of general welfare.
(3) Benefits must be available.
(4) Benefits cannot be lavish or extravagant.
(5) Benefits cannot be compensation for services.
(6) Loans from an Indian Tribal Government to a Tribal Program Participant.
(e) Cultural or ceremonial activities.
(1) In general.
(2) Application.
(3) Examples.
(f) Section 2(c) of the Act.
(g) Audit suspension.
(h) Applicability date.

§1.139E-2 Alaska Native regional or village corporations.

§1.139E-1 Tribal general welfare benefits.

(a) *Overview*. Under section 139E of the Code and this section, the gross income of a Tribal Program Participant for the taxable year does not include the value of any Tribal General Welfare Benefit provided by an Indian Tribal Government Program during the year to or on behalf of the Tribal Program Participant. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the requirements that any program must satisfy to qualify as an Indian Tribal Government Program for purposes of this section. Paragraph (d) of this section provides the requirements that any benefit provided to or on behalf of a Tribal Program Participant must satisfy to qualify as a Tribal General Welfare Benefit for purposes of this section. Paragraph (e) of this section provides special rules related to cultural or ceremonial activities solely for purposes of this section. Paragraph (f) of this section restates the deference provided to Indian Tribal governments under section 2(c) of the Act. Paragraph (g) of this section describes the audit suspension provisions in section 4(a) of the Act. Paragraph (h) of this section provides the date of applicability of this section.

(b) *Definitions*. The following definitions apply for purposes of this section:

(1) *Act*. The term *Act* means the Tribal General Welfare Exclusion Act of 2014, Public Law 113–168, 128 Stat. 1883 (2014).

(2) *Benefit*. The term *benefit* means any money, property, services, or other item of value provided to or on behalf of an individual.

(3) *Code*. The term *Code* means the Internal Revenue Code.

(4) *Indian Tribal Government*. The term *Indian Tribal Government* means an Indian Tribal Government as defined by section 7701(a)(40) of the Code and includes any agencies or instrumentalities of such an Indian Tribal Government.

(5) *Indian Tribal Government Program*. The term *Indian Tribal Government Program* means a program that satisfies the requirements of paragraph (c) of this section.

(6) *Tribal General Welfare Benefit*. The term *Tribal General Welfare Benefit* means any benefit provided to or on behalf of a Tribal Program Participant that satisfies the requirements of paragraph (d) of this section for exclusion from gross income as an "Indian general welfare benefit" under section 139E of the Code.

(7) *Tribe*. The term *Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) *Tribal Program Participant*—(i) *In general*. The term *Tribal Program Participant* means a Tribal Member, spouse of a Tribal Member within the meaning of §301.7701-18 of this chapter, spouse of a Tribal Member under applicable Tribal law, dependent of a Tribal Member, or other individual who has been determined by the Indian Tribal Government to be eligible for a Tribal General Welfare Benefit because such individual is, with respect to a Tribal Member, an ancestor, descendant, former spouse, widow or widower, legally recognized domestic partner or former domestic partner, or an individual for whom a Tribal Member is a caregiver authorized under Tribal or State law.

(ii) *Special rule for ceremonial or cultural activities*. Solely for purposes of paragraph (e) of this section, the term *Tribal Program Participant* may include a member or citizen of a Tribe that is different from the Tribe that establishes or maintains the Indian Tribal Government Program that provides the Tribal General Welfare Benefit, and other individuals described in paragraph (b)(8)(i) of this section. For purposes of this paragraph (b)(8)(ii), in applying paragraph (b)(8)(i) of this section, such member or citizen of another Tribe will be treated as a Tribal Member.

(9) *Tribal Member*. The term *Tribal Member* means an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal Government Program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe, and:

(i) Is listed on the Tribal rolls of the Tribe if such rolls are kept;

(ii) Is recognized as a member by the Tribe if Tribal rolls are not kept; or

(iii) Is an Indian child as defined in 25 U.S.C. 1903.

(10) *Dependent*. The term *dependent* means an individual who is a qualifying child or a qualifying relative, as defined in section 152 of the Code, of a Tribal Member for the taxable year determined:

(i) Without regard to whether the Tribal Member was a qualifying child or qualifying relative, each as defined in section 152, of another taxpayer for a taxable year of the other taxpayer beginning in that calendar year.

(ii) Without regard to whether the individual filed a joint return with the individual's spouse (as defined in section 6013 of

the Code) for the taxable year beginning in that calendar year; and

(iii) Without regard to the individual's gross income for the calendar year in which the individual's taxable year begins.

(c) *Indian Tribal Government Program*—(1) *In general*. A program is an Indian Tribal Government Program only if the program:

(i) Is established by the Indian Tribal Government, as described in paragraph (c)(2) of this section;

(ii) Is administered under specified guidelines, as described in paragraph (c)(3) of this section; and

(iii) Does not discriminate in favor of members of the governing body of the Tribe, as described in paragraph (c)(4) of this section.

(2) *Program must be established*—(i) *In general*. A program must be established by an Indian Tribal Government. A program established by Tribal custom or government practice, or by formal action of the Indian Tribal Government, is a program established by the Indian Tribal Government. Formal action means authorization of the program pursuant to applicable Tribal law. The formal action must be in writing to the extent such writing is required under applicable Tribal law. For example, written documentation that evidences the formal action of the Indian Tribal Government to establish the program is required if such written documentation is required under applicable Tribal law. Similarly, no written documentation of the formal action of the Indian Tribal Government to establish the program is required if, under applicable Tribal law, no written documentation of such action is required. As an additional example, a program may be established by a voice vote if such voice vote would otherwise constitute formal action of the Indian Tribal Government under applicable Tribal law. To the extent permitted under applicable Tribal law, an Indian Tribal Government may delegate the authority for establishing a program to a designated individual or entity of the Indian Tribal Government.

(ii) *Examples*. The requirements of this paragraph (c)(2) are illustrated by the following examples, which are not intended to be an exhaustive or exclusive illustration of the rules provided in this paragraph (c)(2):

(A) *Example 1*. A, a Tribe, operates under the direction of its Indian Tribal Government (the Council). According to the laws of A, all expenditures of A must be approved by a majority of the Council at the Council's annual meeting or by written unanimous consent if the action is taken without a meeting. During the annual meeting of A's Council, a majority of the Council vote to approve establishing a program. A's Council has established the program under paragraph (c)(2)(i) of this section.

(B) *Example 2*—(*1*) *Facts*. The facts are the same as in paragraph (c)(2)(ii)(A) of this section (*Example 1*), except that, based on a recommendation from the Tribal Education office, A's Council determines to provide funding for a scholarship program to pay 100% of education related expenses for any Tribal Member who graduates from high school or receives a GED during the calendar year. Because the next Council meeting is scheduled in December 2024, and to avoid potential impact on eligible students, in February 2024, Council adopts by unanimous written consent the following education program:

(*i*) Approving $X of funding for the 2024 year for the scholarship program; and

(*ii*) Authorizing the director of the Tribal Education office to use the approved funds for the scholarship program.

(*2*) *Analysis*. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(C) *Example 3*. The facts are the same as in paragraph (c)(2)(ii)(B) of this section (*Example 2*) except that A's Council approves $X of annual funding to be provided for the education program, and delegates to the Tribal Education office authority to establish a scholarship program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(3) *Program must be administered under specified guidelines*. A program must be administered under specified guidelines. The specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the eligibility requirements for the program, a description of the type of benefits authorized by the program, and the process for receiving benefits under the program. A program is administered under specified guidelines if the program is operated in accordance with such guidelines. Indian Tribal Governments may choose to, but are not required to, set forth the specified guidelines of the program in writing.

(4) *Program cannot discriminate in favor of members of the governing body of the Tribe*—(i) *In general*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program cannot discriminate in favor of members of the governing body of the Tribe. For the purposes of this paragraph (c)(4), a governing body means the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe.

(ii) *General council Tribes.* A program is treated as being in compliance with this paragraph (c)(4) if the governing body of a Tribe consists of the entire adult membership of the Tribe.

(iii) *Facts and circumstances test*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program fails to satisfy the requirements of this paragraph (c)(4) if, based on all the facts and circumstances, the program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. A program discriminates in favor of the members of the governing body of the Tribe if the program by its terms is available only to members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body fails to satisfy the requirements of this paragraph (c)(4). Additionally, the administration of a program discriminates in favor of members of the governing body of the Tribe if, based on the totality of the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body.

(5) *No limitation on source of funds*—(i) *In general*. Benefits under the Indian Tribal Government Program may be funded by any source of revenue or funds. For example, an Indian Tribal Government may use funds derived from levies, taxes, and service fees; settlements; revenues from Tribally-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal Government Program.

(ii) *Benefits funded by net gaming revenues*. Benefits under the Indian Tribal Government Program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701-2721 (IGRA). However,

per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or this section. For purposes of section 139E and this section, a payment is a per capita payment if it is identified by the Indian Tribal Government as a per capita payment in a Revenue Allocation Plan that is approved by the Department of the Interior (*see* 25 U.S.C. 2710(b)(3) and 25 CFR 290.11) and in effect at the time of the payment.

(iii) *Benefits paid as distributions from certain trusts*. Benefits under the Indian Tribal Government Program may be provided to Tribal Program Participants as distributions from the portion of a trust of which the Indian Tribal Government is treated as owner under sections 671 through 677. For purposes of section 139E and this section, the determination of whether a benefit is a Tribal General Welfare Benefit is made at the time the benefit is distributed from the trust to the Tribal Program Participant. A benefit, or a portion thereof, that an Indian Tribal Government Program distributes from a trust is a Tribal General Welfare Benefit under section 139E if it otherwise satisfies the requirements of section 139E and this section.

(d) *Tribal General Welfare Benefits*—(1) *In general*. A benefit does not qualify as a Tribal General Welfare Benefit unless the benefit is:

(i) Provided pursuant to an Indian Tribal Government Program, as described in paragraph (c) of this section;

(ii) Provided for the promotion of general welfare, as described in paragraph (d)(2) of this section;

(iii) Available to any eligible Tribal Program Participant, as described in paragraph (d)(3) of this section;

(iv) Not lavish or extravagant, as described in paragraph (d)(4) of this section; and

(v) Not compensation for services, as described in paragraph (d)(5) of this section.

(2) *Benefits must be for the promotion of general welfare*—(i) *In general*. Tribal General Welfare Benefits must be for the promotion of general welfare. For purposes of section 139E and this paragraph (d)(2), the Indian Tribal Government determines that a benefit is for the promotion of general welfare at the time it establishes the Tribal General Welfare Program meeting the requirements of paragraph (c) of this section. An Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and the Internal Revenue Service will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. Benefits may be provided without regard to the financial or other need of Tribal Program Participants and may be provided on a uniform or pro-rata basis to Tribal Program Participants. Thus, for example, an Indian Tribal Government determines whether benefits are for the promotion of general welfare under programs such as cultural programs, housing assistance programs, programs to provide education benefits, programs for training or retraining to acquire new skills or to obtain better employment opportunities, programs to provide assistance for disasters or emergency situations, funeral or burial assistance programs, legal aid programs, wellness and health-related programs, or any programs that provide benefits to specific categories of individuals, such as elderly individuals or minors. Moreover, an Indian Tribal Government may also determine that providing a benefit to a Tribal Program Participant to support, develop, operate, expand or start a trade or business is a benefit for the promotion of general welfare. However, a benefit paid to or on behalf of a Tribal Program Participant for a trade or business must be paid to or on behalf of the Tribal Program Participant in the Tribal Program Participant's capacity as an individual (for example, the benefit cannot be paid to or on behalf of the Tribal Program Participant's corporation or partnership).

(ii) *Examples*. The requirements of paragraph (d)(2)(i) of this section are illustrated by the following examples. Items listed in these examples following the term "including" are not intended to be an exhaustive or exclusive illustration of the application of the rules in paragraph (d)(2)(i) of this section. For the examples in this paragraph (d)(2)(ii), assume the Indian Tribal Government has determined that the benefits provided are for the promotion of general welfare.

(A) *Example 1*: *Housing programs*. Indian Tribal Government A administers a program, B, pursuant to which the following benefits are provided in connection with A's Tribal Members' principal residences and ancillary structures: payments for Tribal Members to use to make mortgage payments, down payments, and rent payments (including security deposits); payments for Tribal Members to enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including mold remediation), and heating or cooling issues; payments for Tribal Members to provide for basic housing repairs or rehabilitation (including roof repair and replacement); and payments to Tribal Members to pay utility bills and charges (including water, electricity, gas, and basic communications services such as phone, internet, and cable). The payments made by A under B are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(B) *Example 2*: *Educational programs.* Indian Tribal Government C administers a program, D, pursuant to which the following benefits are provided: provision to students (including post-secondary students) of transportation to and from school, tutors, and supplies (including clothing, backpacks, laptop computers, textbooks, musical instruments, and sports equipment) for use in school activities and extracurricular activities; tuition payments for students (as well as allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education; provision of care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and provision of job counseling and programs for which the primary objective is job placement or training, including allowances for expenses for interviewing or training away from home (including travel, auto expenses, lodging, and food), tutoring, and appropriate clothing for a job interview or training (including an interview suit or a uniform required during a period of training). The payments made by C under D are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(C) *Example 3*: *Elder and disabled programs*. Indian Tribal Government E administers a program, F, pursuant to which the following benefits are provided to Tribal Members who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including an Indian Tribal Government's disability laws): meals through home-delivered meals programs or at a community center or similar facility; home care such as assistance with preparing meals or doing chores, or day care outside the home; local transportation assistance; and improvements to adapt housing to special needs (including but not limited to grab bars and ramps). The payments made by E under F are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(D) *Example 4*: *Transportation programs*. Indian Tribal Government G administers a program, H, pursuant to which the following benefits are provided:

payment of transportation costs, including for rental cars, mileage, and fares for taxis, ride-sharing or ride-hailing services, buses, and other public transportation. The payments made by G under H are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(E) *Example 5*: *Medical programs*. Indian Tribal Government J administers a program, K, pursuant to which the following benefits are provided: payments for the cost of transportation, temporary meals, and lodging of a Tribal Program Participant while the individual is receiving medical care away from home, or to pay the cost of nonprescription drugs (including traditional Tribal medicines). The payments made by J under K are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(F) *Example 6*: *Emergency programs*. Indian Tribal Government L administers a program, M, pursuant to which the following benefits are provided to individuals in exigent circumstances (including victims of abuse): assistance to cover costs, including the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses; payment of costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including situations in which a home is destroyed by a fire or natural disaster); and assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals. The payments made by L under M are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(G) *Example 7*: *Cultural and religious programs.* Indian Tribal Government N administers a program, P, pursuant to which the following benefits are provided: payment of expenses (including admission fees, transportation, food, and lodging) to attend or participate in a Tribe's cultural, social, religious, or community activities, including powwows, potlatches, ceremonies, and traditional dances; payment of expenses (including admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including other Indian reservations; payment of the costs of receiving instruction about a Tribe's culture, history, and traditions (including traditional language, music, and dances); payment of funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; payment of transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe; and cash or property provided as prizes or awards in connection with cultural, social, religious, or community activities (including powwows, potlatches, ceremonies, and traditional dances). In addition, the benefits provided by program P include the payment of expenses to assist in the preparation and clean-up activities related to the Tribe's cultural, social, religious, or community activities. The payments made by N under P are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(H) *Example 8: Economic development benefits*. Indian Tribal Government Q administers a program, R, pursuant to which Q provides benefits to Tribal Program Participants to support, develop, operate, expand or start a trade or business. Q provides benefits under program R, which include: a nonreimbursable grant paid directly to a Tribal Program Participant; an interest-free or other below-market loan to a Tribal Program Participant; and a cash benefit to a Tribal Program Participant to pay rent on a commercial lease. The benefits provided by Q to Tribal Program Participants under R, are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(3) *Benefits must be available*. The benefits provided under an Indian Tribal Government Program must be available to any Tribal Program Participant who meets the specified guidelines of the program required under paragraph (c)(3) of this section, subject to budgetary constraints. However, the Indian Tribal Government has discretion to determine the category of individuals who are Tribal Program Participants under the Indian Tribal Government Program, provided that such determination is consistent with the specified guidelines described in paragraph (c)(3) of this section and subject to the prohibition on discrimination under paragraph (c)(4) of this section. Thus, for example, an Indian Tribal Government is permitted to limit eligibility for an Indian Tribal Government Program to dependents of Tribal Members who have attained a specified age, or, as another example, to a Tribal Member's household.

(4) *Benefits cannot be lavish or extravagant*—(i) *Facts and circumstances test*. The benefit provided by an Indian Tribal Government Program cannot be lavish or extravagant. Whether a benefit is lavish or extravagant for purposes of this section is based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. For purposes of this paragraph (d)(4)(i), the Internal Revenue Service will defer to an Indian Tribal Government's attestations of the fact and circumstances but may also consider other facts and circumstances that are not attested to by the Indian Tribal government at the time that the benefit is provided to the Tribal Program Participant.

(ii) *Presumption for written specified guidelines*. A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal Government Program that exist at the time that the benefit is provided to the Tribal Program Participant.

(5) *Benefits cannot be compensation for services*. Except as provided in paragraph (e) of this section, a Tribal General Welfare Benefit does not include benefits that are provided as compensation for services to any person. Under section 61(a) of the Code, compensation for services includes fees, commissions, fringe benefits, and similar items, whether paid in money or property.

(6) *Loans from an Indian Tribal Government to a Tribal Program Participant*. Except as provided in §1.7872-5(a)(2), section 7872 of the Code does not apply to a loan from an Indian Tribal Government to a Tribal Program Participant pursuant to an Indian Tribal Government Program.

(e) *Cultural or ceremonial activities*—(1) *In general*. For purposes of section 139E and paragraph (d)(5) of this section, a benefit is not compensation for services if:

(i) The benefit is provided to a Tribal Program Participant for the Tribal Program Participant's participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal Government (including but not limited to: powwows; rite of passage ceremonies; funerals; wakes; burials; other bereavement events; honoring events; Tribal community service events, such as a neighborhood clean-up or a youth woodcutting program to benefit elders; participation in training in traditional construction techniques; Tribal language education; and other activities, including, for example, those described in paragraph (d)(2)(ii)(G) of this section); and

(ii) The benefit consists of an item of cultural significance as determined by the Indian Tribal Government, the reimbursement of costs, or a cash honorarium.

(2) *Application*. Except as otherwise provided in this paragraph (e)(2), an Indian Tribal Government has sole discretion to determine whether an item is an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the Internal Revenue Service will defer to these determinations by the Indian Tribal Government. A benefit provided under this paragraph (e) can be a prize or award

given to a Tribal Program Participant for the Tribal Program Participant's participation in cultural or ceremonial activities for the transmission of Tribal culture. However, cash, gift cards, or vehicles are generally not items of cultural significance.

(3) *Examples*. The application of this paragraph (e) is illustrated by the following examples, which are not intended to be an exhaustive or exclusive illustration of the rules provided in this paragraph (e):

(i) *Example 1: Benefits for cultural or ceremonial activities not compensation for services.* Tribe B regularly holds a gathering during the fall season to celebrate its cultural traditions. During the gathering, Tribal Members of B, as well as Tribal members of other Tribes from around the region, are invited to participate. The Indian Tribal Government of B (ITG-B) allocates funds for the gathering, some of which are used for the following payments:

(A) *Tribal Member of B*. Individual 1, a Tribal Member of B, provides traditional blessings on the first and final days of the gathering. ITG-B gives Individual 1 a cash honorarium in recognition of providing the blessings. The cash honorarium that Individual 1 receives from ITG-B is not compensation for services under this paragraph (e).

(B) *Tribal Member of different Tribe*. Individual 2, a Tribal Member of Tribe C, participates as a drummer for a ceremonial dance on the second day of the gathering. ITG-B gives Individual 2 a piece of culturally significant jewelry. Under paragraph (b)(8)(ii) of this section, Individual 2 is a Tribal Program Participant solely for purposes of this paragraph (e). The jewelry that Individual 2 receives from ITG-B is not compensation for services under this paragraph (e).

(ii) *Example 2*: *Benefits for cultural or ceremonial activities not compensation for services*. Tribe C operates a language preservation center in which Individual 3, a Tribal Member of C, who speaks the traditional language that is common to C and other regional Tribes, volunteers to come in every Saturday to discuss and teach the traditional language of C to other Tribal Members of C. The Indian Tribal Government of C (ITG-C), reimburses Individual 3 for travel expenses and teaching supplies used in Individual 3's language lessons. The reimbursement of costs that Individual 3 receives from ITG-C is not compensation for services under this paragraph (e).

(f) *Section 2(c) of the Act*. Section 2(c) of the Act provides that ambiguities in section 139E of the Internal Revenue Code, as added by the Act, shall be resolved in favor of Indian Tribal governments and deference shall be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

(g) *Audit suspension*. After December 16, 2025, the Department of the Treasury and the Internal Revenue Service will, in consultation with the Treasury Tribal Advisory Committee, establish and require the education and training prescribed in section 3(b)(2) of the Act. The temporary suspension of audits and examinations (see sections 7602 and 7605 of the Code) described in section 4(a) of the Act applies to Indian Tribal governments and Tribal Program Participants and will not be lifted until after the education and training prescribed by section 3(b)(2) of the Act is completed. An inquiry into a taxpayer's eligibility for the audit suspension does not constitute an audit or examination for purposes of the audit suspension described in section 4(a) of the Act.

(h) *Applicability date*. This section applies to taxable years of Tribal Program Participants that begin on or after January 1, 2027. Indian Tribal Governments and Tribal Program Participants may choose to apply the provisions of this section, in their entirety, to taxable years that begin before January 1, 2027.

§1.139E-2 Alaska Native regional or village corporations.

An Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), may choose to apply the rules in §1.139E-1 until rules that specifically address the application of the requirements of section 139E of the Internal Revenue Code to Alaska Native regional or village corporations are published under this section. However, an Alaska Native regional or village corporation that chooses to apply the rules in §1.139E-1 must apply all of the rules of §1.139E-1 with respect to any general welfare benefits provided to a shareholder of the Alaska Native regional or village corporation (and the shareholder's spouse and dependents) and other Tribal Program Participants (as defined in §1.139E-1(b)).

Par. 3. Section 1.7872-5 is amended by adding paragraph (b)(17) to read as follows:

§1.7872-5 Exempted loans.

* * * * *

(b) * * *

(17) *See* §1.139E-1(d)(6) for rules for a loan from an Indian Tribal Government to a Tribal Program Participant pursuant to an Indian Tribal Government Program within the meaning of §1.139E-1(c). *See* §1.139E-1(h) for the applicability date of this paragraph (b)(17).

* * * * *

Frank J. Bisignano,
Chief Executive Officer.

Approved: November 19, 2025.

Kenneth J. Kies
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register December 15, 2025, 8:45 a.m., and published in the issue of the Federal Register for December 16, 2025, 90 FR 58378)

Part IV

Section 4611 Oil Spill Liability Trust Fund Financing Rate Expiration

Announcement 2026-02

This announcement provides important information for taxpayers who are liable for the tax on petroleum under § 4611 of the Internal Revenue Code.

SECTION 1. BACKGROUND

Section 4611(a) generally imposes a tax on certain crude oil and petroleum products at the rate specified in § 4611(c). Section 4611(c)(1) provides that the rate of the § 4611 tax is the sum of (A) the Hazardous Substance Superfund financing rate (Superfund tax rate); and (B) the Oil Spill Liability Trust Fund financing rate (OSLTF tax rate). Section 4611(c)(3) adjusts the Superfund tax rate for inflation. Section 4611(f)(2) provides that the OSLTF tax rate shall not apply after December 31, 2025.

Section 4.45 of Rev. Proc. 2025-32, 2025-45 I.R.B. 695, states that the inflation-adjusted amount for the § 4611 tax rate for the 2026 calendar year is $0.27 per barrel, which represents the sum of the $0.18 per barrel inflation-adjusted Superfund tax rate and the $0.09 per barrel OSLTF tax rate.

SECTION 2. SECTION 4611 TAX RATE AFTER EXPIRATION OF OSLTF TAX RATE

The OSLTF tax rate expired on December 31, 2025. As a result, the § 4611 tax rate for calendar year 2026 is $0.18 per barrel, which represents only the inflation-adjusted Superfund tax rate. The $0.18 per barrel rate will apply for the entirety of the 2026 calendar year unless § 4611(f)(2) is amended to extend the OSLTF tax rate. Accordingly, notwithstanding section 4.45 of Rev. Proc. 2025-32, for any period in calendar year 2026 to which the OSLTF tax rate does not apply, the inflation-adjusted amount for the § 4611 tax rate is $0.18 per barrel.

SECTION 3. DRAFTING INFORMATION

The principal author of this announcement is the Office of Associate Chief Counsel (Energy, Credits, and Excise Tax). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this announcement, call (202) 317-6855 (not a toll-free number).

Notice of Proposed Rulemaking

Statutory Updates to Branded Prescription Drug Fee Regulations

REG-103430-24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to regulations regarding the annual fee imposed on covered entities engaged in the business of manufacturing or importing certain branded prescription drugs. In response to the replacement of the Coverage Gap Discount Program with the new Manufacturer Discount Program by the Inflation Reduction Act of 2022, the proposed regulations would make updates regarding the discounts, rebates, and other price concessions used to determine branded prescription drug sales under Medicare Part D and would update for prior statutory changes. These proposed regulations would affect persons engaged in the business of manufacturing or importing certain branded prescription drugs.

DATES: Written or electronic comments and requests for a public hearing must be received by March 3, 2026. 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 via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-103430-24) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-103430-24), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. A plain language summary of the proposed regulations will be made available at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Julia Barlow at (202) 317-6855 (not a toll-free number); concerning the submission of comments and requests to participate in the public hearing, contact the Publications and Regulations Section by phone at (202) 317-6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Branded Prescription Drug Fee Regulations (26 CFR part 51).

The proposed regulations are issued under the express delegation of authority under section 9008(i) of the Patient Protection and Affordable Care Act, Public Law 111-148, 124 Stat. 119 (2010), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, 124 Stat. 1029 (2010). These acts are collectively referred to in this preamble as the "ACA."

All references in this preamble to "section 9008" are references to section 9008 of the ACA. Section 9008(i) provides that the Secretary of the Treasury or the Secretary's delegate (Secretary) "shall publish guidance necessary to carry out the purposes of [section 9008]."

The proposed regulations are also issued under the express delegation of authority under section 7805(a) of the Internal Revenue Code (Code), which provides that the Secretary "shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

I. ***Overview***

The branded prescription drug fee was enacted by section 9008. Section 9008 did not amend the Code but cross-references specific Code sections.

Under section 9008(a)(1), each covered entity engaged in the business of manufacturing or importing branded prescription drugs must pay an annual fee to the Secretary.

Section 9008(b) provides rules for determining the amount of the annual fee for each covered entity. Specifically, section 9008(b)(1) provides that the annual fee for each covered entity for calendar years 2019 and thereafter shall bear the same ratio to $2.8 billion as (i) the covered entity's branded prescription drug sales taken into account during the preceding calendar year to (ii) the aggregate branded prescription drug sales of all covered entities taken into account during the same year.

Section 9008(d)(1) generally defines the term "covered entity" to mean any manufacturer or importer with gross receipts from branded prescription drug sales. Section 9008(e)(1) defines the term "branded prescription drug sales" to mean sales of branded prescription drugs to any specified government program or pursuant to coverage under such program. Section 9008(e)(2)(A) generally defines the term "branded prescription drug" to mean (i) any prescription drug the application for which was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)), or (ii) any biological product the license for which was submitted under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)). Section 9008(e)(2)(B) defines the term "prescription drug" for purposes of section 9008(e)(2)(A)(i) to mean any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)).

Section 9008(e)(4) defines the term "specified government programs" as the Medicare Part D program, the Medicare Part B program, the Medicaid program, any program under which branded prescription drugs are procured by the Department of Veterans Affairs (VA), any program under which branded prescription drugs are procured by the Department of Defense (DOD), and the TRICARE retail pharmacy program, which are collectively referred to in this preamble as the "Programs."

Section 9008(g) requires the Secretary of Health and Human Services (Secretary of HHS), the Secretary of Veterans Affairs, and the Secretary of Defense to report to the Secretary the total branded prescription drug sales for each covered entity with respect to each specified government program. Section 9008(g)(1) specifies the information that the Secretary of HHS shall report for the Medicare Part D program. Section 9008(g)(1)(A) specifies that the costs of prescription drug plans and Medicare Advantage prescription drug plans reported by the Secretary of HHS is reduced by "any per-unit rebate, discount, or other price concession provided by the covered entity." Section 9008(b)(3) requires the Secretary to use the data provided by the Programs to calculate the fee.

The Branded Prescription Drug Fee Regulations (TD 9684, 79 FR 43631 (July 28, 2014), as amended by TD 9823, 82 FR 34611 (July 26, 2017)), provide the method by which each covered entity's annual fee is calculated. The regulations also define terms and provide rules for the administration of the fee. *See* 26 CFR 51.1 through 51.11 and 51.6302.

Section 51.2 explains the terms used in 26 CFR part 51 for purposes of the fee imposed by section 9008 on branded prescription drugs. Section 51.2(b) defines the term "Agencies" to mean the Centers for Medicare & Medicaid Services of the Department of Health and Human Services (CMS), the VA, and the DOD. Section 51.2(i) defines "manufacturer or importer" as the person identified in the Labeler Code of the National Drug Code (NDC) for a branded prescription drug.

Section 51.4 sets forth the methodologies that the Agencies are required to use to calculate the drug sales amount for each specified government program. Section 51.4(b)(1) requires CMS to determine branded prescription drug sales under Medicare Part D by aggregating the ingredient cost reported in the "Ingredient Cost Paid" field on the Prescription Drug Event (PDE) records at the NDC level, reduced by discounts, rebates, and other price concessions provided by the covered entity, for each sales year. Under §51.2(m), the term "sales year" means the second calendar year preceding the fee year.

Section 51.4(b)(2) provides that for purposes of §51.4(b)(1), "discounts, rebates, and other price concessions" means (A) any direct and indirect remuneration (DIR) (within the meaning of §51.4(b)(2)(ii)), which includes any DIR reported on the PDE records at the point of sale and any DIR reported on a Detailed DIR Report (within the meaning of §51.4 b)(2)(iii)); and (B) any coverage gap discount amount (within the meaning of §51.4(b)(2)(iv)).

Section 51.4(b)(2)(iv) provides that for purposes of §51.4(b)(2)(i)(B), the term "coverage gap discount amount" means a 50-percent manufactured-paid (sic) discount on certain drugs under the Coverage Gap Discount Program described in section 1860D-14A of the Social Security Act (SSA) (42 U.S.C. 1395w-114a). The Coverage Gap Discount Program described in section 1860D-14A of the SSA initially required a 50-percent manufacturer-paid discount on applicable drugs in certain instances. In section 53116(b) of the Bipartisan Budget Act of 2018 (BBA), Public Law 115-123, 132 Stat 64 (February 9, 2018), Congress expanded the discount to 70 percent for plan years after plan year 2018. See 42 U.S.C. 1395w-114a(g)(4)(A).

II. *Inflation Reduction Act of 2022 Changes to Medicare Part D Discounts*

Section 11201 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022),

commonly known as the Inflation Reduction Act of 2022 (IRA), redesigned the Medicare Part D benefit, including sunsetting the Coverage Gap Discount Program described in section 1860D-14A of the SSA as of January 1, 2025. Section 11201(c)(1) of the IRA amended the SSA by adding section 1860D-14C (42 U.S.C. 1395w-114c) to establish the new Manufacturer Discount Program beginning January 1, 2025, which requires participating manufacturers to provide discounted prices for applicable drugs of the manufacturer that are dispensed to applicable beneficiaries who are in the initial and catastrophic coverage phases of the Part D benefit. Under section 1860D-43(a) of the SSA, in order for coverage to be available under Part D for covered Part D drugs of a manufacturer beginning January 1, 2025, the manufacturer must participate in the Manufacturer Discount Program by entering into and having in effect a Manufacturer Discount Program agreement under which the manufacturer agrees to provide discounted prices for applicable drugs of the manufacturer that are dispensed to applicable beneficiaries.

Section 11201(c)(2) of the IRA amended section 1860D-14A of the SSA to sunset the Coverage Gap Discount Program for applicable drugs dispensed on or after January 1, 2025, but the provisions (including all responsibilities and duties) of the Coverage Gap Discount Program continue to apply with respect to applicable drugs dispensed before January 1, 2025.

Explanation of Provisions

To reflect statutory changes made by the BBA, the proposed regulations would update the percentage discount amount for the Coverage Gap Discount Program to reflect the statutory change from a 50 percent manufacturer-paid discount to a 70 percent manufacturer-paid discount (for plan years after plan year 2018). The proposed regulations would also correct "manufactured-paid" in the current §51.4(b)(2)(i)(B) to "manufacturer-paid." To reflect statutory changes made by the IRA, the proposed regulations would add references to the Manufacturer Discount Program to the rules regarding the discounts, rebates, and other price concessions that CMS uses to determine branded prescription drug sales under Medicare Part D, for purposes of the Branded Prescription Drug Fee.

The proposed regulations would not remove the Coverage Gap Discount Program from the rules regarding the discounts, rebates, and other price concessions because, due to the manner in which the fee is calculated, the discounts that the Coverage Gap Discount Program provides through December 31, 2024, may still be used to calculate the fee for sales that occurred while the Coverage Gap Discount Program was effective. Beginning in the 2027 fee year, it is expected that there will be no Coverage Gap Discount Program discounts to take into account.

The Treasury Department and the IRS are considering whether to include a sunset for using the Coverage Gap Discount Program in the final regulations. The Treasury Department and the IRS request comments about whether the final regulations should include a sunset for using the Coverage Gap Discount Program for applicable drugs dispensed on or after January 1, 2025.

Proposed Applicability Date

Because these regulations reflect statutory changes that took effect at the beginning of 2025, these regulations are proposed to apply to fees calculated based on sales years beginning with calendar year 2025, which will also be sales years ending on or after the date these proposed regulations are filed in the ***Federal Register***.

Special Analyses

I. *Regulatory Planning and Review—Economic Analysis*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the OMB regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. *Need for Regulation*

Section 9008 of the Patient Protection and Affordable Care Act, Public Law 111-148, 124 Stat. 119 (2010), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, 124 Stat. 1029 (2010) (ACA) imposes an annual fee on covered entities engaged in the business of manufacturing or importing branded prescription drugs. The amount of the annual fee is set by statute. For calendar years 2019 and thereafter, the amount of the annual fee is $2.8 billion. *See* section 9008(b)(4). Each covered entity's share of the annual fee is calculated by determining the ratio of the covered entity's branded prescription drug sales taken into account during the preceding calendar year to the aggregate branded prescription drug sales of all covered entities taken into account during the same year. Under section 9008(e)(1), branded prescription drug sales are sales of branded prescription drugs to any specified government program or pursuant to coverage under such program. Section 9008(g) requires the Secretary of Health and Human Services (Secretary of HHS), the Secretary of Veterans Affairs, and the Secretary of Defense to report to the Secretary the total branded prescription drug sales for each covered entity with respect to each specified government program.

Existing regulations in 26 CFR part 51 specify the method by which each covered entity's share of the annual fee is calculated. Section 51.4(b)(1) specifies the method by which the Centers for Medicare

& Medicaid Services of the Department of Health and Human Services (CMS) is required to determine branded prescription drug sales under Medicare Part D. Two subsequent statutes altered inputs that CMS uses to determine Medicare Part D sales for this purpose. First, the Bipartisan Budget Act of 2018 (BBA), Public Law 115-123, 132, Stat. 64 (February 9, 2018), increased the Coverage Gap Discount Program manufacturer discount rate from 50 percent to 70 percent for plan years after 2018. Second, the Inflation Reduction Act of 2022 (IRA), Public Law 117-169, 136 Stat. 1818 (August 16, 2022), sunsets the Coverage Gap Discount Program effective January 1, 2025, and establishes the Manufacturer Discount Program.

The proposed regulations update existing regulations so that they are consistent with the statute and with how the covered entities have been calculating their share of the annual fee since enactment of the BBA and the IRA. The proposed regulations reflect the BBA's increase to a 70-percent manufacturer discount (as applicable) and add the IRA's Manufacturer Discount Program discounts to the list of reductions CMS uses when computing branded prescription drug sales under Medicare Part D. Because fees are calculated using sales from prior years, Coverage Gap Discount Program discounts provided through December 31, 2024, may still enter fee computations for several sales years. Beginning in the 2027 fee year, no Coverage Gap Discount Program discounts are expected to be taken into account. The updates are necessary to align the regulations with statutory changes so that CMS-reported Medicare Part D sales accurately incorporate the discount programs in effect for the relevant sales years.

B. *The Statute and the Proposed Regulations*

The proposed regulations update the existing regulations regarding the discounts, rebates, and other price concessions that CMS uses to determine branded prescription drug sales, to reflect changes made by the BBA and IRA and to reflect how covered entities are currently calculating their share of the fee. The proposed regulations add the Manufacturer Discount Program, which was established by the IRA, to the list of reductions that CMS uses to calculate branded prescription drug sales. The proposed regulations also update the percentage discount amount used for the Coverage Gap Discount Program to reflect the statutory change made by the BBA for plan years after plan year 2018.

C. *Baseline*

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

D. *Affected Entities and Taxpayers*

The Branded Prescription Drug Fee affects manufacturers and importers of branded prescription drugs with sales to specified government programs (Medicare Part D, Medicare Part B, Medicaid, Department of Veterans Affairs programs that procure branded prescription drugs, Department of Defense programs that procure branded prescription drugs, and TRICARE). Based on records from tax year 2024, the Treasury Department and the IRS estimate the fee impacts roughly 300 affected entities. The proposed regulations apply to how other Federal agencies compile and transmit data, not to new reporting requirements for these affected entities.

E. *Economic Effects of the Proposed Regulations*

The primary effect of the proposed regulations would be improved administrative alignment and clarity. Under the baseline, existing regulations would continue to reference only the Coverage Gap Discount Program and a 50-percent discount, which would not reflect post-2018 discount levels or the post-2024 Medicare Part D discount program. That mismatch would increase uncertainty about how agency data should be compiled after changes made by the IRA and BBA. The proposal clarifies which Medicare Part D discounts reduce branded prescription drug sales for fee computations—ensuring the regulations mirror the BBA and IRA changes. Because the rule clarifies information-collection procedures that already occur at other Federal agencies, Treasury and IRS expect minimal impact on affected entity compliance costs since the covered entities are calculating fees according to the statute. Affected entities are expected to benefit from clearer rules that reduce policy uncertainty and the risk of disputes about discount treatment, but, in aggregate, Treasury and IRS expect these benefits to be small. The regulations will also improve administrative efficiency for CMS and the IRS through consistent data definitions across years. Minor one-time administrative costs incurred by CMS to reflect the updated Manufacturer Discount Program are already part of CMS's program implementation under the IRA and are not imposed by this regulation.

F. *Alternatives Considered*

The Treasury Department and the IRS considered the alternative option of taking no action to update the existing regulations in 26 CFR part 51 to reflect the changes made by the IRA and BBA. This alternative would leave uncertainty as to how CMS data will be reported to the IRS for purposes of calculating each covered entity's share of the Branded Prescription Drug Fee. Therefore, the approach to issue proposed regulations to update the existing regulations to align with changes made by the IRA and BBA was selected over the alternative option of taking no action.

II. *Paperwork Reduction Act*

This rulemaking does not contain a collection of information from the public, and therefore it is not required to be reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). 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.

III. *Regulatory Flexibility Act*

It is hereby certified that these regulations will not have a significant economic

impact on a substantial number of small entities. These regulations do not affect small entities because they merely clarify procedures that already occur at another Federal agency. Affected entities exclude the first $5 million in sales and exclude 90 percent of sales that are over $5 million and not more than $125 million, which minimizes or completely eliminates any additional burden these proposed regulations might impose on small businesses. Entities engaged in pharmaceutical manufacturing or drug wholesaling with aggregate branded drug sales more than $5 million may benefit from clearer rules, but these impacts are not substantial. Entities with aggregate branded drug sales not more than $5 million will not be impacted.

IV. ***Section 7805(f) of the Code***

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

V. ***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 in 1995 dollars, updated annually for inflation. The final regulations do 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.

VI. ***Executive Order 13132: Federalism***

Executive Order 13132 (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. These proposed regulations do not have federalism implications and do 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 a Public Hearing

Before the proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the "ADDRESSES" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on https://www.regulations.gov.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the ***Federal Register***. Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Announcement 2023-16 is published in the Internal Revenue Bulletin and is 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*.

Drafting Information

The principal author of these regulations is Julia Barlow of the Office of the Associate Chief Counsel (Energy, Credit, and Excise Tax). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 51

Drugs, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 51 as follows:

PART 51— BRANDED PRESCRIPTION DRUG FEE

Paragraph 1. The authority citation for part 51 is amended by revising the general authority to read as follows:

Authority: 26 U.S.C. 7805(a); sec. 9008(i), Pub. L. 111-148, 124 Stat. 119.

* * * * *

Par. 2. Section 51.4 is amended by:

1. Removing the word "and" at the end of paragraph (b)(2)(i)(A);

2. Removing the period at the end of paragraph (b)(2)(i)(B);

3. Adding the language "; and" at the end of paragraph (b)(2)(i)(B);

4. Adding paragraph (b)(2)(i)(C);

5. In paragraph (b)(2)(iv), by removing the word "manufactured-paid" and adding the word "manufacturer-paid" in its place, and adding the language "or 70–percent (as applicable)" after the language "50-percent"; and

6. Adding paragraph (b)(2)(v).

The additions read as follows:

§51.4 Information provided by the agencies.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) Any manufacturer discount program discount (within the meaning of paragraph (b)(2)(v) of this section).

* * * * *

(v) *Manufacturer discount program discount*. For purposes of paragraph (b)

(2)(i)(C) of this section, the term *manufacturer discount program discount* means a manufacturer-paid discount on certain drugs under the Manufacturer Discount Program described in section 1860D-14C of the Social Security Act.

* * * * *

Par. 3. Section 51.11 is amended by revising the section heading and adding paragraph (c) to read as follows:

§51.11 Applicability dates.

* * * * *

(c) Section 51.4(b)(2)(i)(C) and (b)(2)(v) apply for fees calculated based on sales years beginning on and after January 1, 2025.

Frank J. Bisignano,
Chief Executive Officer.

(Filed by the Office of the Federal Register December 31, 2025, 8:45 a.m., and published in the issue of the Federal Register for January 2, 2026, 91 FR 93)

Notice of Proposed Rulemaking

Backup Withholding on Third Party Network Transactions

REG-112829-25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations governing backup withholding. The proposed regulations reflect recent changes to the statutory law. These changes will affect third party settlement organizations who make payments in settlement of third party network transactions.

DATES: Electronic or written comments and requests for a public hearing must be received by March 10, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-112829-25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-112829-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Casey Conrad at (202) 317-6844 (not toll-free number); concerning submission of comments or requests for a hearing, the Publications and Regulations Section at (202) 317-6901 (not toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Employment Taxes and Collection of Income Tax at the Source Regulations (26 CFR Part 31) under section 3406 of the Internal Revenue Code (Code). The proposed regulations are issued under the authority conferred by section 3406(i), which provides the Secretary of the Treasury or the Secretary's delegate (Secretary) with authority to "prescribe such regulations as may be necessary or appropriate to carry out the purposes of [section 3406]."

The proposed regulations are also issued pursuant to section 7805(a) of the Code, which authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

This document contains proposed amendments to regulations impacted by amendments to sections 6050W and 3406 of the Code made by section 70432 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA).

I. Section 6050W

Section 6050W requires payment settlement entities, including merchant acquiring entities and third party settlement organizations (TPSOs), to report certain payments made to participating payees for reportable payment transactions. Section 6050W(b) requires TPSOs to file information returns reporting the gross amounts of reportable payments made in settlement of third party network transactions. As originally enacted by the Housing Assistance Tax Act of 2008, Public Law 110-289, 122 Stat. 2908 (July 30, 2008), section 6050W required TPSOs to file information returns if payments to a payee exceeded $20,000 and 200 transactions in a calendar year. In 2021, the American Rescue Plan Act of 2021 (ARPA), Public Law 117-2, 135 Stat. 4 (March 11, 2021), amended section 6050W(e) to lower the TPSO reporting threshold, requiring reporting by TPSOs when payments to a payee exceeded $600 in a calendar year, without regard to the number of transactions. OBBBA section 70432(a) retroactively reverted the reporting threshold to the pre-ARPA level, requiring reporting by a TPSO when payments to a payee exceed $20,000 and 200 transactions in a calendar year. OBBBA section 70432(a)(2) provides that this change "shall take effect as if included in section 9674 of the American Rescue Plan Act." These payments are reported on a Form 1099-K, *Payment Card and Third Party Network Transactions*.

II. Section 3406

Section 3406(a) requires backup withholding for reportable payments where certain conditions are met. Pursuant to section 3406(b)(3)(F), a reportable payment includes payments required to be shown on a return required under section 6050W. Generally, under section 3406(b)

(4), whether a payment is reportable is determined without regard to the minimum amount that must be paid before a return is required.

OBBBA section 70432(b)(1) amended section 3406(b) by adding a new paragraph (8) that applies to calendar years beginning after December 31, 2024. Section 3406(b)(8)(A) provides that any payment in settlement of a third party network transaction required to be shown on a return required under section 6050W that is made during any calendar year is treated as a reportable payment only if (1) the aggregate number of transactions with respect to the participating payee during such calendar year exceeds the number of transactions specified in section 6050W(e)(2), and (2) the aggregate dollar amount of transactions with respect to the participating payee during such calendar year exceeds the dollar amount specified in section 6050W(e)(1) at the time of such payment.

Section 3406(b)(8)(B) provides that section 3406(b)(8)(A) does not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

Explanation of Provisions

Because the existing regulations under section 6050W already reflect the reporting threshold as codified in the OBBBA, the proposed regulations would not alter the existing text of the regulations under section 6050W.

The proposed regulations would update the regulations under section 3406 to reflect the statutory changes made to section 3406(b) by the OBBBA. The proposed regulations would clarify that in the case of payments made in settlement of third party network transactions, the amount subject to withholding under section 3406 is determined with regard to the exception for de minimis payments by TPSOs in section 6050W(e) and the associated regulations. Thus, under the proposed regulations, a payment would be treated as a reportable payment under §31.3406(b)(3)-5(a) only if (1) the aggregate number of transactions with respect to the participating payee during the calendar year exceeds the number of transactions specified in section 6050W(e)(2) (currently 200); and (2) the aggregate dollar amount of the current transaction and all previous transactions to the participating payee during the calendar year exceeds the dollar amount specified in section 6050W(e)(1) at the time of such payment (currently $20,000).

The proposed regulations would also clarify that the amount subject to withholding is the entire amount of the transaction that causes either the total number of transactions to exceed the number of transactions specified in section 6050W(e)(2), or the entire amount of the transaction that causes the total dollar amount paid to the payee to exceed the dollar amount specified in section 6050W(e)(1) at the time of such payment, whichever occurs later, and the amount of any subsequent transactions made to the payee during the calendar year.

Finally, the proposed regulations would clarify that the exception in proposed §31.3406(b)(3)-5(b)(2) would not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

Proposed Applicability Date

These regulations are proposed to apply with respect to payments made in calendar years beginning after December 31, 2024.

Effect on Other Documents

Notice 2023-10, 2023-3 I.R.B. 403, Notice 2023-74, 2023-51 I.R.B. 1484, and Notice 2024-85, 2024-51 I.R.B. 1349 are inconsistent with the statutory revisions and are obsoleted as of January 9, 2026.

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 the OMB.

The collection of information in these proposed regulations relates to recordkeeping and information reporting with respect to backup withholding in proposed §31.3406(b)(3)-5. The collected information will be used by the payor to determine whether payments to the payee exceed a threshold that would require backup withholding and the issuance of an information return. The burden for these requirements is included with the Form and Instructions for Form 945, *Annual Return of Withheld Federal Income Tax*. The Form 945 and Instructions for Form 945 are approved under OMB control number 1545-0029 and the associated burden is included in the estimates shown in the Instructions for Form 941. The Form 941 and its instructions are in the process of being updated, and any decrease in burden associated with the statutory changes to section 3406 will be reflected in those instructions.

III. Regulatory Flexibility Act

It is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed rule would affect any entity required to file information returns reporting payments of third party network transactions.

The proposed regulation could affect a substantial number of small entities; however, the economic impact of the proposed regulations is not likely to be significant because the proposed regulations would not impose any new requirements on small entities. Rather, the proposed rules would clarify the threshold at which entities are required to backup withhold for reportable payments where certain conditions are met. Because the threshold to backup withhold would increase under the proposed rules, the proposed rules would reduce the frequency with which entities must backup withhold. Thus, the economic impact of these proposed regulations is not likely to be significant.

Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. Submission to Small Business Administration

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

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 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 in 1995 dollars, updated annually for inflation. These proposed regulations do 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.

VI. Executive Order 13132: Federalism

Executive Order 13132 (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. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic and paper comments submitted will be available at https://www.regulations.gov or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the ***Federal Register***.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at https://www.irs.gov.

Drafting Information

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

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 31 as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Sections 31.3406(a)-1 through 31.3406(i)-1 also issued under 26 U.S.C. 3406(i).

* * * * *

Par. 2. Section 31.3406(a)-1 is amended by revising paragraphs (a) and (c), and adding paragraph (e) to read as follows:

§31.3406(a)-1 Backup withholding requirements on reportable payments.

(a) *Overview*. Under section 3406 of the Internal Revenue Code (Code), a payor must deduct and withhold an amount equal to the product of the fourth lowest rate of tax applicable under section 1(c) of the Code and a reportable payment if a condition for withholding exists. Reportable payments mean interest and dividend payments (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)). The conditions described in paragraph (b)(1) of this section apply to all reportable payments, including reportable interest and dividend payments. The conditions described in paragraph (b)(2) of this section apply only to reportable interest and dividend payments.

* * * * *

(c) Exceptions. The requirement to withhold does not apply to certain *de minimis* payments as described in

§§31.3406(b)(3)-1(a)(3), 31.3406(b)(3)-5(b)(2), and 31.3406(b)(4)-1 or to payments exempt from withholding under §§31.3406(g)-1 through 31.3406(g)-3.

* * * * *

(e) *Applicability date*. The provisions of this section apply with respect to payments made in calendar years beginning after December 31, 2024.

Par. 3. Section 31.3406(b)(3)-5 is amended by revising paragraphs (b) and (e) to read as follows:

§31.3406(b)(3)-5 Reportable payments of payment card and third party network transactions.

* * * * *

(b) *Amount subject to backup withholding*—(1) *In general.* The amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050W.

(2) *Third party network transactions*. In the case of payments made in settlement of third party network transactions, the amount subject to withholding under section 3406 is determined with regard to the exception for *de minimis* payments by third party settlement organizations in section 6050W(e). A payment is treated as a reportable payment under paragraph (a) of this section only if, during the calendar year, the aggregate number of transactions with respect to the participating payee exceeds the number of transactions specified in section 6050W(e)(2) and the aggregate amount of all reportable payment transactions with respect to such participating payee exceeds the dollar amount specified in section 6050W(e)(1). The amount subject to withholding is the entire amount of the transaction that causes either the total number of transactions to exceed the number of transactions specified in section 6050W(e)(2), or the entire amount of the transaction that causes the total amount paid to the participating payee to exceed the dollar amount specified in section 6050W(e)(1) at the time of such payment, whichever occurs later, and the amount of any subsequent transactions made to the participating payee during the calendar year.

(3) *Exception*. Paragraph (b)(2) of this section does not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

(4) *Examples*. The provisions of paragraph (b) of this section are illustrated by the following examples:

(i) *Example 1*. Platform A is a third party settlement organization (as defined in §1.6050W-1(c)(2) of this chapter) and Y is a participating payee (as defined in §1.6050W-1(a)(5)(i)(B) of this chapter). A complies with all the requirements to solicit a taxpayer identification number (TIN) from Y, but Y does not provide its TIN to A. During calendar year 2026, A makes 201 payments in settlement of third party network transactions that total $20,000.01. A must backup withhold under paragraph (b)(2) of this section on the entire amount of the 201st transaction because that transaction caused Y to exceed the *de minimis* reporting threshold for calendar year 2026 of 200 transactions and $20,000 in gross payments.

(ii) *Example 2*. The facts are the same as in paragraph (b)(4)(i) of this section (*Example 1*). During calendar year 2027, A makes 199 payments in settlement of third party network transactions that total $18,000.00. A must backup withhold on each payment made to Y in settlement of a third party network transaction during 2027 under paragraph (b)(3) of this section because one or more payments in settlement of third party network transactions made by A to Y during the preceding calendar year (2026) were reportable payments.

(iii) *Example 3*. The facts are the same as in paragraph (b)(4)(ii) of this section (*Example 2*). During calendar year 2028, A makes four payments in settlement of third party network transactions that total $2,000.00. A must backup withhold on each payment made in settlement of a third party network transaction during 2028 under paragraph (b)(3) of this section because one or more payments in settlement of third party network transactions made by A to Y during the preceding calendar year (2027) were reportable payments.

(iv) *Example 4*. The facts are the same as in paragraph (b)(4)(iii) of this section (*Example 3*). During calendar year 2029, A made no payments in settlement of third party network transactions, and during calendar year 2030, A makes 199 payments in settlement of third party network transactions that total $18,000.00. A is not required to backup withhold on any payment made in settlement of third party network transactions during calendar year 2030 because A did not make any reportable payments to Y during the preceding calendar year (2029), and A did not make payments in settlement of third party network transactions that exceed the *de minimis* reporting threshold.

* * * * *

(e) *Applicability date*. The provisions of this section apply with respect to payments made in calendar years beginning after December 31, 2024.

Frank J. Bisignano,
Chief Executive Officer.

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Notice of Proposed Rulemaking

Car Loan Interest Deduction

REG-113515-25

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations regarding the deduction for certain taxpayers for an amount up to $10,000 of qualified passenger vehicle loan interest. This document also contains proposed regulations regarding new information reporting requirements for certain persons who, in a trade or business, receive from any individual interest aggregating $600 or more for any calendar year on a specified passenger vehicle loan, including applicable penalties for failures to file information returns or furnish payee statements as required. The proposed regulations would affect taxpayers that may deduct qualified passenger vehicle loan interest, and also persons subject to these information reporting requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 2, 2026. The public hearing is being held on February 24, 2026, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by February 2, 2026. If no outlines are received by February 2, 2026, the public hearing will be cancelled. Requests to attend the public

hearing must be received by 5 p.m. ET on February 20, 2026.

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-113515-25) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted electronically and comments submitted on paper to its public docket. Send hard copy submissions to: CC:PA:01:PR (REG-113515-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Riston Escher of the Office of Associate Chief Counsel (Income Tax & Accounting) at (202) 317-7003; concerning submissions of comments or the public hearing, please contact Publications and Regulations Section at (202) 317-6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed amendments that would add new regulations to the Income Tax Regulations (26 CFR part 1) under sections 163 and 6050AA of the Internal Revenue Code (Code), as amended and enacted, respectively, by section 70203(a) and (c)(1) of Public Law 119-21, 139 Stat. 72, 176-179 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA), related to the allowance of a Federal income tax deduction under section 163(a) and (h)(4) for qualified passenger vehicle loan interest (QPVLI) and certain information reporting requirements under section 6050AA for persons receiving certain interest on a specified passenger vehicle loan (SPVL). This notice of proposed rulemaking also contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to electronic filing of returns under section 6011 of the Code, and penalties under section 6721 of the Code for failures to file information returns and under section 6722 of the Code for failures to furnish payee statements.

The proposed regulations are issued under the authority of section 7805(a) of the Code, which authorizes the Secretary of the Treasury or the Secretary's delegate (Secretary) to prescribe all needful rules and regulations for the enforcement of the Code including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. The proposed regulations under section 6050AA are also issued under the authority of section 6050AA(e), which authorizes the Secretary to issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 6050AA, including regulations or other guidance to prevent the duplicate reporting of information under section 6050AA. The proposed regulations under section 6011 are also issued under the authority of section 6011(e), which authorizes the Secretary to prescribe regulations that require taxpayers to electronically file returns, including information returns, if the taxpayer is required to file at least 10 returns of any type during a calendar year.

Background

Section 70203(a) of the OBBBA amended section 163(h) (relating to the disallowance of any deduction for personal interest) by inserting a new paragraph (4) to provide an exception for QPVLI. Additionally, section 70203(b) of the OBBBA amended section 63(b) of the Code by inserting a new paragraph (7) to allow this deduction for taxpayers that do not itemize their deductions. Further, section 70203(c) of the OBBBA added new section 6050AA to the Code to require returns relating to applicable passenger vehicle loan interest received in a trade or business from individuals. The amendments made by section 70203 of the OBBBA apply to indebtedness incurred after December 31, 2024. The new allowance of a deduction for QPVLI under section 163(a) and (h)(4) applies solely to taxable years beginning after December 31, 2024, and before January 1, 2029. New section 6050AA provides that no information return is required under section 6050AA for any period to which new section 163(h)(4) does not apply.

I. *Section 163*

Section 163(a) allows a deduction for all interest paid or accrued within the taxable year on indebtedness. Section 163(h) generally disallows a deduction for personal interest. Section 163(h)(1) provides that a taxpayer other than a corporation cannot take a deduction for personal interest paid or accrued during the taxable year under chapter 1 of the Code. Section 163(h)(2) defines "personal interest" as any interest deductible under chapter 1 other than (a) interest paid or accrued on indebtedness properly allocable to the conduct of a trade or business (other than the trade or business of performing services as an employee), (b) investment interest, (c) interest taken into account under section 469 of the Code in computing income or loss from a passive activity, (d) qualified residence interest, (e) interest payable under section 6601 of the Code on any unpaid portion of the tax imposed by section 2001 of the Code for the period during which an extension of time for payment of such tax is in effect under section 6163 of the Code, and (f) any interest allowable as a deduction under section 221 of the Code.

As added by the OBBBA, new section 163(h)(4)(A) provides that in the case of taxable years beginning after December 31, 2024, and before January 1, 2029, personal interest does not include QPVLI. As a result, a deduction for QPVLI is allowable under section 163(a) for taxable years beginning after December 31, 2024, and before January 1, 2029. Section 163(h)(4)(B)(i) provides that "QPVLI" means any interest that is paid or accrued during the taxable year on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an applicable passenger vehicle (APV) for personal use, subject to certain enumerated exceptions in section 163(h)(4)(B)(ii). Section 163(h)(4)(C) provides limitations on the amount of

QPVLI that a taxpayer can deduct during a taxable year. Section 163(h)(4)(D) defines an "APV" as a vehicle that satisfies the requirements of section 163(h)(4)(D)(i) through (vi) but excludes from the definition any vehicle the final assembly of which did not occur within the United States. Section 163(h)(4)(E) provides the definition of "final assembly" and special rules on the treatment of a refinancing and related party indebtedness.

II. *Section 63(b)(7)*

Section 63 defines "taxable income" for purposes of subtitle A of the Code (subtitle A). Section 63(a) provides the general rule that, except as provided in section 63(b), for purposes of subtitle A, the term "taxable income" means gross income minus the deductions allowed by chapter 1 (other than the standard deduction). Section 63(b) provides that, in the case of an individual who does not elect to itemize the individual's deductions for the taxable year, for purposes of subtitle A, the term taxable income means "adjusted gross income" (as defined in section 62 of the Code), minus the deductions enumerated in section 63(b)(1) through (7). As amended by the OBBBA, new section 63(b)(7) provides that so much of the deduction allowed by section 163(a) as is attributable to the exception under section 163(h)(4)(A) is subtracted from adjusted gross income in computing taxable income.

III. *Section 6050AA*

New section 6050AA(a) provides that any person engaged in a trade or business who, in the course of that trade or business, receives from any individual interest aggregating $600 or more for any calendar year on an SPVL, must file an information return reporting the receipt of interest. Section 6050AA(b) provides that the information return filed by the recipient of such interest (interest recipient) must be in the form prescribed by the Secretary and must contain: (A) the name and address of the individual from whom such interest was received, (B) the amount of such interest received for the calendar year, (C) the amount of outstanding principal on the SPVL as of the beginning of such calendar year, (D) the date of origination of that loan, (E) the year, make, model, and vehicle identification number (VIN) of the APV that secures that loan (or any other description of that vehicle as the Secretary may prescribe), and (F) any other information as the Secretary may prescribe.

Section 6050AA(c) provides that every person required to make an information return under section 6050AA(a) must also furnish to each individual whose name is required to be included in the return a written statement showing the name, address, and phone number of the information contact of the interest recipient, and the information required to be included in the information return under section 6050AA(b)(2)(B) through (F).

Section 6050AA(e) authorizes the Secretary to issue regulations or guidance necessary to carry out the purposes of section 6050AA, including regulations or other guidance to prevent duplicate reporting.

IV. *Section 6011 and Electronic Filing of Information Returns*

Section 6011(e) authorizes the Secretary to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(5) authorizes the Secretary to prescribe regulations that require taxpayers to electronically file returns, including information returns, if the taxpayer is required to file at least 10 returns of any type during a calendar year.

V. *Penalties Under Sections 6721 and 6722*

Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date, and for any failure to include all the information required to be shown on a return or the inclusion of incorrect information. Section 6722 imposes a penalty for any failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished and for any failure to include all the information required to be shown on a payee statement or the inclusion of incorrect information.

Section 70203(c)(2)(A) of the OBBBA amended section 6724(d)(1) to add information reporting requirements under section 6050AA—regarding returns relating to QPVLI received in a trade or business from individuals—to the definition of "information return." Section 70203(c)(2)(B) of the OBBBA similarly amended the definition of "payee statement" in section 6724(d)(2). As a result of these amendments, penalties under sections 6721 and 6722 may be imposed on interest recipients that fail to file correct information returns and payee statements under section 6050AA.

On October 21, 2025, the IRS released Notice 2025-57, 2025-45 I.R.B. 692, to provide transitional guidance on the information reporting requirements under section 6050AA. Notice 2025-57 provides that an interest recipient will be deemed to have satisfied the reporting obligations under section 6050AA for interest on SPVLs received in 2025 if the interest recipient makes a statement available to the individual indicating the total amount of interest received in calendar year 2025 on an SPVL.

Explanation of Provisions

I. *Explanation of Proposed §1.163-16*

A. *QPVLI generally*

Section 163(h)(4)(B)(i) provides the general rule that QPVLI means any interest that is paid or accrued during the taxable year on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an APV for personal use. Proposed §1.163-16(c)(1) would provide that interest is QPVLI only if the interest is paid or accrued on an SPVL that is secured by a first lien on the purchased APV at the time the taxpayer pays or accrues interest on that SPVL. A lender's release of a lien typically occurs following the borrower's final payment on the related indebtedness. Thus, at the time of the final payment, an SPVL would typically still be secured by a lien on the purchased APV. See parts I.C (*Interest paid or accrued*), I.E.1 (*SPVLs Generally*), and I.D (*QPVLI exceptions*) of this Explanation of Provisions.

B. *Taxpayers that may deduct QPVLI*

Section 163(h)(4)(B)(i) provides that QPVLI is interest paid or accrued on indebtedness incurred by the taxpayer for the purchase of an APV for personal use.

Proposed §1.163-16(a)(2)(i) would provide that only individuals, decedents' estates, and non-grantor trusts may deduct QPVLI. This is because only those taxpayers could be considered to have purchased an APV for personal use as described in part I.H.2 of this Explanation of Provisions (*Types of Taxpayers that May Satisfy the Personal Use Requirement*).

Under existing rules (for example, §301.7701-3(b)), an entity may be disregarded as an entity separate from its owner for Federal tax purposes. Accordingly, for Federal income tax purposes (including for purposes of section 163(h)(4)), activities of a disregarded entity are treated as the activities of the owner. Additionally, a grantor or other person treated as owning any portion of a trust under sections 671 through 679 of the Code (a grantor trust) is treated as the owner of the trust property for Federal income tax purposes. See Revenue Ruling 85-13 (1985-1 C.B. 184). For example, if a grantor trust acquires an APV and incurs a secured loan for its purchase, the grantor trust's deemed owner is treated as the owner of the APV and the obligor of the loan, and eligibility of the grantor trust's deemed owner to deduct the interest paid by the grantor trust as QPVLI is determined by disregarding the grantor trust and instead looking to the deemed owner to test whether all of the requirements for deductible QPVLI have been satisfied. In this case, the modified adjusted gross income phaseout (as would be provided in proposed §1.163-16(h)(2)) is determined based upon the modified adjusted gross income of the deemed owner of the grantor trust, rather than the modified adjusted gross income of the grantor trust or any other person.

Thus, similar to the deduction for qualified residence interest under section 163(h)(3), the proposed regulations would permit QPVLI to be deducted by an individual, decedent's estate, or non-grantor trust, including with respect to a grantor trust or disregarded entity deemed owned by the individual, decedent's estate, or non-grantor trust.

Section 63(b)(7) provides that the deduction for QPVLI is allowed for taxpayers who do not itemize deductions. Proposed §1.163-16(a)(2)(ii) would clarify that the deduction for QPVLI may be taken by taxpayers who itemize deductions and taxpayers who take the standard deduction. For taxpayers who itemize deductions, the deduction is available under the general rule of section 63(a). For taxpayers who take the standard deduction, the deduction is available under section 63(b)(7).

C. *Interest paid or accrued*

Proposed §1.163-16(c)(2)(i) would provide that interest on an SPVL accrues on a daily basis over the term of the SPVL, consistent with the accrual of interest on other debt instruments. The amount of QPVLI that is deductible by a taxpayer for the taxable year is determined by the taxpayer's overall method of accounting for Federal income tax purposes (either the cash receipts and disbursements method or an accrual method) or an applicable special method of accounting. For purposes of section 163(h)(4), QPVLI includes all interest payable with respect to the amount financed under an SPVL.

Proposed §1.163-16(c)(2)(ii) would provide that a payment on an SPVL is treated first as a payment of interest to the extent interest has accrued and remains unpaid on the SPVL as of the date the payment is due, and second, to the extent of any excess, as a payment of principal. Proposed §1.163-16(c)(2)(ii) would also make clear that, consistent with the foregoing, a simple interest calculation may be used to determine the amount of interest that has accrued and remains unpaid on an SPVL when a payment is made. Under this simple interest calculation, interest accrues daily over the term of the SPVL based on the outstanding principal balance and the Annual Percentage Rate (APR) or stated interest rate provided in the retail installment sales contract or other contract evidencing the SPVL.

D. *QPVLI exceptions*

1. In General

As discussed in part I.A of this Explanation of Provisions (*QPVLI Generally*), proposed §1.163-16(c)(1) would provide that interest is QPVLI only if the interest is paid or accrued on an SPVL that is secured by a first lien on the purchased APV at the time the taxpayer pays or accrues interest on that SPVL.

Consistent with section 163(h)(4)(B)(ii), proposed §1.163-16(c)(4) would provide that QPVLI does not include amounts paid or accrued on: (i) a loan to finance fleet sales; (ii) a loan incurred for the purchase of a commercial vehicle that is not used for personal purposes; (iii) any lease financing; (iv) a loan to finance the purchase of a vehicle with a salvage title; or (v) a loan to finance the purchase of a vehicle intended to be used for scrap or parts.

2. Non-purchase Transactions

Proposed §1.163-16(b)(6) would provide that the term "lease financing" means a transaction that is not a purchase of an APV, and under which a taxpayer has usage rights with respect to an APV but is not considered the owner of the APV under State or other applicable law. As stated in part I.F of this Explanation of Provisions (*Purchase of the APV*), proposed §1.163-16(b)(11) would provide that "purchase" means an acquisition that is both (i) an acquisition of a vehicle for Federal income tax purposes and (ii) the acquisition of the title of the vehicle for purposes of State or other applicable law. Accordingly, because under proposed §1.163-16(b)(6) a lease financing does not involve a purchase of an APV, it would not be considered an SPVL, and QPVLI would not include any amounts paid or accrued with respect to a lease financing, including any amounts payable under the lease financing that are attributable to the time value of money.

A transaction that is a lease financing under State or other applicable law would not be a purchase within the meaning of section 163(h)(4)(B)(i) and proposed §1.163-16(b)(6) and (11), even if the transaction is properly viewed as a sale for Federal income tax purposes. Conversely, a transaction that is a purchase of an APV under State or other applicable law that is properly viewed as a lease for Federal income tax purposes also would not be a purchase within the meaning of section

163(h)(4)(B)(i) and proposed §1.163-16(b)(11).

Proposed §1.163-16(c)(6)(i) would provide an example that illustrates the application of proposed §1.163-16(c)(1) and (4) to a non-purchase transaction.

3. Lien on APV Substitutes

Proposed §1.163-16(c)(3)(ii) would provide an exception to the proposed general rule in proposed §1.163-16(c)(1) and (c)(3)(i) that interest is QPVLI only if the interest is paid or accrued on an SPVL that is secured by a first lien on the purchased APV at the time the taxpayer pays or accrues interest on that SPVL. This proposed exception would permit the substitution of collateral on the SPVL in limited circumstances. Under this proposed exception, if an SPVL is secured by a first lien on an APV that is replaced with a substitute APV due to an unforeseen intervening event, and the lien is transferred to that substitute APV under the loan documentation terms, the indebtedness will continue to be treated as an SPVL. Unforeseen intervening events would include a defective APV required to be replaced under State or other applicable lemon law or an APV that is required to be replaced due to an insurance product.

This proposed exception would be limited to substitute vehicles for which original use commences with the taxpayer, and that otherwise meet the requirements to be an APV. Furthermore, this proposed exception would be intended to apply in situations in which the existing SPVL continues without change other than the substitution of the collateral for the SPVL, as if the unforeseen intervening event did not occur. If instead the lender in that situation treats the original SPVL as being satisfied and new indebtedness as being issued to the taxpayer for the substitute vehicle, the generally applicable rules would apply for determining if this new indebtedness for the vehicle is an SPVL.

Proposed §1.163-16(c)(6)(ii) would provide an example that illustrates the application of proposed §1.163-16(c)(3).

4. Requirement to Report the VIN

Consistent with section 163(h)(4)(B)(iii), proposed §1.163-16(c)(5) would provide that interest paid or accrued by a taxpayer during the taxable year on an SPVL is not deductible as QPVLI unless the taxpayer reports the VIN of the purchased APV on the Schedule 1-A (or successor) or other relevant form specified by the Secretary. Proposed §1.163-16(b)(16) would provide that "VIN" means the series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes under 49 CFR 565.13.

E. *Specified passenger vehicle loan (SPVL)*

1. SPVLs Generally

Section 163(h)(4)(B)(i) provides that interest is QPVLI only if it is paid or accrued on indebtedness that is incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an APV for personal use. Because section 163(h)(4)(B)(i) does not use a specific term for this indebtedness, proposed §1.163-16(b)(15) refers to this indebtedness as a "specified passenger vehicle loan" or an "SPVL," the term used in section 6050AA to reference this indebtedness.

Proposed §1.163-16(b)(14) would provide that "secured by a first lien" means a valid and enforceable security interest in an APV under State or other applicable law with priority ahead of all other security interests, other than tax liens or other similar security interests that may be given higher priority at a later date following the date of purchase and only in limited circumstances. This exception would be intended to clarify that so-called springing liens that result due to the operation of State or other applicable law and that may be given a higher priority at a later date following the date of purchase, such as a tax lien arising due to the non-payment of State property taxes, do not prevent the APV from being secured by a first lien.

Section 163(h)(4)(E)(iii) provides that indebtedness between the taxpayer and a related party (within the meaning of section 267(b) or 707(b)(1) of the Code) is not an SPVL.

2. The SPVL Must Be Incurred for the Purchase of an APV

An APV may be sold under loan documentation referred to as a "motor vehicle retail installment sales contract". A typical motor vehicle retail installment sales contract indicates the total amount to be paid as part of the purchase transaction for the APV, which includes the purchase price of the vehicle and other fees and charges for property and services that are part of the purchase transaction. The total amount to be paid for the purchase transaction takes into account the value of any trade-in vehicle and any amounts paid by a taxpayer at the time of the purchase transaction for an APV, such as a down payment. In certain cases, amounts representing debt on a vehicle traded in as part of the purchase transaction for the APV in excess of the value of the vehicle (so-called "negative equity") are rolled into the financing for the purchase of the APV and included in the total amount to be paid as part of the purchase transaction for the APV.

The "amount financed" consists of the total amount to be paid as part of the purchase transaction for the APV, including any negative equity, reduced by the value of any trade-in vehicle and any down payment. Under the typical terms of the contract, the APR is the cost of the buyer's credit as a yearly rate. The finance charge stated in the contract, which is the total dollar amount the credit will cost the buyer, is determined based on the APR, the amount financed, and the period over which the buyer will make payments.

Proposed §1.163-16(d)(2)(i) would provide that indebtedness qualifies as an SPVL only to the extent the indebtedness is incurred for the purchase of an APV as well as for any other items or amounts customarily financed in an APV purchase transaction and that directly relate to the purchased APV (for example, vehicle service plans, extended warranties, sales taxes, and vehicle-related fees). For this purpose, whether an item or amount is customarily financed in an APV purchase transaction would be determined on an industry-wide basis, and not by reference to the financing terms of a particular financing entity.

Proposed §1.163-16(d)(2)(ii) would provide that to the extent any indebtedness is not described in proposed §1.163-16(d)(2)(i), this indebtedness is not incurred by a taxpayer for the purchase of an APV, even if it is incurred as part of a purchase transaction for an APV, and, therefore,

this indebtedness is not an SPVL. For example, an amount representing negative equity under an existing loan on a trade-in vehicle is not described in proposed §1.163-16(d)(2)(i) because such negative equity is not an item or amount directly related to the purchased APV.

In addition, indebtedness is not incurred by a taxpayer for the purchase of an APV to the extent the indebtedness is incurred to purchase collision and liability insurance or to purchase any property or services not directly related to the purchased APV (for example, a trailer or a boat). Indebtedness is also not incurred by a taxpayer for the purchase of an APV to the extent the indebtedness relates to cash proceeds that the taxpayer receives from the lender.

In general, under proposed §1.163-16(d)(2)(iii)(A), if a taxpayer incurs indebtedness attributable to more than the purchase of an APV and any items or amounts customarily financed with the purchase of the APV that are directly related to the purchased APV, the portion of the indebtedness attributable to this excess amount (nonqualifying indebtedness) would not be an SPVL. Accordingly, none of the interest attributable to this portion of the indebtedness would be deductible as QPVLI. Proposed §1.163-16(d)(2)(iii)(B) would provide that for purposes of determining the portion of the indebtedness that constitutes nonqualifying indebtedness, any down payment or other consideration supplied by the taxpayer is applied first against any negative equity and any other amounts that are not incurred for the purchase of the APV or for other items customarily financed in an APV purchase transaction and that directly relate to the purchase of the APV. This proposed rule would reduce the amount of indebtedness that otherwise would not qualify as an SPVL to the extent of any down payment or other consideration supplied by the taxpayer. For example, if a taxpayer incurred indebtedness totaling $50,000 to purchase an APV, made a down payment of $4,000, and traded in a car with $6,000 of negative equity, and all other amounts incurred by the taxpayer were for the purchase of the APV or for other items or amounts customarily financed in an APV purchase transaction that directly relate to the purchased APV, then $48,000 of the indebtedness would qualify as an SPVL and only $2,000 would not qualify as an SPVL.

Proposed §1.163-16(d)(6)(i) and (ii) provide examples that would illustrate the application of proposed §1.163-16(d)(2)(i) through (iii).

3. Refinanced SPVLs

Section 163(h)(4)(E)(ii) generally provides that a new loan resulting from refinancing an SPVL is an SPVL if the new loan is secured by a first lien on the APV with respect to which the refinanced SPVL was incurred, but only to the extent the amount of the new loan does not exceed the amount of the refinanced SPVL.

Proposed §1.163-16(d)(4) would provide this rule and clarify that the amount of the new loan that is an SPVL is limited to the outstanding balance of the refinanced SPVL as of the date of the refinancing. Consistent with proposed §1.163-16(d)(5)(i), which would provide that the SPVL would have to be originally incurred by the taxpayer, proposed §1.163-16(d)(4) would provide that, if there is a change in obligor as part of the refinancing, the new loan is not an SPVL with regard to any obligor other than the original obligor unless the refinancing is in connection with a change in obligor by reason of the obligor's death within the meaning of proposed §1.163-16(d)(5)(ii). See part I.E.4 of this Explanation of Provisions (*SPVL Must Be Incurred by the Taxpayer*).

Proposed §1.163-16(d)(6)(iii) would provide an example that illustrates the application of proposed §1.163-16(d)(4).

4. The SPVL Must Be Incurred by the Taxpayer

Proposed §1.163-16(d)(5) would provide additional guidance on the requirement in section 163(h)(4)(B)(i) that indebtedness be "incurred by the taxpayer" in order to qualify as an SPVL. Generally, section 163(h)(4) provides an exception to the disallowance of a deduction for personal interest in section 163(h)(1) that applies to certain taxpayers that incur SPVLs. Section 163(h)(4) does not provide that indebtedness owed by a taxpayer other than the taxpayer that originally incurred the indebtedness may qualify as an SPVL.

Accordingly, proposed §1.163-16(d)(5)(i) would provide a proposed general rule that indebtedness is an SPVL only if that indebtedness was originally incurred by the taxpayer. For example, if individual A incurs an SPVL and subsequently is replaced by individual B as the obligor on the indebtedness, the indebtedness is no longer an SPVL.

However, the proposed regulations would contain an exception to this proposed general rule for a change in obligor by reason of the obligor's death. In the limited circumstance of the death of the original obligor, this rule would treat the obligor succeeding to the decedent's interest as stepping into the shoes of the original obligor for purposes of section 163(h)(4). Thus, proposed §1.163-16(d)(5)(ii)(A) would provide that if a change in obligor on an SPVL occurs by reason of the death of the obligor, then the indebtedness remains an SPVL with respect to the new obligor.

Proposed §1.163-16(d)(5)(ii)(B) would provide that a change in obligor by reason of death as described in proposed §1.163-16(d)(5)(ii) would include a change in obligor (whether through a modification of the existing indebtedness or a refinancing) by reason of the following: the succession to ownership of an APV subject to an SPVL by the deceased obligor's estate, a surviving joint owner of the APV, or the surviving beneficiary designated by contract, a transfer on death provision, or by operation of law; and a distribution of an APV subject to an SPVL by a deceased obligor's estate to a legatee or heir or by a trust that is made to a trust beneficiary by reason of death.

Proposed §1.163-16(d)(5)(ii)(C) would provide that a change in obligor by reason of death as described in proposed §1.163-16(d)(5)(ii) would not include changes in the obligor resulting from the following: a sale, exchange, or other disposition of an APV by a decedent's estate or trust, other than certain distributions described in proposed §1.163-16(d)(5)(ii)(B); or any disposition of an APV by an individual who received the APV by reason of death (unless that individual also dies and the change in obligor is described in proposed §1.163-16(d)(5)(ii)(B)).

For example, assume D, an individual, incurs indebtedness that qualifies as

an SPVL. Subsequently, D dies and D's APV, subject to the SPVL, then belongs to D's estate. Sometime thereafter, D's estate distributes the APV, subject to the SPVL, to H, a residuary legatee under D's will. Subsequently, H gifts the APV, subject to the SPVL, to G, an individual. Under proposed §1.163-16(d)(5)(ii) the indebtedness remains an SPVL with respect to D, D's estate, and H, during such time as each person held the APV subject to the indebtedness, because each of these parties is the obligor on the indebtedness due to the death of D (an obligor of an SPVL). Accordingly, D, D's estate, and H each may deduct the amount of interest that each of D, D's estate, and H, respectively, paid or accrued on the SPVL as QPVLI, subject to the requirements of section 163(h)(4)(C) and proposed §1.163-16(h). For example, it may be the case that D and H cannot deduct the interest because their respective modified adjusted gross incomes exceed the limits imposed by section 163(h)(4)(C)(ii), but that D's estate is able to deduct the interest. However, the indebtedness is not an SPVL with respect to G because G did not originally incur the indebtedness or become the obligor on the indebtedness by reason of D's death.

F. *Purchase of the APV*

Section 163(h)(4)(B)(i) requires that the indebtedness incurred by the taxpayer be for the purchase of an APV. Proposed §1.163-16(b)(11) would provide that "purchase" means an acquisition that is both an acquisition of a vehicle for Federal income tax purposes and the acquisition of the title of the vehicle for purposes of State or other applicable law. A purchase results in the taxpayer being listed as the owner on the title or registration of the APV under State or other applicable law, with the lender listed on the title as the first lienholder. The fact that a lender may physically hold this title until the indebtedness is repaid would not affect whether the transaction is considered a purchase.

G. *Applicable passenger vehicle (APV)*

1. In General

Section 163(h)(4)(D) defines APV as meaning any vehicle: (i) the original use of which commences with the taxpayer; (ii) that is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails); (iii) that has at least 2 wheels; (iv) that is a car, minivan, van, sport utility vehicle, pickup truck, or motorcycle; (v) that is treated as a motor vehicle for purposes of title II of the Clean Air Act; and (vi) that has a gross vehicle weight rating of less than 14,000 pounds. Section 163(h)(4)(D) also provides that the term APV does not include any vehicle the final assembly of which did not occur within the United States.

Proposed §1.163-16(e)(1) would provide that a vehicle is an APV only if it satisfies the requirements set forth in section 163(h)(4)(D). Proposed §1.163-16(b)(13) would define car, minivan, van, sport utility vehicle, pickup truck, and motorcycle by reference to existing, well-established vehicle classification standards used by the Environmental Protection Agency (EPA), consistent with the reference in section 163(h)(4)(D)(v) to the Clean Air Act that the EPA administers. Proposed §1.163-16(e)(2) and (3), respectively, would provide rules for determining whether original use commences with the taxpayer and final assembly occurred in the United States.

2. Original Use

Proposed §1.163-16(e)(2)(i) would provide that original use commences with the first person that takes delivery of a vehicle after the vehicle is sold, registered, or titled. In the case of a dealer, proposed §1.163-16(e)(2)(i) would also provide that original use of a vehicle does not commence with the dealer unless the dealer registers or titles the vehicle to itself (for example, in the case of certain demonstrator vehicles or loaner vehicles). Proposed §1.163-16(e)(2)(i) would recognize that dealers may operate vehicles prior to the sale to retail purchasers in a manner that does not require the vehicle to be registered or titled under State or other applicable law, and that operation of the vehicle in this manner would not result in original use commencing with the dealer. For example, if a dealer uses a vehicle for test drives or as a demonstrator vehicle, and State or other applicable law does not require the dealer to register or title the vehicle, original use of that vehicle would not commence with the dealer. In this case, a subsequent retail purchaser of that vehicle could satisfy the original use requirement for the vehicle. On the other hand, dealer operation that requires the vehicle to be registered or titled under State or other applicable law would cause original use to commence with the dealer. For example, if a dealer uses a vehicle as a courtesy car loaned to customers in connection with servicing or the repair of vehicles and State or other applicable law requires the dealer to register or title the vehicle, original use of that vehicle would commence with the dealer. In this case, a subsequent retail purchaser of that vehicle cannot satisfy the original use requirement for the vehicle, and therefore the vehicle would not be an APV when purchased by the retail purchaser. Although a dealer's requirement to register or title vehicles may vary under State or other applicable law, this proposed standard would be straightforward for taxpayers to apply and administrable for the IRS.

The proposed approach to original use for retail purchasers recognizes that prior use of a vehicle by the dealer that would prevent the vehicle from being sold as a new vehicle under the associated loan documentation to a retail purchaser generally would suffice to cause the original use to commence with the dealer. Accordingly, under proposed §1.163-16(e)(2)(i), for retail purchasers that incur indebtedness to purchase a vehicle, original use would commence with that purchaser only if the loan documentation treats the vehicle as a new vehicle.

Proposed §1.163-16(e)(2)(ii) would provide an exception to the original use requirement. Under this exception, if a retail purchaser returns a vehicle within 30 days after the purchaser took delivery of that vehicle, the original use of that vehicle would not be considered to have commenced with that purchaser. In this case, the original use of that vehicle may commence with a subsequent retail purchaser of that vehicle if that subsequent purchaser's loan documentation treats the vehicle as a new vehicle. The Treasury Department and the IRS understand that dealers may have return policies that range from several days up to 30 days,

and these proposed rules are intended to reflect industry practice.

Proposed §1.163-16(e)(2)(iii) would provide examples that illustrate the application of proposed §1.163-16(e)(2)(i) and (ii), including the application of the proposed original use requirement to dealer demonstrator vehicles, a vehicle that was previously the subject of a cancelled sale, a vehicle that was previously leased and was purchased by the lessee after the lease was terminated, and a vehicle that was previously returned by a retail purchaser.

3. Final Assembly

Section 163(h)(4)(D) provides that an APV does not include any vehicle the final assembly of which did not occur within the United States. The final assembly point is listed on the vehicle information label attached to each vehicle on a dealer's premises. Proposed §1.163-16(e)(3) would provide that, to establish that final assembly occurred within the United States, the taxpayer may rely on (1) the vehicle's plant of manufacture as reported in the VIN under 49 CFR 565; or (2) the final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3). Taxpayers can determine whether the vehicle's plant of manufacture is located in the United States by following the instructions on the National Highway Traffic Safety Administration (NHTSA) VIN Decoder website: https://www.nhtsa.gov/vin-decoder.

These proposed reliance standards are intended to allow taxpayers to determine whether a vehicle meets the final assembly requirement in a straightforward manner, such that a taxpayer may more clearly make informed purchase decisions that consider the potential applicability of section 163(h)(4) at the time of the purchase of a vehicle.

H. *Personal use of the APV*

1. Definition of Personal Use

The definition of QPVLI in section 163(h)(4)(B) requires that the indebtedness is incurred by the taxpayer for the purchase of an APV for personal use, as contrasted with the purchase of a vehicle for use in a trade or business, for investment, or for other non-personal use. Accordingly, proposed §1.163-16(b)(10) would define "personal use" to mean use by an individual other than in any trade or business (except for use in the trade or business of performing services as an employee), or for the production of income. Costs of commuting between an individual's home and the individual's main or regular place of work are personal expenses. See Revenue Ruling 99-7 (1999-1 C.B. 361) and §1.262-1(b)(5).

2. Types of Taxpayers That May Satisfy the Personal Use Requirement

Inherent in section 163(h)(4)(B)(i) of the Code and the proposed definition of personal use in proposed §1.163-16(b)(10) is that individuals may satisfy the personal use requirement. For example, an individual that incurs indebtedness for the purchase of an APV may satisfy the personal use requirement with the individual's own use of the car.

Ordinary trusts are generally formed for the purpose of protecting or conserving property for one or more beneficiaries, and this property may be property for the personal use of one or more individual beneficiaries. Decedents' estates are generally formed to hold a deceased owner's property for one or more legatees or heirs and then distribute that property to one or more legatees or heirs. Less commonly, a decedent's estate may purchase property for the personal use of one or more individual legatees or heirs. Thus, some decedents' estates and non-grantor trusts that incur indebtedness to purchase APVs may qualify to deduct QPVLI. Other non-grantor trusts might never be able to satisfy the personal use test (for example, qualified funeral trusts as defined in section 685(b) of the Code) and thus would not be able to deduct QPVLI.

In contrast to decedents' estates and non-grantor trusts, business entities generally are formed for the purpose of carrying on profit-making activities. Business entities cannot satisfy the personal use requirement of section 163(h)(4)(B)(i) and proposed §1.163-16(f)(1) and therefore would not qualify to deduct QPVLI under proposed §1.163-16(a)(2).

3. Determination of Personal Use Based on Intent at the Time Indebtedness Is Incurred

Many taxpayers purchase a vehicle and expect to use it partially for personal use and partially for non-personal use. Section 163(h)(4)(B) does not require that a vehicle be purchased exclusively for personal use. Taxpayers may not be able to estimate with precision the relative proportions of these different types of uses at the time of purchase, and requiring taxpayers to make a determination regarding the exact amount of expected personal use and non-personal use is not administrable and may result in a considerable burden to taxpayers. Additionally, section 163(h)(4) does not require that the person incurring indebtedness for the purchase of the vehicle be the same person that satisfies the personal use requirement. One member of a family may purchase a vehicle for personal use by another member of the family, and such purchase would satisfy the personal use requirement of section 163(h)(4).

Proposed §1.163-16(f)(1) would provide that a taxpayer is considered to purchase that APV for personal use if, at the time the indebtedness is incurred, the taxpayer expects that the APV will be used for personal use by the taxpayer that incurred the indebtedness, or by certain members of that taxpayer's family and household, for more than 50 percent of the time. The proposed 50 percent threshold is intended to correspond to a vehicle being predominantly used for "personal use" within the meaning of section 163(h)(4)(B)(i) while still allowing taxpayers with considerable non-personal use to benefit from the deduction. The Treasury Department and the IRS understand that automotive retail installment sales contracts often indicate whether the purchased vehicle is for personal use or business use. Therefore, at the time a vehicle loan is incurred, the taxpayer financing the vehicle may have contemplated the intended use of a vehicle in a way that would facilitate evaluating this 50 percent personal use standard. In evaluating whether a taxpayer meets this personal use standard, it is intended that the IRS may consider information relating to the expected usage of the vehicle, such as information contained in the loan doc-

umentation and the type of collision and liability insurance held with respect to a vehicle.

Section 163(h)(4)(B)(i) of the Code could be read to require the personal use standard to be met only by reference to use by the taxpayer that incurred indebtedness to purchase the APV. However, the House Budget Report for Public Law 119-21 states that section 163(h)(4) was intended to "ease the financial burden of car ownership for working and growing families" (H.R. Rep. No. 119-106, at 1510 (2025)). As a result, such a narrow standard would appear contrary to Congressional intent in enacting section 163(h)(4) and contrary to common practices of the purchase and use of vehicles by families. Accordingly, proposed §1.163-16(f)(1) would adopt a broader standard to allow usage by the taxpayer that incurred the indebtedness, that taxpayer's spouse, or an individual that is related to the taxpayer within the meaning of section 152(c)(2) or (d)(2) of the Code, or any combination of these individuals to qualify.

Additionally, proposed §1.163-16(f)(2) would provide that, for purposes of determining whether a decedent's estate or non-grantor trust expects that an APV will be used for personal use, the determination is based on the expected personal use of the vehicle by the legatees or heirs, or beneficiaries, respectively, who have a present or future interest in such decedent's estate or non-grantor trust; the spouse of such legatees, heirs, or beneficiaries; or an individual that is related to such legatees, heirs, or beneficiaries within the meaning of section 152(c)(2) or (d)(2), or a combination of these individuals.

The personal use requirement in section 163(h)(4) is a requirement that must be satisfied in connection with the incurrence of indebtedness, as opposed to an ongoing requirement. As a result, a taxpayer is not required to reevaluate personal and non-personal use in taxable years after the indebtedness is incurred. Differences between expected use and later actual use do not affect the taxpayer's eligibility to deduct QPVLI, nor the amount of the taxpayer's QPVLI. The taxpayer must evaluate and determine that the personal use requirement is met at the time the indebtedness is incurred.

Under proposed §1.163-16(f)(1), an individual, decedent's estate, or non-grantor trust that receives an APV subject to an SPVL by reason of an obligor's death would not be required to evaluate whether it satisfies the personal use requirement; instead, the indebtedness would be an SPVL if it was an SPVL in the hands of the decedent (meaning, among other things, that the decedent satisfied the personal use requirement).

See part I.I of this Explanation of Provisions (*Non-personal use and independently deductible interest*) that discusses certain proposed rules relating to vehicles used for non-personal use and independently deductible interest.

Proposed §1.163-16(f)(3) would provide examples that illustrate the application of proposed §1.163-16(f).

I. *Non-personal use and independently deductible interest*

Under section 163(a), taxpayers may deduct interest that is QPVLI as a different type of interest in certain circumstances. For example, taxpayers paying interest attributable to a vehicle used in a trade or business may be able to deduct that interest as a business interest expense. The Treasury Department and the IRS understand that some taxpayers may prefer to deduct QPVLI as a different type of interest. Further, section 163(h)(4) does not affect the ability of a taxpayer to deduct interest that is otherwise able to be deducted under section 163(a) or a different section of the Code. Accordingly, the proposed regulations would provide certain rules with respect to interest that is both QPVLI and interest otherwise deductible under section 163(a) or a different section of the Code. These proposed rules are intended to provide clarity for taxpayers and to prevent taxpayers from claiming duplicative interest deductions.

Proposed §1.163-16(g)(1) would provide that independently deductible interest means interest paid or accrued that is QPVLI (prior to the application of the dollar limitation in section 163(h)(4)(C)(i) of the Code and in proposed §1.163-16(h)(1) and determined without regard to proposed §1.163-16(g)) and that also is deductible as a different type of interest under section 163(a) or a different section of the Code.

Proposed §1.163-16(g)(2) would provide that all independently deductible interest may be deductible as QPVLI or may be deductible as a different type of interest described in proposed §1.163-16(g)(1) (non-QPVLI). In addition, proposed §1.163-16(g)(2) would provide that the amount of independently deductible interest that may be deductible as QPVLI (before the application of the $10,000 limitation in section 163(h)(4)(C)(i)) is reduced dollar for dollar to the extent the taxpayer deducts that interest as non-QPVLI. These proposed provisions are intended to make clear that taxpayers may take any available interest deductions permitted under section 163(a) or a different section, while clarifying that a taxpayer may not deduct more total interest than otherwise is allowable. To ensure no amount of interest is deducted both as QPVLI and as some other type of deductible interest, proposed §1.163-16(g)(3) would provide that a taxpayer must report any amount of independently deductible interest that is deducted in a taxable year as non-QPVLI on Form 1040 Schedule 1-A (or successor) or other relevant form.

Non-interest vehicle expenses deducted by a taxpayer would not affect the taxpayer's treatment of independently deductible interest or require any additional reporting. For example, non-interest vehicle expenses deducted by a taxpayer under section 162(a) as trade or business expenses have no effect on interest deducted as QPVLI for that taxable year. These amounts would not be subject to any of the proposed provisions relating to independently deductible interest.

Proposed §1.163-16(g)(4) would provide examples that illustrate the application of proposed §1.163-16(g), including examples in which a taxpayer chooses to deduct independently deductible interest as QPVLI, and alternatively in which the taxpayer chooses to deduct independently deductible interest as non-QPVLI.

J. *Limitations of QPVLI*

Section 163(h)(4)(C)(i) provides that the deduction allowed for QPVLI by

a taxpayer for any taxable year cannot exceed $10,000. Section 163(h)(4)(C)(i) does not provide a different amount for joint filers (in contrast to section 163(h)(4)(C)(ii), discussed in the immediately following paragraph). Accordingly, proposed §1.163-16(h)(1) would clarify that this $10,000 limitation applies per Federal tax return. Thus, the maximum deduction allowed on a joint Federal income tax return is $10,000. If two taxpayers have a Federal income tax return filing status of married filing separately, the $10,000 limitation would apply separately to each taxpayer's return.

Section 163(h)(4)(C)(ii) provides that the amount otherwise allowable as a deduction under section 163(a) as QPVLI (after the application of the section 163(h)(4)(C)(i) dollar limitation) is reduced (but not below zero) by $200 for each $1,000 (or portion thereof) by which the modified adjusted gross income of the taxpayer for the taxable year exceeds $100,000. In the case of married taxpayers filing a joint Federal income tax return, section 163(h)(4)(C)(ii) provides that this reduction begins after the taxpayer's modified adjusted gross income exceeds $200,000.

With respect to the deduction of QPVLI by a decedent's estate or non-grantor trust (as would be defined in proposed §1.163-16(b)(9)), the modified adjusted gross income threshold of $100,000 would be applied to the decedent's estate or non-grantor trust, and not with respect to the beneficiaries of the decedent's estate or non-grantor trust. In the case of a decedent's estate or non-grantor trust, proposed §1.163-16(b)(7)(ii) would provide that the term "modified adjusted gross income" means adjusted gross income (as defined in section 67(e) of the Code).

Proposed §1.163-16(h)(3) would provide examples that illustrate the application of proposed §1.163-16(h).

II. *Explanation of Proposed §1.6050AA-1*

A. *In general*

The proposed regulations under section 6050AA would provide the operational, administrative, and definitional rules for persons in a trade or business who receive interest on an SPVL to comply with the statutory information reporting requirements with respect to receipt of interest to which section 163(h)(4) and proposed §1.163-16 would apply.

In general, under section 6050AA and proposed §1.6050AA-1(a), if the interest recipient receives from any individual at least $600 of interest on an SPVL for a calendar year, the interest recipient would be required to file an information return with the IRS and furnish a statement to the payor of record on the SPVL.

B. *Definitions*

1. Applicable Passenger Vehicle (APV)

Proposed §1.6050AA-1(b)(1) would provide that the term "applicable passenger vehicle" or "APV" has the meaning provided in section 163(h)(4)(D) and proposed §1.163-16(b)(1). See part I.G of this Explanation of Provisions (*Applicable passenger vehicle* (*APV)*).

2. Calendar Year

Proposed §1.6050AA-1(b)(2) would provide that the calendar year for which interest is received is the later of the calendar year in which the interest is received or the calendar year in which the interest properly accrues. In order to account for certain payments occurring near year end, the proposed regulations would also permit an interest recipient to report in the current calendar year prepaid interest accruing shortly after year-end. Proposed §1.6050AA-1(b)(2)(ii) would permit an interest recipient to report as interest received during the current calendar year prepaid interest properly accruing by the following January 15. An interest recipient that reports as interest received during the current calendar year prepaid interest properly accruing by the following January 15 would not report that prepaid interest in the following calendar year. These proposed rules are consistent with the rules for reporting mortgage interest under section 6050H.

3. Interest Recipient

Proposed §1.6050AA-1(b)(3) would provide that the term "interest recipient" means a person that is engaged in a trade or business, whether or not the trade or business of lending money, and that, in the course of that trade or business, receives interest on an SPVL.

The Treasury Department and the IRS understand that, in some situations, a person collects interest on an SPVL on behalf of another (for example, the lender of record). The proposed rules provide that, in that situation, the person that first receives the interest generally would be required to report under proposed §1.6050AA-1(a), and no reporting would be required upon the transfer of the interest from the interest recipient to the person on whose behalf the interest recipient received the interest. However, an initial recipient would not be required to report interest received on behalf of the person on whose behalf the interest recipient received the interest if the initial recipient does not possess the reporting information for the borrower and the person on whose behalf the interest recipient received the interest is engaged in a trade or business and would receive the interest in the course of its trade or business if it received the interest directly. In this situation, proposed §1.6050AA-1(b)(3)(ii)(A) would require the person on whose behalf the interest recipient received the interest, rather than the initial recipient, to report.

4. Lender of Record

Proposed §1.6050AA-1(b)(4) would provide that the term "lender of record" means the person who, at the time the loan is made, is named as the lender on the loan documents and whose right to receive payment from the payor of record is secured by a lien on the payor of record's APV. The proposed regulations would also provide that an intention by the lender of record to sell or otherwise transfer the loan to a third party subsequent to the close of the transaction would not affect the determination of who is the lender of record. As a result of the interaction between proposed §1.6050AA-1(b)(4) and (a)(2), a lender of record would be required to file an information return with the IRS and furnish a statement to the payor of record on the SPVL if they receive at least $600 of interest on an SPVL for a calendar year,

even if they intend to transfer the loan to a third party.

5. Payor of Record

The Treasury Department and the IRS understand that interest recipients maintain books and records regarding loans but do not necessarily track the identity of the party actually making the payments on a particular loan. The Treasury Department and the IRS also understand that some interest recipients provide SPVLs as well as home mortgage loans and these interest recipients have an established practice for determining the payor of record with respect to such mortgage loans. Accordingly, the Treasury Department and the IRS are proposing a definition of the term "payor of record" that is similar to the definition of payor of record in §1.6050H-1(b)(3). Proposed §1.6050AA-1(b)(5) would define a payor of record on an SPVL as any person carried on the books and records of the interest recipient as the principal borrower on the SPVL. To prevent the duplicate reporting of information, if the books and records of the interest recipient do not indicate which borrower is the principal borrower, the proposed regulations would provide the interest recipient must designate a borrower as the principal borrower. As a result of the interaction between proposed §1.6050AA-1(b)(5) and (a)(2), only the payor of record would be furnished a written statement on the SPVL under proposed §1.6050AA-1(a)(2)(ii).

As described in part I.B of this Explanation of Provisions (*Taxpayers that may deduct QPVLI*), proposed §1.163-16(a)(2)(i) would provide that only individuals, decedents' estates, and non-grantor trusts may deduct interest under section 163(h)(4). Because only these persons would need the information reported under section 6050AA to complete their income tax returns, proposed §1.6050AA-1(b)(5) would also provide the term "person" means any individual, decedent's estate, or non-grantor trust.

6. Secretary

Proposed §1.6050AA-1(b)(6) would provide that the term "Secretary" has the meaning provided in section 7701(a)(11) of the Code.

7. Specified Passenger Vehicle Loan (SPVL)

Section 6050AA(d)(2) provides that the term "specified passenger vehicle loan" means the indebtedness described in section 163(h)(4)(B) with respect to any APV. Proposed §1.6050AA-1(b)(7) would adopt this definition and would provide that the term "specified passenger vehicle loan" or "SPVL" has the meaning provided in proposed §1.163-16(b)(15). See part I.E of this Explanation of Provisions (*Specified passenger vehicle loan (SPVL)*).

C. *Reporting by foreign person*

The Treasury Department and the IRS are aware that some foreign persons may receive interest on SPVLs. Individual borrowers may not be aware that the interest recipient is a foreign person. Under proposed §1.6050AA-1(c)(1), an interest recipient that is a foreign person would be required to report with respect to interest received on an SPVL to the extent such interest is received at a location in the United States. For example, a foreign bank with a branch located in the United States would be required to report with respect to interest received on an SPVL received at their U.S. branch. Under proposed §1.6050AA-1(c)(2), an interest recipient that is a foreign person and receives interest at locations outside the United States would be required to report only if the foreign person is a controlled foreign corporation (as defined in section 957(a)) or if 50 percent or more of the foreign person's gross income was effectively connected with the conduct of a trade or business within the United States. This proposed 50-percent figure would be calculated based on the three-year period ending with the close of the taxable year preceding the receipt of interest. These rules are similar to the rules applicable to foreign persons that receive home mortgage interest in §1.6050H-1(d)(1).

D. *Reporting with respect to a nonresident alien individual, foreign decedent's estate, or foreign non-grantor trust*

Proposed §1.6050AA-1(d)(1) would provide that the reporting requirement of section 6050AA would not apply if the payor of record is a nonresident alien individual, foreign decedent's estate, or foreign non-grantor trust. Proposed §1.6050AA-1(d)(2) would provide the documentation rules that the interest recipient would be required to follow to determine whether the payor of record is a nonresident alien individual, foreign decedent's estate, or foreign non-grantor trust. These rules are similar to the rules applicable to nonresident alien individuals that receive home mortgage interest in §1.6050H-1(d)(2).

E. *Determining if a loan is an SPVL*

The Treasury Department and the IRS understand that interest recipients will often not be the person listed on the loan documents as the lender of record but that these interest recipients are instead listed on subsequent loan documents as assignees whose right to receive payment from the payor of record is secured by a lien on the payor of record's APV. Regarding the ability of these assignees to determine whether a loan is an SPVL, the Treasury Department and the IRS understand that these assignees typically receive information as part of the loan assignment process that should largely enable them to determine whether reporting is required for the assigned loan. In particular, the Treasury Department and the IRS understand these assignees typically receive a copy of the retail installment sales contract, which generally includes relevant information, including the VIN, which these interest recipients can use to determine whether the vehicle's plant of manufacture is located in the United States, and information regarding the items and amounts financed in connection with the purchase of the vehicle. Accordingly, the Treasury Department and the IRS expect that assignees will have most of the information needed based on current business practices.

One piece of relevant information that assignees may not have as result of receiving a copy of the retail installment sales contract is whether the personal use requirement is met. The Treasury Department and the IRS understand that while retail installment sales contracts often include some indication of whether a vehicle is purchased

for personal or business use, this is not true of all such contracts and, for those that include some indication, the information in the contract may not be sufficient for the assignee to determine if the personal use requirement is met. If the information in the contract is sufficient for an assignee of the loan to determine that the personal use requirement is met, then, in the absence of conflicting information, the assignee may rely on that information for purposes of satisfying its information reporting obligations. The assignee may choose to make arrangements to obtain information regarding personal use from the obligor, from the lender of record, or by some other means.

F. *Amount of interest received on an SPVL for the calendar year*

Section 6050AA(a) provides that the information return relates to interest received on an SPVL. Accordingly, under proposed §1.6050AA-1(e), whether an interest recipient receives $600 or more of interest on an SPVL would be determined on an SPVL-by-SPVL basis. An interest recipient would not be required to report interest of less than $600 received on an SPVL, even if it receives a total of $600 or more of interest on SPVLs from different vehicles from the same payor of record during a calendar year.

The Treasury Department and the IRS are aware that it might be burdensome for interest recipients to determine which SPVLs require reporting under section 6050AA in a given year based on the amount of interest received. To alleviate this burden and because the information may be useful to taxpayers claiming a deduction for QPVLI of less than $600, proposed §1.6050AA-1(a)(3) would permit, but not require, an interest recipient to report its receipt of less than $600 of interest on an SPVL for a calendar year. To provide taxpayers with accurate information to claim the deduction, an interest recipient that chooses to file an information return under section 6050AA of less than $600 would be subject to the requirements of proposed §1.6050AA-1.

G. *Requirement to file information return*

Section 6050AA(b) provides that the information return filed by the interest recipient must be in the form prescribed by the Secretary and contain certain information. Accordingly, under proposed §1.6050AA-1(f)(2), the interest recipient would be required to file a form designated by the Secretary that contains: (i) the name, address, and taxpayer identification number of the payor of record; (ii) the name, address, and taxpayer identification number of the interest recipient; (iii) the amount of interest received for the calendar year; (iv) the amount of outstanding principal on the SPVL as of the beginning of such calendar year; (v) the date of origination of such loan; (vi) the year, make, model, and VIN of the APV that secures such loan; (vii) the date the SPVL was acquired; and (viii) any other information required by the form or its instructions.

These items generally follow the items prescribed in section 6050AA(f)(2). In addition, because the Treasury Department and the IRS understand SPVLs may be sold or otherwise transferred to a new lender of record, proposed §1.6050AA-1(f)(2)(vii) would require the lender of record to include the date it acquired the loan on the form.

H. *Requirement to furnish written statement*

Proposed §1.6050AA-1(g) would require the interest recipient that would be required to file a return under proposed §1.6050AA-1(a) to furnish a statement to the payor of record. For rules regarding electronic delivery of these written statements, see Revenue Procedure 2025-22 (2025-30 IRB 200) (or its successor), republished as Publication 1179, "General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns)."

For purposes of tax administration, the proposed requirement to furnish written statements would require that those with a reporting obligation must provide statements to certain recipients containing the information reported to the IRS and, in some cases, additional information. Under proposed §1.6050AA-1(g), the recipient would be the payor of record, and the written statement would be required to include the information that was reported on the form designated for this purpose. In addition, the written statement must include a legend that would identify the statement as important tax information that is being furnished to the IRS and would state that penalties may apply if the payor of record overstated a deduction for interest reported on the statement. To minimize the risk of recipients claiming an interest deduction that is limited by section 163(h)(4)(C) or otherwise ineligible, proposed §1.6050AA-1(g)(2)(ii) would also require that the written statement include a legend stating that the payor of record may be unable to deduct the full amount of interest reported on the statement.

I. *Due dates*

Section 6050AA(a) provides that the information return must be filed at such time as the Secretary may prescribe. Further, under section 6050AA(c), the written statement must be furnished to the recipient on or before January 31 of the year following the calendar year for which the information return was required to be made. Under proposed §1.6050AA-1(f)(3), the interest recipient would be required to file the information return on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which it receives the interest. To ensure the payor of record has the information necessary to prepare the payor's income tax return, and as directed by section 6050AA(c), proposed §1.6050AA-1(g)(5) would require the interest recipient to furnish to the payor of record the written statement on or before January 31 of the year following the calendar year for which it receives the interest on the SPVL.

III. *Explanation of Proposed Amendments to §301.6011-2*

Section 6011(e)(5) authorizes the Secretary to prescribe regulations that require taxpayers to electronically file returns, including information returns, if the taxpayer is required to file at least 10 returns of any type during a calendar year. On February 23, 2023, the Secretary published final regulations implementing this 10-return threshold. TD 9972, 88 FR 11754 (February 23, 2023). Section 301.6011-2(b) prescribes the information returns that must

be filed electronically once the ten-return threshold set out in §301.6011-2(c)(1) is met. Consistent with section 6011(e)(5) and the existing regulations, proposed §301.6011-2(b)(1) would add the return required under section 6050AA to the list of returns that must be filed electronically. Recipients of interest on SPVLs must file the information return required by section 6050AA and these regulations electronically if they are required to file at least 10 returns that calendar year. Any interest recipients required to file fewer than 10 returns during a calendar year may choose to make the information return reporting the interest electronically.

IV. *Explanation of Proposed Amendments to §301.6721-1*

As amended by the OBBBA, section 6724(d)(1)(B)(xxix) defines an information return for purposes of the penalty imposed by section 6721 as including a return required by section 6050AA(a). Consistent with section 6724(d)(1)(B)(xxix), proposed §301.6721-1(h)(3)(xxviii) would add returns required by section 6050AA to the list of information returns included in §301.6721-1 (Failure to furnish correct information returns).

V. *Explanation of Proposed Amendments to §301.6722-1*

As amended by the OBBBA, section 6724(d)(2)(MM) defines a payee statement for purposes of the penalty imposed by section 6722 as including a statement required by section 6050AA(c). Consistent with section 6724(d)(2)(MM), proposed §301.6722-1(e)(2)(xxxix) would add returns required by section 6050AA to the list of payee statements included in §301.6722-1 (Failure to furnish correct payee statements).

Proposed Applicability Dates

The regulations under section 163 are proposed to apply to taxable years in which taxpayers may deduct QPVLI pursuant to section 163(h)(4). The regulations under section 6050AA are proposed to apply to calendar years in which taxpayers may deduct QPVLI pursuant to section 163(h)(4). A taxpayer may rely on the proposed regulations under section 163 with respect to indebtedness incurred for the purchase of an APV after December 31, 2024, and on or before the date these regulations are published as final regulations in the ***Federal Register***, provided that the taxpayer follows these proposed regulations in their entirety and in a consistent manner. Similarly, interest recipients may rely on the proposed regulations under section 6050AA with respect to indebtedness incurred for the purchase of an APV after December 31, 2024, and on or before the date these regulations are published as final regulations in the ***Federal Register***, provided that the taxpayer follows these proposed regulations in their entirety and in a consistent manner.

Special Analyses

I. *Regulatory Planning and Review—Economic Analysis*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is significant under section 3(f)(1) of Executive Order 12866 and subject to review under Executive Order 12866 and section 1(b) of the MOA. Accordingly, the proposed regulations have been reviewed by OMB.

This proposed rule, if finalized, is expected to be an Executive Order 14192 regulatory action.

Need for Regulation

Section 70203 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA), amends section 163(h) of the Internal Revenue Code[1] to provide a newly allowable income tax deduction for qualified passenger vehicle loan interest (QPVLI). In the absence of regulations, taxpayers would face substantial uncertainty about which vehicle loan interest is eligible for the deduction. The OBBBA also establishes section 6050AA of the Code to require interest recipients receiving at least $600 of interest on a specified passenger vehicle loan (SPVL) within a calendar year to file an information return with the Internal Revenue Service (IRS) and furnish a statement to the payor of record. In the absence of guidance, interest recipients would face uncertainty about how to comply with the requirements.

The proposed regulations would clarify the statute for taxpayers and lenders, including by: defining "personal use" and providing a standard for "personal use" of a vehicle; clarifying the requirements for interest to be QPVLI; clarifying the requirements for indebtedness to be a SPVL; defining "indebtedness incurred for the purchase of an applicable passenger vehicle" to include the cost of warranties, service plans, and other amounts customarily financed in a vehicle purchase transaction and that are directly related to the purchased vehicle; establishing which information must be reported by lenders to comply with the information reporting requirements; clarifying that the deduction is limited to $10,000 per return, regardless of the taxpayer's filing status; providing rules for determining whether "final assembly" of a vehicle occurred in the United States; and offering further definitions and clarifications of terms in

[1] References to a "section" are to a section of the Internal Revenue Code of 1986, as amended (Code), unless otherwise indicated.

section 163(h)(4) and section 6050AA, such as the vehicle identification number (VIN).

I. The Statute and Proposed Regulations

Under section 163(h)(1), certain taxpayers cannot deduct personal interest paid or accrued during the taxable year. Section 70203(a) of the OBBBA adds a new section to the Code, section 163(h)(4). Section 163(h)(4)(A) provides that, in the case of taxable years beginning after December 31, 2024, and before January 1, 2029, personal interest does not include QPVLI. This allows taxpayers to deduct QPVLI for taxable years beginning after December 31, 2024, and before January 1, 2029. Section 163(h)(4)(B) defines QPVLI as any interest that is paid or accrued during the taxable year on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an applicable passenger vehicle (APV) for personal use. Section 163(h)(4)(B) also includes exceptions to QPVLI, such as financing for commercial vehicles or lease financing, and a requirement for taxpayers to include the VIN of the APV on the tax return in order to claim the deduction.

The proposed regulations would provide definitions and clarifications of terms related to QPVLI in section 163(h)(4) and section 6050AA. The proposed regulations would clarify that individuals, decedents' estates, and non-grantor trusts may deduct QPVLI. The proposed regulations would provide that interest is only QPVLI if the interest is paid or accrued during the taxable year on indebtedness that is an SPVL secured by a first lien on an APV and is not otherwise excluded from the definition of QPVLI. The proposed regulations would adopt a standard for personal use that would provide that a taxpayer is considered to purchase an APV for personal use if, at the time the indebtedness is incurred, the taxpayer expects that the APV will be used for personal use by the taxpayer that incurred the indebtedness, that taxpayer's spouse, or an individual that is related to the taxpayer within the meaning of sections 152(c)(2) or (d)(2) of the Code, or any combination of these individuals, for more than 50 percent of the time the taxpayer expects to own the APV. The proposed 50 percent threshold is intended to correspond to a vehicle being predominantly used for "personal use" within the meaning of section 163(h)(4)(B)(i) while still allowing taxpayers with considerable non-personal use to benefit from the deduction. If the taxpayer is a decedent's estate or non-grantor trust, personal use is tested based on the use by legatees or heirs, or beneficiaries, respectively. Further, under the proposed regulations, the taxpayer would not be required to reevaluate compliance with the personal use standard in taxable years after the indebtedness is incurred. The proposed regulations also would clarify that taxpayers may not deduct the same interest as both QPVLI and otherwise deductible interest (such as a business interest expense) and that taxpayers must report certain information relating to vehicle interest deducted independent of QPVLI.

Typical auto loan sales contracts indicate an "amount financed" that may include property and services in addition to the amount for the price of the vehicle. The proposed regulations would provide that indebtedness incurred for the purchase of an APV as well as for certain items or amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV is an SPVL and therefore interest paid or accrued on such indebtedness is potentially eligible to be deducted. The regulations describe certain items and services that are considered customarily financed in an APV purchase transaction and that are directly related to the purchased APV, such as vehicle service plans, extended warranties, sales taxes, and vehicle-related fees. Indebtedness not incurred for the purchase of an APV nor for any other items or amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV, and, therefore, interest paid or accrued on such indebtedness is not QPVLI. For example, to the extent that a taxpayer incurs indebtedness to purchase collision and liability insurance or to purchase any property or services unrelated to the vehicle (for example, a trailer or a boat), that indebtedness is not an SPVL, and, therefore, interest paid or accrued on that indebtedness is not QPVLI and may not be deducted under section 163(h)(4).

Section 163(h)(4)(C) establishes limitations on the amount of QPVLI that a taxpayer may deduct. The dollar limit is $10,000 per taxable year. The proposed regulations would clarify that this limit applies regardless of the taxpayer's filing status for that taxable year. Additionally, under section 163(h)(4)(C), the deduction for QPVLI is reduced (but not below zero) by $200 for each $1,000 (or portion thereof) by which the taxpayer's modified adjusted gross income (MAGI) exceeds $100,000 ($200,000 in the case of a married couple filing a joint return). Section 163(h)(4)(C) defines "modified adjusted gross income" for the purposes of this phaseout as adjusted gross income of the taxpayer for the taxable year plus any amount excluded from gross income under sections 911, 931, or 933. The proposed regulations would clarify that for estates and non-grantor trusts, the MAGI phaseout is applied to the estate or trust, not with respect to the beneficiaries of the estate or trust; and for estates and non-grantor trusts, MAGI means AGI as defined in section 67(e).

Section 163(h)(4)(D) defines the term "applicable passenger vehicle". The criteria for an APV include that its original use must commence with the taxpayer and that its final assembly must have occurred in the United States. The proposed regulations would provide rules for determining whether original use of a vehicle begins with the taxpayer, rules for whether a vehicle's final assembly occurred in the United States, and definitions for other APV-related terms used in the statute. Original use commences with the first person that takes delivery of a vehicle after the vehicle is sold, registered, or titled. For purchasers that are not dealers, original use does not commence with the taxpayer unless the loan documentation treats the vehicle as a new vehicle. For dealers, original use does not commence with the dealer unless the dealer registers or titles the vehicle. The proposed regulations would provide that taxpayers can determine the location of final assembly by (1) the plant of manufacture as reported in the VIN or (2) the final assembly point reported on the label affixed to the vehicle.

Section 163(h)(4)(E) provides other definitions and special rules. These

include the treatment of refinancing and of indebtedness owed to related parties. The proposed regulations would clarify that for refinanced loans, the amount of the new loan on which interest is considered QPVLI is limited to the outstanding balance of the refinanced loan as of the date of the refinancing.

Section 70203(b) of the OBBBA amends section 63(b) of the Code so that the deduction for QPVLI is allowed for taxpayers who do not elect to itemize their deductions. The proposed regulations would clarify that the deduction is available to taxpayers who itemize their deductions and to taxpayers who claim the standard deduction.

Section 70203(c) of the OBBBA adds a new section 6050AA to the Code that establishes information reporting requirements for QPVLI. Any person who, in the course of a trade or business, receives from any individual more than $600 in a calendar year on a SPVL must provide an information return to the IRS and furnish a statement to the payor of record. The proposed regulations would provide operational definitions and rules for complying with the information reporting requirements. The regulations clarify the need to report the date the SPVL was acquired; require that the statement to the payor of record includes a legend clarifying that the taxpayer may be unable to deduct the full amount of interest shown on the statement; and offer guidance on reporting by and to certain foreign persons. To prevent duplicate reporting, the proposed regulations also would provide that if an interest recipient's records for a loan do not indicate which borrower is the principal borrower, the interest recipient must designate a principal borrower. This follows established practice with respect to information reporting requirements for qualified residence interest.

II. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

III. Affected Entities and Taxpayers

The proposed regulations would affect individuals, decedents' estates, and non-grantor trusts that may deduct QPVLI, and also would affect any person engaged in a trade or business, who, in the course of that trade or business, receives interest aggregating $600 or more for any calendar year on an SPVL and is therefore subject to certain information reporting requirements. As described in the preamble to the proposed regulations, interest recipients receiving less than $600 of interest on an SPVL would have the option to provide information returns.

Under section 163(h)(4), the deduction is limited to interest on loans for vehicles with final assembly occurring in the U.S. whose original use commences with the taxpayer. The Treasury Department and the IRS estimate that in 2024, roughly 6 million loans originated on new, U.S.-assembled vehicles. (See Table A.) Retail sales of new light vehicles in the U.S. totaled about 16 million in 2024[2]; roughly 60 percent of new vehicle purchases are financed with loans[3]; and analysis of vehicle model sales data suggests that about 60 percent of vehicles sold in the U.S. undergo U.S. final assembly. The Treasury Department and the IRS do not have an estimate of the number of estates and non-grantor trusts that are obligors on auto loans.

Table A: Estimated Annual Loans on New, U.S.-assembled Vehicles

1. 2024 U.S. new light vehicle sales	16 million
2. Share of new vehicle sales financed with loans	60 percent
3. Of new vehicles sold, share with U.S. final assembly	60 percent
4. Estimated annual loans on new vehicles with U.S. final assembly	Approximately 6 million

Notes: Row 4 is the rounded product of rows 1, 2, and 3.

Sources: "Light vehicle retail sales in the United States from 1976 to 2024," Statista, last accessed October 27, 2025, https://www.statista.com/statistics/199983/us-vehicle-sales-since-1951/; https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles; "New and used passenger car and light truck sales and leases," Bureau of Transportation Statistics, last accessed October 27, 2025, https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles; "State of the Automotive Finance Market Report: Q2 2025," Experian, last accessed October 27, 2025, https://www.experian.com/automotive/auto-credit-webinar-form; manufacturer vehicle model sales data.

To identify the number of businesses that the proposed regulations are expected to affect, the Treasury Department and the IRS analyzed confidential tax return data. For tax year 2023, approximately 36,000 businesses filed a tax return with North American Industry Classification System (NAICS) codes for new car dealers (code 441110), motorcycle dealers (code 441227), car loan lenders (code 522220), and consumer lending (code 522291). (See Table B.) This total does not include used car dealers because the statue and regulations only apply to loans for new vehicles.

[2] "Light vehicle retail sales in the United States from 1976 to 2024," Statista, last accessed October 27, 2025, *https://www.statista.com/statistics/199983/us-vehicle-sales-since-1951/*; *https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles*; "New and used passenger car and light truck sales and leases," Bureau of Transportation Statistics, last accessed October 27, 2025, *https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles*. The 16 million total transactions (row 1 of Table A) includes leases; the share of new vehicle transactions financed with a loan (row 2 of Table A), used to estimate the number of loans on new, U.S.-assembled vehicles, excludes leases.

[3] "State of the Automotive Finance Market Report: Q2 2025," Experian, last accessed October 27, 2025, *https://www.experian.com/automotive/auto-credit-webinar-form*; "New and used passenger car and light truck sales and leases," Bureau of Transportation Statistics, last accessed October 27, 2025, *https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles*.

Table B: Estimated Number of Affected Businesses by NAICS Code	
New car dealers (441110)	17,800
Motorcycle dealers (441227)	4,100
Car loan lenders (522220)	5,800
Consumer lending (522291)	8,100
Total	35,800
Notes: The table shows counts of tax year 2023 filers of forms 1065, 1120S, or 1120. NAICS codes appear in parentheses.	
Source: Treasury Department analysis of confidential tax return data, October 24, 2025.	

IV. Economic Effects of the Proposed Regulations

The proposed regulations would clarify the statute and facilitate taxpayers claiming the auto loan interest deduction. Consider, for example, a taxpayer who is purchasing a vehicle. For most people, a vehicle is a major purchase, and there are many elements to be considered along the way, including choices between a new versus used vehicle, a U.S.-assembled versus foreign-assembled vehicle, and a cash purchase versus a loan or a lease. With the introduction of the deduction for qualified vehicle loan interest, the taxpayer now faces questions about whether and how the statute interacts with the vehicle and financing choices they make. For instance, in the absence of guidance, the taxpayer may not know whether their intended personal use of the vehicle is sufficient to claim the deduction or whether a vehicle meets the standard for U.S.-final assembly.

The proposed rules would assist the taxpayer in understanding and claiming the qualified vehicle loan interest deduction. For example, the regulations direct taxpayers to the National Highway Traffic Safety Administration (NHTSA) VIN Decoder website to determine whether a vehicle underwent final assembly in the United States, a necessary condition for the vehicle to be eligible for the deduction. By facilitating taxpayers' understanding of which vehicles are American made and eligible for the deduction under the statute, the proposed regulations would reduce taxpayer compliance burden and, as a result, may also increase consumer demand for vehicles and financing that are eligible for the deduction, namely loans for new, U.S.-assembled vehicles. The Treasury Department and the IRS do not have readily available parameters and models to quantify the extent of this increase in demand for U.S. assembled vehicles or debt financing. The following sections describe in further detail the potential economic impacts of specific elements of the proposed regulations

a. Personal Use Standard

Section 163(h)(4) limits the deduction to vehicles purchased for personal use. The proposed regulations would provide a standard for personal use. To meet the standard, the taxpayer must expect at the time of purchase that the APV will be used for personal use for more than 50 percent of the time the taxpayer expects to own the APV. An alternative standard of personal use could have required mostly or exclusively personal use of a vehicle for loan interest to be considered QPVLI.

The 50 percent personal use standard benefits taxpayers who debt-finance mixed-use vehicles who would be disallowed from taking the deduction for QPVLI under stricter, alternative standards. Interest on a vehicle loan that is properly allocable to a trade or business is generally deductible under section 163(h)(2)(A). Consider, for example, a taxpayer who finances the purchase of an APV expecting for 60 percent of use to be for personal use and 40 percent for use in a trade or business. Assume for a given tax year the taxpayer pays $3,500 in interest on the vehicle loan, drives the vehicle 55 percent for personal use and 45 percent for use in a trade or business, and meets all other requirements to deduct QPVLI and interest properly allocable to a trade or business. (Note that 55 percent personal use for this tax year differs somewhat from the taxpayer's expected 60 percent personal use over the cumulative time the taxpayer expects to own the vehicle.) Under a strict personal use standard for QPVLI, such as exclusive personal use, the taxpayer would be prohibited from deducting any interest as QPVLI, and would only be able to deduct the interest attributable to use in a trade or business ($1,575, equal to 45 percent of the $3,500 of interest paid during the year), provided all of the other requirements for deducting interest properly allocable to a trade or business are met. Under the 50 percent personal use standard, the taxpayer can potentially deduct all $3,500 in interest as QPVLI. Alternatively, the taxpayer would have discretion to deduct $1,575 (45 percent of $3,500) as interest properly allocable to a trade or business and $1,925 as QPVLI ($3,500 minus $1,575). The 50 percent personal use standard benefits taxpayers with mixed-use vehicles who, under a strict personal use standard, would be able to deduct only interest properly allocable to a trade or business.

The Treasury Department and the IRS examined public survey data and confidential tax records to assess the prevalence of mixed-use vehicles that may be affected by the personal use standard. Analysis of Panel Study of Income Dynamics (PSID) data suggests that, in 2023, 11 percent of personally owned vehicles were used for mixed personal and business purposes.[4] An alternative and narrower definition of personal use, such as exclusive personal use, would exclude roughly 700,000 loans (11 percent of the estimated 6 million total shown in Table A) from potential eligibility for the QPVLI deduction. (See Table C.)

Table C: Estimated Annual Loans on New, U.S.-assembled Vehicles for Mixed Personal and Business Use	
1. Estimated annual loans on new, U.S.-assembled vehicles	6 million
2. Share of personally owned vehicles used for mixed personal and business purposes	11 percent
3. Estimated annual loans on new, U.S.-assembled vehicles for mixed personal and business use	Approximately 700,000

Notes*:* Row 3 is the rounded product of rows 1 and 2.

Sources: Row 2 is derived from the 2023 Panel Study of Income Dynamics, variable ER82936. Row 1 is derived in Table A, with data sourced from: "Light vehicle retail sales in the United States from 1976 to 2024," Statista, last accessed October 27, 2025, https://www.statista.com/statistics/199983/us-vehicle-sales-since-1951/; https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles; "New and used passenger car and light truck sales and leases," Bureau of Transportation Statistics, last accessed October 27, 2025, https://www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles; "State of the Automotive Finance Market Report: Q2 2025," Experian, last accessed October 27, 2025, https://www.experian.com/automotive/auto-credit-webinar-form; manufacturer vehicle model sales data.

Tax records also contain information on mixed personal and business use vehicles. Sole proprietors file Schedule C to record business income and expenses, including car or truck expenses. On part IV of Schedule C, certain taxpayers are required to enter information on their vehicle, including the date a vehicle was placed in service for business purposes; the number of miles driven for business, commuting, and other purposes; and whether the vehicle was available for personal use during off-duty hours.[5]

Schedule C data has several limitations for analysis of the personal use standard. First, Schedule C does not distinguish between new versus used cars, U.S.- versus foreign-assembled cars, or cars financed with loans versus cars that are leased or purchased with cash. Because used cars, foreign-assembled cars, and cars that are leased or purchased with cash are not eligible for the QPVLI deduction, totals of mixed-use vehicles from part IV of Schedule C overstate the number of sole proprietors' vehicles that the personal use standard will affect. Second, the data available for analysis cover predominantly electronically filed returns of Schedule C rather than paper filed returns. Third, the Schedule C data do not include vehicle expenses that taxpayers may deduct on Schedules E and F. Fourth, the Schedule C data indicate when the car was placed into service for business use rather than when the individual first acquired the car. The available Schedule C data nonetheless provide insight on the prevalence of personal use of sole proprietors' business vehicles.

The Treasury Department and the IRS estimate that in tax year 2023, sole proprietors who filed electronically placed 5 million vehicles in service for business purposes.[6] See Table D. About 80 percent of these taxpayers indicated that the vehicle was also available for personal use during off-duty hours. Among filers for whom the vehicle was available for personal use, roughly 40 percent drove the vehicle more than 50 percent of its total mileage for personal use. The typical filer drove the vehicle for majority business use; the median share of total miles driven for business purposes was about 80 percent. These estimates suggest that a substantial share of taxpayers with vehicles for business use would benefit from the 50 percent personal use standard, relative to a strict alternative standard, such as exclusive personal use.

Table D: Statistics on Tax Year 2023 Sole Proprietor Vehicle Use from Schedule C, Part IV	
1. Sole proprietors' vehicles placed in business service in tax year 2023*	5 million
2. Of vehicles placed in business service in tax year 2023 (row 1), share reported to be available for personal use	80 percent
3. Of vehicles placed in business service in 2023 and available for personal use, share reported with more than 50 percent of mileage for personal use.	40 percent
4. Of vehicles placed in business service in 2023 and available for personal use, median share of miles driven for business use.	80 percent

* This total does not correspond to vehicles eligible for the QPVLI deduction; it includes used, leased, and foreign-assembled vehicles, which are not eligible for the QPVLI deduction. See text for further detail on the Schedule C data and its limitations.

Source: Treasury Department analysis of confidential tax return data, October 24, 2025.

[4] See variable ER82936 in the 2023 PSID. The survey language is: "Not counting routine use to get to and from work, is this vehicle also used for business purposes?"

[5] Taxpayers are required to fill out part IV of Schedule C only if they claim car or truck expenses on Schedule C and are not required to file Form 4562 (Depreciation and Amortization) for the business in question. Taxpayers who have "listed property," including automobiles, are required to enter information on such automobiles in Section B of Part V of Form 4562.

[6] The 5 million total reflects sole proprietorship-vehicle pairs. A sole proprietor who placed the same vehicle in service for multiple businesses in 2023 would appear more than once in this total. Because Schedule C does not include a VIN or other unique vehicle identifier, Treasury and the IRS cannot distinguish these cases—the same vehicle placed in service for multiple businesses—from cases in which a sole proprietor placed multiple vehicles in service for multiple businesses.

The proposed personal use rules also benefit taxpayers by providing clarity. In the absence of a personal use standard, two taxpayers with otherwise similar tax situations would face uncertainty as to whether this deduction applies to their situation. Without guidance, these taxpayers might make different choices as to whether their auto loan interest qualifies for the deduction, and, therefore, face different tax liability. Consider, for example, two taxpayers who each buy an APV expecting for 75 percent of its use to be for personal use and 25 percent for business use (assume they meet all other requirements to claim the deduction). Taxpayer A interprets the section 163(h)(4) personal use requirement to mean that interest on the loan is not QPVLI, because the vehicle is partly for business use. In contrast, Taxpayer B interprets the personal use requirement to mean that interest on the loan is QPVLI because a majority of the use of the vehicle is personal use. The proposed regulations would ensure that these two taxpayers use the same standard of personal use and are subject to the same tax treatment.

The proposed personal use standard, relative to a stricter alternative standard, may change vehicle purchase patterns among taxpayers who use their vehicles for mixed personal and business purposes (vehicles on which loan interest would not be considered QPVLI under a strict personal use standard). For this population, the 50 percent personal use standard would increase the economic appeal of financing relative to cash purchases and would increase the economic appeal of new, U.S.-assembled vehicles relative to used or foreign-assembled vehicles. The extent of consumption changes along these margins depends on several interacting factors, including: the extent to which increased demand for new, U.S.-assembled vehicles driven by the deduction affects the prices of these vehicles; substitution elasticities between new and used vehicles and between vehicles assembled in the U.S. and assembled abroad[7]; the salience of the tax deduction at the time of purchase[8]; and the extent to which taxpayers perceive the deduction as temporary, as prescribed in statute, or likely to be extended by future policymakers. The Treasury Department and the IRS do not have readily available parameters and models to precisely assess the impact. House Budget Committee Report 119-106 expects the deduction to promote domestic manufacturing.

b. Personal Use Determined Soley by Taxpayer Intent at Time Debt is Incurred

The proposed regulations would provide that personal use is determined only once, based on taxpayers' intent at the time indebtedness is incurred. An alternative standard could have required taxpayers to evaluate their expected use each year or document personal use each year to continue to qualify for the deduction. A repeated certification requirement would result in considerable compliance burden to taxpayers, particularly among taxpayers whose vehicles will be exclusively for personal use. The proposed regulations would benefit taxpayers by simplifying the process of claiming the QPVLI deduction, relative to a requirement for annual certification of sufficient personal use.

c. Personal and Business Use Allocation

Under the proposed regulations, if a taxpayer meets the personal use standard (more than 50 percent of expected use of an APV for personal use), interest on the SPVL is considered QPVLI. Alternative guidance could have required taxpayers to allocate amounts of loan interest attributable to personal and business uses of the APV and allowed only interest directly linked to personal use to be deducted. The proposed rules streamline the process and reduce the compliance burden of deducting QPVLI for taxpayers and administering the deduction for the IRS. Many taxpayers with mixed personal and business use vehicles already track and allocate personal and business mileage for Federal income tax purposes. For these taxpayers, the proposed regulations promote flexibility by allowing taxpayers who meet the personal use standard and all other requirements to deduct vehicle interest solely as QPVLI or, to the extent the taxpayers have interest properly allocable to a trade or business, as a business expense.

d. Specified Passenger Vehicle Loan (SPVL) and Further Definitions

The proposed regulations would clarify what constitutes a SPVL. Specifically, the proposed rules provide that indebtedness qualifies as a SPVL only if the indebtedness is incurred for the purchase of an APV and for items and amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV. These items include vehicle service plans, extended warranties, and sales taxes and vehicle-related fees. Indebtedness incurred for collision and liability insurance or to purchase any property or services unrelated to the APV (for example, a trailer or a boat) is not considered a SPVL. The proposed regulations strengthen the incentive for debt financing of the items and amounts included in the SPVL definition (such as warranties and sales taxes), relative to a rule that excluded those items and amounts from the SPVL definition.

Alternative guidance could have prescribed that only debt directly attributable to the price of the vehicle is a SPVL and therefore that only interest on that portion of a loan is deductible. Such an alternative standard could result in substantial compliance costs to taxpayers and to lenders and interest recipients in requiring allocations of indebtedness and associated interest. For amounts customarily financed together, such as the price of the vehicle itself and sales taxes and warranties on the vehicle, identifying and allocating which interest is attributable to which portion of total indebtedness would be difficult and costly to administer. The proposed guidance benefits taxpayers by removing

[7] There is limited evidence on elasticities relating directly to the country of vehicle assembly. See Grieco et al. (2024) for estimates on consumer responsiveness to prices changes across vehicle manufacturers. Grieco, Paul L.E., Charles Murry, and Ali Yurukoglu. 2024. "The Evolution of Market Power in the U.S. Automobile Industry." *The Quarterly Journal of Economics* 139 (2): 1201-1253, *https://academic.oup.com/qje/article-abstract/139/2/1201/7276495?redirectedFrom=fulltext*.

[8] Chetty, Raj, Adam Looney, and Kory Kroft. 2009. "Salience and Taxation: Theory and Evidence." *American Economic Review* 99 (4): 1145-77, *https://www.aeaweb.org/articles?id=10.1257/aer.99.4.1145*.

uncertainty and reduces burden relating to what taxpayers may consider a SPVL. According to Autotrader, for financed vehicle purchases, "taxes and dealer fees are almost always included in the payment."[9] A substantial share of taxpayers with QPVLI would therefore benefit from the proposed SPVL definition, relative to an alternative definition that would require taxpayers to identify separately interest attributable to the price of the vehicle and items and amounts customarily financed with the vehicle. Relatedly, an SPVL definition limited strictly to the price of the vehicle may also require additional information reporting that burdens interest recipients and lenders. The proposed SPVL definition benefits entities subject to information reporting requirements because taxpayers can determine their QPVLI without needing information on interest amounts related to the price of the vehicle separate from interest amounts related to items and amounts customarily financed with the vehicle.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 the OMB.

The general recordkeeping requirements mentioned in these proposed regulations are considered general tax records under §1.6001-1(e). A taxpayer would use these records to establish its eligibility for the section 163(h)(4) deduction and the amount of the deduction claimed. The recordkeeping requirements would include that individuals keep records about the SPVL, the APV, and the amount of interest paid or accrued. For PRA purposes, general tax records are already approved by OMB under 1545-0074 for individuals and 1545-0092 for trust and estate filers.

These proposed regulations also mention reporting requirements related to claiming deductions as set forth in proposed §1.163-16. These collections will be made by eligible taxpayers as part of filing a return (such as the appropriate Form 1040 or 1041), including filling out the relevant schedules. These forms are approved by OMB under 1545-0074 for individuals and 1545-0092 for trust and estate filers.

These proposed regulations also include reporting, third-party disclosure and recordkeeping requirements required under section 6050AA as set forth in proposed §1.6050AA-1. The collections will be used by the IRS for tax compliance purposes and by taxpayers to calculate their deduction. The burden associated with these information collections will be included in Form 1098-VLI and its instructions and approved with OMB control number 1545-XXXX in accordance with PRA procedures under 5 CFR 1320.10. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations. In addition, when available, drafts of IRS forms are posted for comment at www.irs.gov/draftforms.

The likely respondents are corporations and partnerships. The estimated burden for these requirements is as follows:

Estimated number of respondents: 35,800 respondents.

Estimated number of responses: 6,000,000 responses.

Estimated frequency of responses: Annually.

Estimated average time per response: 0.25 hours.

Estimated total annual burden hours: 1,500,000 hours.

Estimated total annual burden cost: $130,785,000.

The collections of information contained in this notice of proposed rulemaking has been submitted to the OMB for review in accordance with the PRA. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the Internal Revenue Service. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-113515-25 on the Subject line). Comments on the collection of information should be received by March 3, 2026.

Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility. The accuracy of the estimated burden associated with the proposed collection of information. How the quality, utility, and clarity of the information to be collected may be enhanced. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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

III. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities.

[9] "Are taxes and fees included in car financing?", Autotrader, last accessed October 28, 2025, *https://www.autotrader.com/car-shopping/financing-a-car-are-taxes-and-fees-included-in-financing-222154*.

Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed regulations. The Treasury Department and the IRS have not determined whether the proposed regulations, when finalized, will have a significant economic impact on a substantial number of small entities. This determination requires further study. However, because there is a possibility of a significant economic impact on a substantial number of small entities, these proposed regulations include an IRFA. The Treasury Department and the IRS invite comments on both the number of entities affected by these proposed regulations and the economic impact of these proposed regulations on small entities.

A. *Need for and objectives of the rule*

The proposed regulations would provide the eligibility rules and key definitions regarding the section 163(h)(4) deduction to allow taxpayers to determine whether their interest is QPVLI eligible for the section 163(h)(4) deduction. In addition, the proposed regulations would provide the operational, administrative, and definitional rules for persons in a trade or business to comply with the statutory information reporting requirements under section 6050AA with interest received on a SPVL.

The proposed rules are expected to clarify the OBBBA provision regarding the car loan interest deduction, which Congress intended to ease the financial burden of car ownership for individuals and promote domestic manufacturing. *See* House Budget Committee report on the OBBBA, H. Rept. 119-106, at 1510 (2025). The proposed rules are intended to facilitate the easing of the financial burden of car ownership by providing the information necessary for taxpayers to claim the deduction. Additionally, the proposed rules are consistent with the promotion of domestic manufacturing. The rules direct taxpayers to the National Highway Traffic Safety Administration VIN lookup tool to help taxpayers determine whether a vehicle had final assembly in the United States, a necessary condition for the vehicle to be eligible for the deduction. Because the proposed rules assist taxpayers in claiming the deduction, the rules may also increase consumer demand for vehicles with final assembly in the United States. Over time, this may lead manufacturers to increase production and assembly of vehicles in the United States in order to meet demand for vehicles that are eligible for the deduction. Thus, the Treasury Department and the IRS intend and expect that the proposed rules will deliver benefits across the economy that will favorably impact individuals, vehicle dealers, and the domestic manufacturing industry, including vehicle manufacturers.

B. *Affected small entities*

The Small Business Administration estimates in its 2023 Small Business Profile that 99.9 percent of United States businesses meet its definition of a small business. The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to these proposed regulations and in this IRFA, these rules may affect a variety of different businesses across several different industries but will primarily affect dealers of new vehicles and financial entities that would be required to file and furnish information returns under section 6050AA.

The Treasury Department and the IRS currently estimate 35,800 businesses may be impacted by these proposed regulations because they are car and motorcycle loan lenders. Of the estimated 35,800 car and motorcycle loan lenders that may be impacted by these proposed regulations, the Treasury Department and the IRS expect 24,600 would likely be considered a small business entity. To prepare these estimates, the Treasury Department and IRS reviewed tax return filings for relevant industry codes for prior taxable years.

1. Impact of the Rules

The recordkeeping and reporting requirements would increase for businesses that provide loans on new cars and motorcycles. Although the Treasury Department and the IRS do not have sufficient data to precisely determine the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble. Based on the estimated number of responses (6,000,000) and an estimate time to respond of 0.25 hours, the estimated burden is 1,500,000 total burden hours.

2. Alternatives Considered

The Treasury Department and the IRS considered alternatives to the proposed regulations. For example, the Treasury Department and the IRS considered a delay to reporting for small businesses. Although this would ease the burden on small businesses, it would increase the burden on individuals who need the information reported under section 6050AA to accurately claim the deduction for QPVLI on their Federal income tax returns. Accordingly, the Treasury Department and the IRS decided not to delay reporting for small businesses.

The Treasury Department and the IRS also considered whether reporting should be required for each person from whom interest was received. However, the Treasury Department and the IRS understand that interest recipients do not necessarily track the identity of the person making payments. Therefore, in order to reduce the reporting burden for small businesses that may find this additional tracking burdensome, these proposed regulations would define a payor of record on an SPVL as any person carried on the books and records of the interest recipient as the principal borrower of the SPVL.

Another alternative considered was whether reporting under section 6050AA should be limited to QPVLI. However, the Treasury Department and the IRS understand that interest recipients do not necessarily have the information necessary to determine whether interest on a SPVL is QPVLI for an individual. Accordingly, to reduce the reporting burden for small businesses that do not routinely ask individuals for information such as the expected amount of personal use of the vehicle, these proposed regulations propose that interest recipients report receipt of interest received on a SPVL.

3. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. As discussed in the Explanation of Provisions, the proposed regulations would merely provide requirements, procedures, and definitions related to the section 163(a) deduction for QPVLI and section 6050AA. The Treasury Department and the IRS invite input from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. *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 in 1995 dollars, updated annually for inflation. These proposed regulations do 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.

VI. *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 Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to comments regarding this notice of proposed rulemaking 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 the proposed regulations. All comments submitted will be available at *www.regulations.gov*. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for February 24, 2026, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by February 2, 2026. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by February 2, 2026, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-113515-25 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY in Person at Hearing for REG-113515-25.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-113515-25 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-113515-25.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG-113515-25 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-113515-25. Requests to attend the public hearing must be received by 5:00 p.m. ET on February 20, 2026.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-113515-25 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-113515-25. Requests to attend the public hearing must be received by 5:00 p.m. ET on February 20, 2026.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing, please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by February 19, 2026.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin

and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at https://www.irs.gov.

Drafting Information

The principal author of these proposed regulations is Riston Escher, Office of the Associate Chief Counsel (Income Tax & Accounting), IRS. However, 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, Excise taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order for §1.6050AA-1 to read in part as follows:

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

* * * * *

Section 1.6050AA-1 is also issued under 26 U.S.C. 6050AA(e).

* * * * *

Par. 2. Section 1.163-16 is added to read as follows:

§1.163-16 Qualified passenger vehicle loan interest.

(a) *Overview*—(1) *In general*. In computing the taxable income for a taxable year beginning after December 31, 2024, and before January 1, 2029, of a taxpayer described in paragraph (a)(2) of this section, for purposes of the deduction allowable under section 163(a) of the Internal Revenue Code (Code) for interest paid or accrued within the taxable year on indebtedness, section 163(h)(4) excludes qualified passenger vehicle loan interest (QPVLI) (as defined in section 163(h)(4)(B) and paragraph (b)(12) of this section) from the definition of "personal interest" paid or accrued during the taxable year for which a deduction would be disallowed under section 163(h)(1). *See* paragraph (b) of this section for definitions of terms used in section 163(h)(4) and this section.

(2) *Taxpayers that may deduct QPVLI*—(i) *In general*. Only a taxpayer that is an individual, decedent's estate, or non-grantor trust may deduct QPVLI in computing the taxpayer's taxable income.

(ii) *Deduction available without regard to whether taxpayer itemizes deductions*. Under section 63(b)(7) of the Code, the deduction for QPVLI allowable under section 163(h)(4) may be taken by a taxpayer without regard to whether the taxpayer itemizes deductions or takes the standard deduction.

(b) *Definitions*. The following definitions apply for purposes of section 163(h)(4) and this section:

(1) *Applicable passenger vehicle (APV)*. The term *applicable passenger vehicle* or *APV* means a vehicle that satisfies the requirements of paragraph (e)(1) of this section.

(2) *Dealer*. The term *dealer* means a person licensed by a State, the District of Columbia, the Commonwealth of Puerto Rico, any other territory or possession of the United States, an Indian Tribal government (as defined in section 7701(a)(40) of the Code), or an Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)) to engage in the sale of vehicles. This term includes a dealer licensed by any jurisdiction that makes sales at sites outside of the jurisdiction in which it is licensed.

(3) *Final assembly*. The term *final assembly* means the process by which a manufacturer produces a vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

(4) *Grantor trust*. A *grantor trust* is any portion of a trust that is treated as being owned by one or more persons under sections 671 through 679 of the Code.

(5) *Independently deductible interest*. The term *independently deductible interest* means interest that satisfies the requirements of paragraph (g)(1) of this section.

(6) *Lease financing*. The term *lease financing* means a transaction that is not a purchase of an APV, and under which a taxpayer has usage rights with respect to an APV but is not considered the owner of the APV under State or other applicable law.

(7) *Modified adjusted gross income*—(i) *Individuals*. The term *modified adjusted gross income*, in the case of an individual, means adjusted gross income (as defined in section 62 of the Code) increased by any amount excluded from gross income under sections 911, 931, or 933 of the Code.

(ii) *Decedents' estates and non-grantor trusts*. The term *modified adjusted gross income*, in the case of a decedent's estate or non-grantor trust, means adjusted gross income as defined in section 67(e) of the Code.

(8) *Negative equity*. The term *negative equity* means existing indebtedness on a vehicle traded in as part of a purchase transaction for an APV, to the extent such indebtedness exceeds the vehicle's trade-in value specified by the contract for the purchase of the APV.

(9) *Non-grantor trust*. The term *non-grantor trust* means a trust (or the portion of a trust) that is not a grantor trust.

(10) *Personal use*. The term *personal use* means use by an individual other than in any trade or business (except for the use in the trade or business of performing services as an employee), or for the production of income.

(11) *Purchase*. The term *purchase* means an acquisition that is both an acquisition of a vehicle for Federal income tax purposes and the acquisition of the title of the vehicle for purposes of State or other applicable law.

(12) *Qualified passenger vehicle loan interest (QPVLI)*. The term *qualified pas-*

senger vehicle loan interest or *QPVLI* means any interest that satisfies the requirements of paragraph (c)(1) of this section.

(13) *Qualified vehicle classification*—(i) *In general*. The term *qualified vehicle classification* means one of the following vehicle classifications:

(ii) *Car*. The term *car* means a vehicle classified in one of the classes of passenger vehicles listed in 40 CFR 600.315-08(a)(1), or otherwise so classified by the Administrator of the EPA under 40 CFR 600.315-08(a).

(iii) *Minivan*. The term *minivan* means a vehicle classified as a minivan under 40 CFR 600.315-08(a)(2)(iv), or otherwise so classified by the Administrator of the EPA under 40 CFR 600.315-08(a).

(iv) *Van*. The term *van* means a vehicle classified as a van under 40 CFR 600.315-08(a)(2)(iii), or otherwise so classified by the Administrator of the EPA under 40 CFR 600.315-08(a).

(v) *Sport utility vehicle*. The term *sport utility vehicle* means a vehicle classified as a small sport utility vehicle or standard sport utility vehicle under 40 CFR 600.315-08(a)(2)(v) and (vi), or otherwise so classified by the Administrator of the EPA under 40 CFR 600.315-08(a).

(vi) *Pickup truck*. The term *pickup truck* means a vehicle classified as a small pickup truck or standard pickup truck under 40 CFR 600.315-08(a)(2)(i) and (ii), or otherwise so classified by the Administrator of the EPA under 40 CFR 600.315-08(a).

(vii) *Motorcycle*. The term *motorcycle* means a vehicle classified as a motorcycle under 40 CFR 86.402-78, or otherwise so classified by the Administrator of the EPA.

(14) *Secured by a first lien*. The term *secured by a first lien* means a valid and enforceable security interest under State or other applicable law in an APV with status ahead of all other security interests, other than tax liens or other similar security interests that may be given higher priority at a later date following the date of purchase and only in limited circumstances.

(15) *Specified passenger vehicle loan (SPVL)*. The term *specified passenger vehicle loan* or *SPVL* means indebtedness that satisfies the requirements of paragraph (d)(1) of this section.

(16) *Vehicle identification number (VIN)*. The term *vehicle identification number* or *VIN* means a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes under 49 CFR 565.13.

(c) *Qualified passenger vehicle loan interest (QPVLI)*—(1) *In general*. Interest is QPVLI only if the interest is paid or accrued during the taxable year on indebtedness that is an SPVL secured by a first lien on an APV and is not excluded from the definition of QPVLI (as described in paragraphs (c)(4) and (5) of this section).

(2) *Determining the amount of interest paid or accrued during a taxable year*—(i) *In general*. Interest on an SPVL accrues on a daily basis over the term of the SPVL. The amount of QPVLI that is deductible by a taxpayer for the taxable year is determined under the taxpayer's overall method of accounting for Federal income tax purposes (either the cash receipts and disbursements method or an accrual method) or an applicable special method of accounting. For purposes of section 163(h)(4), the amount of QPVLI includes all interest payable with respect to the amount financed under an SPVL (that is, the amount of indebtedness that qualifies for purposes of determining whether indebtedness is an SPVL under paragraph (d)(2) of this section).

(ii) *Allocation of payments*. In general, a payment on an SPVL is treated first as a payment of interest to the extent interest has accrued and remains unpaid on the SPVL as of the date the payment is due, and second, to the extent of any excess, as a payment of principal. See §§1.446-2(e) and 1.1275-2(a) for rules on allocating payments between interest and principal. For purposes of this paragraph (c)(2)(ii), a simple interest calculation may be used to determine the amount of interest that has accrued and remains unpaid on an SPVL when a payment on the SPVL is made. Under this simple interest calculation, interest accrues daily over the term of the SPVL based on its outstanding principal balance and the annual percentage rate or interest rate provided in the retail installment sales contract or other contract evidencing the SPVL.

(3) *Determining whether the SPVL is secured by a first lien on an APV*—(i) *In general*. In order for interest paid or accrued on an SPVL to be QPVLI, the SPVL must be secured by a first lien (as defined in paragraph (b)(14) of this section) on the APV financed by the SPVL at the time the interest is paid or accrued.

(ii) *Exception for substitute vehicle due to unforeseen intervening event*. In the case of an SPVL secured by a first lien on an APV that is replaced at a later time with a substitute vehicle that is an APV due to an unforeseen intervening event (for example, a defective APV is required to be replaced under State or other applicable law or an APV is required to be replaced under an insurance product), and as a result the SPVL is secured by a first lien on that substitute vehicle, the substitute vehicle is considered the initially purchased APV for purposes of this paragraph (c)(3) and for purposes of paragraph (c)(5) of this section.

(4) *Interest that is not QPVLI*. QPVLI does not include any amount paid or accrued on any of the following:

(i) A loan to finance fleet sales.

(ii) A loan incurred for the purchase of a commercial vehicle that is not used for personal purposes.

(iii) Any lease financing.

(iv) A loan to finance the purchase of a vehicle with a salvage title.

(v) A loan to finance the purchase of a vehicle intended to be used for scrap or parts.

(5) *VIN requirement*. Interest paid or accrued by the taxpayer during the taxable year on an SPVL is not treated as QPVLI and may not be deducted under section 163(h)(4) unless the taxpayer reports the VIN of the purchased APV on the Federal tax return for the taxable year in the manner prescribed by the Internal Revenue Service in guidance published in the Internal Revenue Bulletin or in forms and instructions.

(6) *Examples*. The rules of paragraphs (c)(1), (c)(3) and (c)(4)(iii) of this section are illustrated by the following examples:

(i) *Example 1: Lease financing*—(A) *Facts*. Dealer is located in State Y. Dealer purchases an APV from the manufacturer and sells the car to Leasing Company. Leasing Company leases the car to A for a 120-month period in a transaction that is a lease for State Y purposes. At the end of the lease term, A has the option to purchase the car for a nominal amount. For Federal income tax purposes, the lease agreement is properly viewed as a sale. A makes lease payments during the taxable year.

(B) *Analysis*. A's lease payments are made under a lease financing transaction and do not qualify as QPVLI. Additionally, notwithstanding that the lease agreement is properly viewed as a sale for Federal income tax purposes, the transaction is not a purchase (as defined in paragraph (b)(11) of this section) and therefore the lease is not an SPVL. Accordingly, no amounts paid under the lease are QPVLI.

(ii) *Example 2: Defective vehicle replaced*—(A) *Facts*. A, a resident of State X, incurs an SPVL to purchase Vehicle 1. The SPVL is secured by a first lien on Vehicle 1. After purchase, A discovers Vehicle 1 is defective. Under State X law that requires the replacement of new vehicles with serious defects, the manufacturer replaces defective Vehicle 1 with Vehicle 2. As a result, the SPVL is secured by a first lien on Vehicle 2. Vehicle 2 is an APV with respect to A, as the original use of Vehicle 2 commences with A, and the vehicle meets all other requirements of an APV as described in paragraph (e) of this section. The SPVL continues to be in effect with no changes other than the substitution of Vehicle 1 for Vehicle 2 occurring under State X law. A continues making payments under the terms of the SPVL.

(B) *Analysis*. The interest paid or accrued on the SPVL that is now secured by Vehicle 2 is QPVLI. The SPVL is secured by a first lien on the APV that was purchased as a result of the incurred SPVL at the time that interest is paid or accrued. As Vehicle 1 was replaced with Vehicle 2, an APV, due to an unforeseen intervening event and the SPVL is secured by a first lien on Vehicle 2, Vehicle 2 is considered the initially purchased APV.

(d) *Specified passenger vehicle loan (SPVL)*—(1) *In general*. Indebtedness is an SPVL only if the indebtedness is incurred by the taxpayer after December 31, 2024, for the purchase of an APV for personal use, and is secured by a first lien on that APV.

(2) *Indebtedness incurred for the purchase of an APV*—(i) *In general*. For purposes of paragraph (d)(1) of this section, indebtedness is an SPVL only to the extent the indebtedness is incurred for the purchase of an APV and, if part of the same purchase transaction, for any other items or amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV. Items or amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV include, for example, vehicle service plans, extended warranties, sales taxes, and vehicle-related fees.

(ii) *Indebtedness that is not incurred for the purchase of an APV*. To the extent any indebtedness is not incurred by a taxpayer for the purchase of an APV or for any other items or amounts customarily financed in an APV purchase transaction that are directly related to the purchased APV, such indebtedness is not an SPVL even if it is incurred as part of a purchase transaction for an APV. For example, indebtedness incurred for the repayment of negative equity on a loan secured by a trade-in vehicle, to purchase collision and liability insurance, or to purchase any property or services unrelated to an APV (for example, a trailer or a boat) is not incurred by a taxpayer for the purchase of an APV or for any other items or amounts customarily financed in an APV purchase transaction that are directly related to the purchased APV, and as a result is not an SPVL. In addition, indebtedness is not incurred by a taxpayer for the purchase of an APV or for any other items or amounts customarily financed in an APV purchase transaction and that are directly related to the purchased APV to the extent the indebtedness relates to cash proceeds that the taxpayer receives from the lender.

(iii) *Allocation of indebtedness*—(A) In general. Except as provided in paragraph (d)(2)(iii)(B) of this section, if a taxpayer incurs indebtedness described in both paragraphs (d)(2)(i) and (ii) of this section as part of the same transaction, the indebtedness must be allocated between the indebtedness described in paragraph (d)(2)(i) of this section and the indebtedness described in paragraph (d)(2)(ii) of this section. Only the portion of the indebtedness allocated to the indebtedness described in paragraph (d)(2)(i) of this section is an SPVL. In such cases, payments of interest and principal are allocated to the portion of the indebtedness described in paragraph (d)(2)(i) of this section and the portion of the indebtedness described in paragraph (d)(2)(ii) of this section on a pro rata basis.

(B) *Allocation of down payment*. For purposes of determining the portion of the indebtedness described in paragraph (d)(2)(ii) of this section, any down payment (or other consideration provided by the taxpayer at the time of the purchase transaction for an APV) is applied first against any negative equity and any other amounts that are not incurred for the purchase of the APV or for other items customarily financed in an APV purchase transaction and that directly relate to the purchase of the APV.

(3) *Related party indebtedness*. Any indebtedness owed to a person who is related to the taxpayer within the meaning of section 267(b) or section 707(b)(1) of the Code is not an SPVL.

(4) *Refinancing of an SPVL*. If a taxpayer refinances an SPVL (refinanced loan), the resulting indebtedness (new loan) is an SPVL if the new loan is secured by a first lien on the APV with respect to which the refinanced loan was incurred. The amount of the new loan that is an SPVL is limited to the outstanding balance of the refinanced loan as of the date of the refinancing. A taxpayer allocates principal and interest between the amount of the new loan that is an SPVL and the remaining portion of the indebtedness on a pro rata basis. For purposes of this paragraph (d)(4), if there is a change in obligor as part of the refinancing, the new loan is not an SPVL with regard to any subsequent obligor unless the refinancing is in connection with a change in obligor by reason of the obligor's death within the meaning of paragraph (d)(5)(ii) of this section.

(5) *Whether the SPVL was incurred by the taxpayer*—(i) *In general*. Except as provided in paragraph (d)(5)(ii) of this section, indebtedness is an SPVL only if that indebtedness was originally incurred by the taxpayer. For example, if an individual incurs an SPVL and subsequently ceases to be an obligor and another individual becomes the obligor on the indebtedness, the indebtedness is not an SPVL with respect to the other individual.

(ii) *Exception for a change in obligor by reason of the death of an obligor*—(A) *In general*. If a change in obligor is by reason of the death of an obligor of an SPVL, then the indebtedness is treated as an SPVL with respect to the new obligor.

(B) *Change in obligor by reason of the death of an obligor.* For purposes of paragraph (d)(5)(ii)(A) of this section, a change in obligor by reason of death includes the following:

(*1*) The succession to ownership of an APV subject to an SPVL by—

(*i*) The deceased obligor's estate;

(*ii*) A surviving joint owner of the APV; or

(*iii*) The surviving beneficiary designated by contract, a transfer on death provision, or by operation of law.

(*2*) A distribution of an APV subject to an SPVL by—

(*i*) A deceased obligor's estate to a legatee or heir; or

(*ii*) A trust that is made to a trust beneficiary by reason of death as described in this paragraph (d)(5)(ii).

(*3*) Any refinancing of an SPVL in connection with a transfer by reason of death as described in this paragraph (d)(5)(ii).

(C) *Not a change in obligor by reason of the death of an obligor.* A change in obligor by reason of death as described in this paragraph (d)(5)(ii) does not include changes resulting from the following:

(*1*) A sale, exchange, or other disposition of an APV by a decedent's estate or trust, other than a distribution described in paragraph (d)(5)(ii)(B)(2) of this section.

(*2*) Any disposition of an APV by an individual who received the APV by reason of death (unless that disposition is by reason of that individual's death and the change in obligor is described in paragraph (d)(5)(ii)(B) of this section).

(6) *Examples*. The rules of paragraphs (d)(2) and (4) of this section are illustrated by the following examples in which A is an individual who incurs indebtedness to purchase an APV for personal use:

(i) *Example 1: Vehicle-related purchases*—(A) *Facts*. A finances the purchase of an APV for personal use by incurring a loan. The loan is secured by a first lien on the APV. The retail installment sales contract, which evidences the loan, indicates that the total amount financed is equal to the sum of the APV purchase price, the cost for an extended warranty, sales tax, title and registration fees, and a dealer document fee.

(B) *Analysis*. All of the amount financed under the loan is incurred for the purchase of an APV and for other items or amounts customarily financed in an APV purchase transaction and that directly relate to the purchased APV within the meaning of paragraph (d)(2)(i) of this section. Accordingly, the loan is an SPVL and all of the interest on the loan may be deductible as QPVLI.

(ii) *Example 2: Non-vehicle-related purchase*—(A) *Facts*. A incurs indebtedness to finance the purchase of both an APV and a trailer. The indebtedness is secured by a first lien on the APV. The price of the trailer is added to the amount financed as part of the retail installment sales contract that includes the purchase price of the APV.

(B) *Analysis*. The indebtedness attributable to the purchase price of the trailer included in the amount financed under the retail installment sales contract is not incurred for the purchase of an APV or for any other items or amounts customarily financed in an APV purchase transaction and that directly relate to the purchased APV within the meaning of paragraph (d)(2)(i) of this section and therefore this indebtedness is not included in an SPVL under paragraph (d)(2)(ii) of this section. In accordance with the allocation rules in paragraph (d)(2)(iii) of this section, A must allocate the portion of the indebtedness that is allocable to the purchase price of the trailer to indebtedness described in paragraph (d)(2)(ii) of this section that is not an SPVL. Thus, none of the interest that is attributable to that portion of the indebtedness is QPVLI. The remaining portion of the indebtedness is allocated to indebtedness described in paragraph (d)(2)(i) of this section that is an SPVL.

(iii) *Example 3: Vehicle refinanced*—(A) *Facts*. A incurs indebtedness (Loan 1) to finance the purchase of an APV, and in a subsequent taxable year in which A is eligible to deduct QPVLI**,** A refinances Loan 1 by incurring new indebtedness of $38,000 (Loan 2), which is secured by a first lien on the APV. At the time of refinancing, the APV has a fair market value of $38,000 and Loan 1 has an outstanding balance of $30,000. The Loan 2 proceeds of $38,000 are used to first repay the $30,000 Loan 1 balance, with the remaining $8,000 going to A as cash proceeds.

(B) *Analysis*. Of the $38,000 amount financed by Loan 2, $8,000 is the amount of the resulting indebtedness that exceeds the amount of such refinanced indebtedness within the meaning of paragraph (d)(4) of this section. Only $30,000 of the $38,000 balance of Loan 2 is an SPVL per the rule in paragraph (d)(4) of this section. Thus, none of the interest attributable to the $8,000 portion of Loan 2 is interest that is deductible as QPVLI.

(iv) *Example 4: Negative equity and down payment*—(A) *Facts*. A finances the purchase of an APV that costs $40,000, and trades in a previously owned vehicle subject to an existing vehicle loan with $6,000 of negative equity. A makes a down payment of $4,000 as part of the APV purchase transaction, incurring indebtedness of $42,000 ($40,000 plus $6,000 minus $4,000).

(B) *Analysis*. The $6,000 of negative equity is not an item or amount customarily financed in an APV purchase transaction that is directly related to the purchased APV within the meaning of paragraph (d)(2)(i) of this section. In accordance with the allocation rules in paragraph (d)(2)(iii) of this section, A must allocate the $42,000 of indebtedness between indebtedness described in paragraph (d)(2)(i) of this section and indebtedness described in paragraph (d)(2)(ii) of this section. For purposes of determining the portion of the indebtedness described in paragraph (d)(2)(ii) of this section, the down payment of $4,000 is allocated against the $6,000 of negative equity. As a result, of the $42,000 of indebtedness incurred by A, $40,000 of the indebtedness incurred is indebtedness incurred for the purchase of an APV as described in paragraph (d)(2)(i) of this section and $2,000 is indebtedness not incurred for the purchase of an APV as described in paragraph (d)(2)(ii) of this section.

(e) *Applicable passenger vehicle (APV)*—(1) *In general*. A vehicle is an *A*PV only if—

(i) The original use of the vehicle commences with the taxpayer (as described in paragraph (e)(2)(i) of this section);

(ii) The vehicle is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails);

(iii) The vehicle has at least 2 wheels;

(iv) The vehicle is in a qualified vehicle classification (as defined in paragraph (b)(13) of this section);

(v) The vehicle is treated as a motor vehicle for purposes of title II of the Clean Air Act;

(vi) The vehicle has a gross vehicle weight rating of less than 14,000 pounds; and

(vii) The final assembly (as defined in paragraph (b)(3) of this section) of the vehicle occurs within the United States (as described in paragraph (e)(3) of this section).

(2) *Determining whether original use commences with the taxpayer*—(i) *In general*. Original use of a vehicle commences with the first person that takes delivery of the vehicle after the vehicle is sold, registered, or titled. In the case of a dealer, original use of a vehicle does not commence with the dealer unless the dealer registers or titles the vehicle. In the case of a purchaser that is not a dealer and that incurs indebtedness to purchase a vehicle, original use of the vehicle does not commence with that purchaser unless the vehicle is treated as a new vehicle under the loan documentation.

(ii) *Vehicle return exception*. If a purchaser that is not a dealer returns a vehicle to a seller within 30 days of taking delivery of the vehicle, then that purchaser will not be considered the first person that takes delivery of the vehicle after the vehicle is sold, registered, or titled for purposes of paragraph (e)(2)(i) of this section, and, accordingly, original use of the vehicle does not commence with that purchaser.

(iii) *Examples*. The rules of paragraphs (e)(1)(i) and (e)(2) of this section are illustrated by the following examples:

(A) *Example 1: Demonstrator vehicles registered and titled in dealer's name*—(*1*) *Facts*. Dealer operates in State X. Dealer purchases and takes delivery of a new vehicle from the manufacturer and designates this vehicle as a demonstrator vehicle. State X law requires a dealer to title and register the vehicle in its name. Accordingly, Dealer titles and registers the vehicle in its name and uses the vehicle as a demonstrator vehicle.

(*2*) *Analysis*. Original use of the vehicle commences with Dealer. Dealer is the first person that takes delivery of the vehicle after it is sold, registered, or titled. Accordingly, the vehicle will not be considered an APV by a subsequent purchaser of the

vehicle, and interest paid or accrued by a subsequent purchaser on indebtedness incurred for the purchase of the vehicle is not QPVLI.

(B) *Example 2: Demonstrator vehicles not registered and titled in dealer's name*—(*1*) *Facts*. The facts are the same as in paragraph (e)(2)(iii)(A) of this section (*Example 1*), except that Dealer operates in State Y. State Y law does not require a dealer to title and register a demonstrator vehicle in its name. Accordingly, Dealer does not title and register the vehicle in its name and uses the vehicle as a demonstrator vehicle.

(*2*) *Analysis*. Original use of the vehicle does not commence with Dealer. Dealer is not the first person that takes delivery of the vehicle after it is sold, registered, or titled. Original use of the vehicle may commence with a subsequent purchaser of the vehicle if the vehicle is treated as a new vehicle under the loan documentation for the loan incurred by that subsequent purchaser to purchase the vehicle.

(C) *Example 3: Cancelled sale*—(*1*) *Facts*. A, an individual, enters into a contract to purchase a special-order vehicle from a dealer in State Z that is estimated to be delivered in one month. State Z law provides that the vehicle is not required to be titled and registered until A takes delivery of the vehicle. A cancels the order under the sales contract prior to the delivery occurring.

(*2*) *Analysis*. Original use of the vehicle does not commence with A. A is not the first person that takes delivery of the vehicle after it is sold, registered, or titled. Original use of the vehicle may commence with a subsequent purchaser of the vehicle if the vehicle is treated as a new vehicle under the loan documentation for the loan incurred by that subsequent purchaser to purchase the vehicle.

(D) *Example 4: Vehicle purchase following a lease*—(*1*) *Facts*. Dealer purchases and takes delivery of a new vehicle from the manufacturer for resale. Dealer does not register or title the vehicle and sells the vehicle to Leasing Company. After taking delivery of the vehicle, Leasing Company titles and registers the vehicle in its name. Leasing Company leases the car to A, an individual. At the end of the lease term, A exercises its option to purchase the car under its lease agreement.

(*2*) *Analysis*. Original use of the vehicle does not commence with A. Original use of the vehicle commences with Leasing Company. Leasing Company is the first person that takes delivery of the vehicle after it is sold, registered, or titled. Original use does not commence with Dealer because Dealer did not register or title the vehicle.

(E) *Example 5: Returned vehicle*—(*1*) *Facts*. A is a retail purchaser that purchases a vehicle from Dealer. A returns the car to Dealer 15 days after taking delivery of the vehicle.

(*2*) *Analysis*. Original use of the vehicle does not commence with A. Because A returned the vehicle to Dealer within 30 days of taking delivery of the vehicle, A is not considered to be the first person that takes delivery of the vehicle after it is sold, registered, or titled and therefore original use does not commence with A. Original use of the vehicle may commence with a subsequent purchaser of the vehicle if the vehicle is treated as a new vehicle under the loan documentation for the loan incurred by that subsequent purchaser to purchase the vehicle.

(3) *Determining whether final assembly has occurred within the United States*. To determine whether the final assembly of a vehicle occurred within the United States, a taxpayer may rely on—

(i) The vehicle's plant of manufacture as reported in the VIN; or

(ii) The final assembly point reported on the label affixed to the vehicle as described in 49 CFR 583.5(a)(3).

(f) *Determination of personal use*—(1) *In general*. A taxpayer that incurs indebtedness to purchase an APV is considered to purchase that APV for personal use if, at the time the indebtedness is incurred, that taxpayer expects that the APV will be used for personal use by the taxpayer, the taxpayer's spouse, or an individual that is related to the taxpayer within the meaning of section 152(c)(2) or (d)(2) of the Code, or any combination of these individuals, for more than 50 percent of the time. The taxpayer's intent is determined based on the expected use during the period the taxpayer expects to own the APV.

(2) *Special rules for decedents' estates and non-grantor trusts*. For purposes of determining whether a decedent's estate or non-grantor trust that incurs indebtedness to purchase an APV expects that the APV will be used for personal use under paragraph (f)(1) of this section, the determination is based on the expected personal use by one or more of the legatees or heirs, or beneficiaries, respectively, who have a present or future interest in that decedent's estate or non-grantor trust; the spouse of a legatee, heir, or beneficiary; or an individual that is related to a legatee, heir, or beneficiary within the meaning of section 152(c)(2) or (d)(2).

(3) *Examples*. The rules of this paragraph (f) are illustrated by the following examples in which A is an individual:

(i) *Example 1: Predominant personal use*—(A) *Facts*. At the time A incurs indebtedness to purchase an APV, A expects to use the APV for A's personal use for 85 percent of the time. A expects to use the APV to earn income as a driver for a rideshare service for the remaining 15 percent of the time.

(B) *Analysis*. A is considered to have purchased the APV for personal use. At the time A purchases the APV, A expects that the APV will be used for personal use more than 50 percent of the time. A's intention to use the APV to earn income as a driver for a rideshare service for 15% of the time does not preclude A from being considered to have purchased the APV for personal use.

(ii) *Example 2: Predominant business use*—(A) *Facts*. At the time A incurs indebtedness to purchase an APV, A expects to use the APV in A's contracting business that is a sole proprietorship for 60 percent of the time. A expects to use the APV for A's personal use for the remaining 40% of the time.

(B) *Analysis*. A is not considered to have purchased the APV for personal use. At the time A purchases an APV, A does not expect that the APV will be used for personal use more than 50 percent of the time.

(iii) *Example 3: Personal use by an individual related to taxpayer*—(A) *Facts*. At the time A incurs indebtedness to purchase an APV, A expects the APV to be used exclusively for personal use by A's child B.

(B) *Analysis*. A is considered to have purchased the APV for personal use. At the time A purchases the APV, A expects that the APV will be used for personal use more than 50 percent of the time by B, an individual that is related to A within the meaning of section 152(c)(2) or (d)(2).

(g) *Independently deductible interest*—(1) *In general*. Independently deductible interest is limited to interest that is QPVLI determined under section 163(h)(4)(B)(i) (prior to the application of the dollar limitation of section 163(h)(4)(C)(i) described in paragraph (h)(1) of this section and determined without regard to this paragraph (g)) and that is otherwise deductible by the taxpayer as a different type of interest under section 163(a) or a different section of the Code.

(2) *Deducting independently deductible interest*. A taxpayer may deduct independently deductible interest paid or accrued by the taxpayer during the taxable year as QPVLI (subject to the application of the dollar limitation of section 163(h)(4)(C)(i) described in paragraph (h)(1) of this section), or alternatively, as a different type of interest described in paragraph (g)(1) of this section (non-QPVLI), subject to any applicable limitations. The amount of independently deductible interest that may be deductible as QPVLI for a taxable year (before the application of the dollar limitation of section 163(h)(4)(C)(i) described in paragraph (h)(1) of this section) is reduced to the extent that the taxpayer deducts that independently deductible interest as non-QPVLI.

(3) *Reporting independently deductible interest*. If a taxpayer deducts independently deductible interest in a taxable year as non-QPVLI under paragraph (g)(2) of this section, the taxpayer must report information relating to that independently deductible interest in the manner prescribed by the Internal Revenue Service in

guidance published in the Internal Revenue Bulletin or in forms and instructions.

(4) *Examples*. The rules of this paragraph (g) regarding independently deductible interest are illustrated by the following examples in which A is an individual:

(i) *Example 1: Independently deductible interest*—(A) *Facts*. During the taxable year, A paid $1,000 of interest on an SPVL that may be deductible by A as $1,000 of QPVLI. During the taxable year, 40 percent of the use of the APV is attributable to A's trade or business. A may deduct the full $1,000 as QPVLI after considering the application of the modified adjusted gross income phaseout in paragraph (h)(2) of this section as A's modified adjusted gross income is less than $100,000.

(B) *Analysis*. $400 (40% of $1,000) is independently deductible interest because this amount is deductible as QPVLI and as business interest under section 163(a). Assume A may deduct the full $400 as business interest after considering any applicable limitations. A may deduct the interest paid on the SPVL in multiple ways including—

(*1*) A may deduct this $400 of interest as QPVLI. In this case, A would deduct all $1,000 of interest as QPVLI; or

(*2*) A may deduct this $400 as business interest. In this case, A would deduct $600 as QPVLI and $400 as business interest, because A must reduce its $1,000 of QPVLI by the $400 of interest deducted as business interest to determine the amount A can deduct as QPVLI. Additionally, A must report information relating to that independently deductible interest in the manner prescribed by the Internal Revenue Service in guidance published in the Internal Revenue Bulletin or in forms and instructions.

(ii) *Example 2: QPVLI limited by dollar limitation* —(A) *Facts*. During the taxable year, A paid $12,000 of interest on an SPVL. During the taxable year, 30 percent of the use of the APV is attributable to A's trade or business. A may deduct up to $10,000 of the interest as QPVLI after considering the application of the dollar limitation and the modified adjusted gross income phaseout in paragraphs (h)(1) and (2) of this section as A's modified adjusted gross income is less than $100,000.

(B) *Analysis*. $3,600 (30% of $12,000) is independently deductible interest because this amount is deductible as QPVLI and as business interest under section 163(a). Assume A may deduct the full $3,600 as business interest after considering any applicable limitations. A may deduct the interest paid on the SPVL in multiple ways including—

(*1*) A may maximize QPVLI deducted. A may deduct $10,000 of interest as QPVLI, and deduct the remaining $2,000 as business interest. Additionally, A must report information relating to that independently deductible interest in the manner prescribed by the Internal Revenue Service in guidance published in the Internal Revenue Bulletin or in forms and instructions; or

(*2*) A may maximize business interest deducted. A may deduct $3,600 of business interest, and the remaining $8,400 as QPVLI. A has $12,000 of interest paid on an SPVL and must reduce that by the amount of independently deductible interest of the taxpayer deducts as business interest ($3,600). Additionally, A must report information relating to that independently deductible interest in the manner prescribed by the Internal Revenue Service guidance published in the Internal Revenue Bulletin or in forms and instructions.

(iii) *Example 3: QPVLI limited by dollar limitation*—(A) *Facts*. During the taxable year, A paid $15,000 of interest on an SPVL. During the taxable year, 20 percent of the use of the APV is attributable to A's trade or business. A may deduct up to $10,000 of the interest as QPVLI after considering the application of the dollar limitation and the modified adjusted gross income phaseout in paragraphs (h)(1) and (2) of this section as A's modified adjusted gross income is less than $100,000.

(B) *Analysis*. $3,000 (20% of $15,000) is independently deductible interest because this amount is deductible as QPVLI and as business interest under section 163(a). Assume A may deduct the full $3,000 as business interest after considering any applicable limitations. Therefore, the $3,000 is deductible as business interest or as QPVLI. If A were to deduct the $3,000 of independently deductible interest as QPVLI, the application of the dollar limitation in paragraph (h)(1) of this section would limit A's deduction to $10,000 of the $15,000 as QPVLI. Instead, A may deduct $3,000 of interest as business interest and deduct $10,000 as QPVLI as the modified adjusted gross income phaseout in paragraph (h)(2) of this section does not reduce A's QPVLI deduction amount. Additionally, A must report information relating to that independently deductible interest in the manner prescribed by the Internal Revenue Service in guidance published in the Internal Revenue Bulletin or in forms and instructions.

(h) *Limitations*—(1) *Dollar limitation*. The amount taken into account as QPVLI by a taxpayer for any taxable year may not exceed $10,000 per Federal tax return regardless of filing status.

(2) *Modified adjusted gross income phaseout*. The amount taken into account as QPVLI (after the application of the dollar limitation in paragraph (h)(1) of this section) is reduced (but not below zero) by $200 for each $1,000 (or portion thereof) by which the modified adjusted gross income of the taxpayer for the taxable year exceeds $100,000 or, in the case of a joint Federal income tax return, by which the modified adjusted gross income exceeds $200,000.

(3) *Examples*. The rules of this paragraph (h) are illustrated by the following examples:

(i) *Example 1: Dollar limitation*—(A) *Facts*. A and B are married and file a joint Federal income tax return. A incurs an SPVL to purchase Vehicle 1. B incurs an SPVL to purchase Vehicle 2. During the taxable year, A paid $6,000 of interest on the SPVL for Vehicle 1. B paid $5,000 of interest on the SPVL for Vehicle 2.

(B) *Analysis*. A and B can deduct no more than $10,000 as QPVLI on their joint Federal income tax return because of the dollar limitation described in paragraph (h)(1) of this section.

(ii) *Example 2: Modified adjusted gross income phaseout*—(A) *Facts*. A is an individual that paid $7,000 of QPVLI on an SPVL during the taxable year and files a Federal income tax return with a filing status as single. A has modified adjusted gross income of $124,200 for the taxable year.

(B) *Analysis*. The maximum amount of QPVLI that A can deduct for the taxable year is $2,000. A's modified adjusted gross income is greater than $100,000. Therefore, the amount of QPVLI that can be taken into account as QPVLI after the application of the dollar limitation ($7,000) must be reduced by $200 for each $1,000 (or portion thereof) that A's modified adjusted gross income exceeds $100,000. A's modified adjusted gross income exceeds $100,000 by $24,200. Thus, the $7,000 amount must be reduced by $5,000, which is equal to $200 x 25 ($24,200 / $1,000 = 24.2 (which is then rounded up to 25)).

(i) *Applicability date*. This section applies to taxable years beginning after December 31, 2024, and before January 1, 2029.

Par. 3. Section 1.6050AA-1 is added to read as follows:

§1.6050AA-1 Information reporting of applicable passenger vehicle loan interest received in a trade or business from an individual.

(a) *Information reporting requirement*—(1) *Overview*. The information reporting requirements of section 6050AA of the Internal Revenue Code (Code) and this section apply to an interest recipient who receives at least $600 of interest on a specified passenger vehicle loan (SPVL) from a payor of record for a calendar year. *See* paragraph (b) of this section for definitions of terms used in section 6050AA and this section.

(2) *Reporting requirement*. Except as otherwise provided in this section, an interest recipient that receives at least $600 of interest on an SPVL for a calendar year must—

(i) File an information return, as described in paragraph (f) of this section, with the Internal Revenue Service (IRS); and

(ii) Furnish a statement to the payor of record, as described in paragraph (g) of this section, on the SPVL.

(3) *Optional reporting*. An interest recipient may, but is not required to, report its receipt of less than $600 of interest on an SPVL for a calendar year. An interest

recipient that chooses to file a return as provided in this section and to furnish a statement as provided in this section is subject to the requirements of this section.

(b) *Definitions*. The following definitions apply for purposes of section 6050AA and this section:

(1) *Applicable passenger vehicle (APV)*. The term *applicable passenger vehicle* or *APV* has the meaning provided in §1.163-16(b)(1).

(2) *Calendar year for which interest is received* —(i) *In general*. Except as provided in paragraph (b)(2)(ii) of this section, the *calendar year for which interest is received* is the later of the calendar year in which the interest is received or the calendar year in which the interest properly accrues.

(ii) *De minimis rule*. An interest recipient may treat interest received during the current calendar year that properly accrues by January 15 of the subsequent calendar year as interest received for the current calendar year. For example, if an interest recipient receives a monthly interest payment on December 31, Year 1, that includes interest accruing for the period December 5, Year 1, to January 5, Year 2, the interest recipient may treat the entire interest payment as received in Year 1. If a portion of the interest for which a payment received in a calendar year accrues after January 15 of the subsequent calendar year, an interest recipient must report as interest received for the current calendar year only the portion that properly accrues by the end of the current calendar year. For example, if an interest recipient receives a monthly payment that includes interest accruing for the period December 20, Year 1, through January 20, Year 2, the interest recipient may not report as interest received for Year 1 any interest accruing after December 31, Year 1. The interest recipient must report the interest accruing after December 31, Year 1, as received for calendar Year 2.

(3) *Interest recipient*—(i) *Trade or business requirement*. An *interest recipient* is a person that is engaged in a trade or business (whether or not the trade or business of lending money) and that, in the course of that trade or business, receives interest on an SPVL. For purposes of this paragraph (b)(3)(i), if a person holds an SPVL that was originated or acquired in the course of a trade or business, the interest on the SPVL is considered to be received in the course of that trade or business. The rules of this paragraph (b)(3)(i) are illustrated by the following examples:

(A) *Example 1: Financing entity*—(*1*) *Facts*. Car manufacturer finance subsidiary A lends money to individual B to enable B to purchase an applicable passenger vehicle. B makes a payment to A of interest on the SPVL.

(*2*) *Analysis*. Under the rules of this paragraph (b)(3), A is an interest recipient for purposes of section 6050AA and must file an information return reporting the interest received from B.

(B) *Example 2: Interest not in the course of the trade or business*—(*1*) *Facts*. C, a person engaged in the trade or business of being a physician, lends money to individual D to enable D to purchase an APV from car dealer A. D makes a payment to C of interest on the SPVL.

(*2*) *Analysis*. C is not an interest recipient for purposes of section 6050AA and this paragraph (b)(3) because C will not receive the interest in the course of the trade or business of being a physician. C does not need to file an information return reporting the interest received from D.

(C) *Example 3: Dealer direct lending*—(*1*) *Facts*. E, a corporation, operates a car dealership under the "buy here, pay here" model. E sells vehicles to retail customers and, as part of its ordinary course of business, extends financing directly to the purchasers. Customer F buys a vehicle from E and enters into a loan agreement with E for the amount necessary to buy the vehicle. F pays E $1,200 of stated interest on the indebtedness during the calendar year.

(*2*) *Analysis*. Because E is engaged in the trade or business of selling automobiles and receives interest in the course of that trade or business, E is an interest recipient for purposes of section 6050AA and must file an information return reporting the interest received from F.

(ii) *Interest received on behalf of another person*—(A) *In general. A* person that, in the course of its trade or business, receives or collects interest on an SPVL on behalf of another person (for example, the lender of record) is the interest recipient (initial recipient) for purposes of this paragraph (b)(3) with respect to the SPVL. In this case, the reporting requirement of paragraph (a) of this section does not apply to the transfer of interest from the initial recipient to the person for which the initial recipient receives or collects the interest. For example, if financial institution A collects interest on behalf of financial institution B, A is the initial recipient of interest for the SPVL and is subject to the reporting requirements of section 6050AA. B is not required to report the interest received on the SPVL from A.

(B) *Exception*. Paragraph (b)(3)(ii)(A) of this section does not apply for any period for which—

(*1*) An initial recipient does not possess the information needed to comply with the reporting requirement of paragraph (a) of this section; and

(*2*) The person for which the interest is received or collected would receive the interest in the course of its trade or business if the interest were paid directly to that person.

(C) *Application of exception*. If the exception provided by paragraph (b)(3)(ii)(B) of this section applies, the person for which the interest is received or collected is the interest recipient with respect to interest received or collected on the SPVL.

(D) *Presumption.* For purposes of this paragraph (b)(3)(ii), if interest is received or collected on behalf of a person other than an individual, that person is presumed to receive interest in the course of its trade or business.

(4) *Lender of record*. The *lender of record* is the person who, at the time the loan is originated, is named as the lender on the loan documents and whose right to receive payment from the payor of record is secured by a lien on the payor of record's APV. An intention by the lender of record to sell or otherwise transfer the loan to a third party subsequent to the close of the transaction does not affect the determination of who is the lender of record.

(5) *Payor of record*. The *payor of record* on an SPVL is the person specified on the books and records of the interest recipient as the principal borrower on the SPVL. If the books and records of the interest recipient do not indicate which borrower is the principal borrower, the interest recipient must designate a borrower as the principal borrower. The term *person* for purposes of this paragraph (b)(5) means any individual, decedent's estate, or trust that is not a grantor trust within the meaning of §1.163-16(b)(9) (non-grantor trust).

(6) *Secretary*. The term *Secretary* has the meaning provided in section 7701(a)(11) of the Code.

(7) *Specified passenger vehicle loan (SPVL)*. The term *specified passenger vehicle loan* or *SPVL* has the same meaning given by §1.163-16(b)(15).

(c) *Reporting by foreign person*. An interest recipient that is not a United States person, as defined in section 7701(a)(30),

must report interest received on an SPVL only if it receives the interest—

(1) At a location in the United States; or

(2) At a location outside the United States and—

(i) The interest recipient is a controlled foreign corporation, within the meaning of section 957(a) of the Code; or

(ii) 50 percent or more of the gross income of the interest recipient from all sources for the three-year period ending with the close of the taxable year preceding the receipt of interest (or for that part of the period for which the person was in existence) was effectively connected with the conduct of a trade or business in the United States.

(d) *Reporting with respect to nonresident alien individual, foreign decedent's estate, or foreign non-grantor trust*—(1) *In general*. The reporting requirement of paragraph (a) of this section does not apply if the payor of record is a nonresident alien individual, a decedent's estate that is a foreign estate within the meaning of section 7701(a)(31)(A), or a non-grantor trust that is a foreign trust within the meaning of section 7701(a)(31)(B).

(2) *Nonresident alien individual, foreign decedent's estate, and foreign non-grantor trust*. For purposes of paragraph (d)(1) of this section, an interest recipient must apply the following documentation rules to determine whether a payor of record is a nonresident alien individual, foreign decedent's estate, or foreign non-grantor trust—

(i) If interest is paid outside the United States, the interest recipient must satisfy the documentary evidence standard provided in §1.6049-5(c) with respect to the payor of record; and

(ii) If interest is paid within the United States, the interest recipient must secure from the payor of record an applicable Form W-8 (or a substitute form) that meets the validity and reliance requirements described in §1.1441-1(e)(4).

(3) *Place of payment*. For purposes of paragraph (d)(2) of this section, the place of payment is the place where the payor of record completes the acts necessary to effect payment. An amount paid by transfer to an account maintained by an interest recipient in the United States or by mail to a United States address is considered to be paid within the United States.

(e) *Amount of interest received on SPVL for calendar year*. Whether an interest recipient receives $600 or more of interest on an SPVL for a calendar year is determined on an SPVL-by-SPVL basis. An interest recipient need not aggregate the interest received on all of the SPVLs of a payor of record held by the interest recipient to determine whether the $600 threshold is met. Therefore, an interest recipient need not report interest of less than $600 received on an SPVL, even though it receives a total of $600 or more of interest on all of the SPVLs of the payor of record for a calendar year.

(f) *Requirement to file return*—(1) *Form of return*. An interest recipient must file a return required by paragraph (a) of this section on the form specified by the Secretary for this purpose, with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*. An interest recipient may use forms containing provisions substantially similar to those in the forms specified by the Secretary for this purpose if it complies with applicable revenue procedures relating to those forms. An interest recipient must file a separate return for each SPVL for which it receives $600 or more of interest for a calendar year.

(2) *Information included on return*. An interest recipient must include on the form specified by the Secretary for this purpose—

(i) The name, address, and taxpayer identification number of the payor of record;

(ii) The name, address, and taxpayer identification number of the interest recipient;

(iii) The amount of interest received for the calendar year;

(iv) The amount of outstanding principal on the SPVL as of the beginning of the calendar year;

(v) The date of the origination of the SPVL;

(vi) The year, make, model, and vehicle identification number of the APV that secures the SPVL;

(vii) The date the SPVL was acquired; and

(viii) Any other information required by the form specified by the Secretary for this purpose or its instructions.

(3) *Time and place for filing return; cross-references to penalty and electronic filing requirements*. An interest recipient must file a return required by paragraph (a) of this section on or before February 28 (March 31 if filed electronically) of the year following the calendar year for which it receives the interest. An interest recipient must file the return required by paragraph (a) of this section with the IRS office designated in the instructions for the form. For provisions relating to the penalty provided for the failure to file a correct information return required by paragraph (a) of this section, see §301.6721-1 of this chapter. See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and not due to willful neglect. See §301.6011-2(b) of this chapter for requirement to submit the information returns required by this section electronically.

(g) *Requirement to furnish statement*—(1) *In general*. An interest recipient that must file a return under paragraph (a) of this section must furnish a statement to the payor of record.

(2) *Information included on statement*. An interest recipient must include on the statement that it must furnish to the payor of record—

(i) The information required under paragraph (f)(2) of this section;

(ii) A legend that—

(A) Identifies the statement as important tax information that is being furnished to the IRS; and

(B) Notifies the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction may be imposed if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this interest (if any) on the payor of record's return; and

(iii) A legend stating that the payor of record may be unable to deduct the full amount of SPVL interest reported on the statement; that limitations based on the payor of record's modified adjusted gross income may apply; and that the payor of record may deduct QPVLI only to the extent the SPVL was incurred by, and the QPVLI actually paid by, the payor of record.

(3) *Copy of form determined by the Secretary to payor of record*. An interest recipient will satisfy the requirement of

paragraph (g)(2)(i) of this section by furnishing to a payor of record a copy of the form determined by the Secretary (or substitute statement that complies with applicable revenue procedures) containing all the information filed with the IRS and all the legends required by paragraph (f)(2) of this section.

(4) *Furnishing statement with other information returns*. An interest recipient may transmit the statement required by paragraph (g)(1) of this section to the payor of record with other information, including other information returns, as permitted by applicable revenue procedures.

(5) *Time and place for furnishing statement*. An interest recipient must furnish a statement required by paragraph (g)(1) of this section to the payor of record on or before January 31 of the year following the calendar year for which it receives the interest. The interest recipient will be considered to have furnished the statement to the payor of record if it mails the statement to the payor of record's last known address.

(h) *Applicability date*. This section applies to calendar years beginning after December 31, 2024, and before January 1, 2029.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805

* * * * *

Par. 5. Section 301.6011-2 is amended by revising paragraph (b)(1) to read as follows:

§301.6011-2 Required use of electronic form.

* * * * *

(b) * * *

(1) If the use of Form 1042–S, Form 1094 series, Form 1095–B, Form 1095–C, Form 1097–BTC, Form 1098, Form 1098–C, Form 1098–E, Form 1098–Q, Form 1098–T, a Form to report information required under section 6050AA, Form 1099 series, Form 3921, Form 3922, Form 5498 series, Form 8027, or Form W–2G is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

* * * * *

Par. 6. Section 301.6721-1 is amended by:

1. Revising paragraphs (h)(3)(xxvi) and (xxvii);

2. Adding paragraph (h)(3)(xxviii); and

3. Revising paragraph (j)(2).

The additions and revision read as follows:

§301.6721-1 Failure to file correct information returns.

* * * * *

(h) * * *

(3) * * *

(xxvi) Section 6050Y (relating to returns relating to certain life insurance contract transactions);

(xxvii) Section 6050Z (relating to reports relating to long-term care premium statements); or

(xxviii) Section 6050AA (relating to returns relating to QPVLI received in trade or business from individuals).

* * * * *

(j) * * *

(2) *Exceptions*.

(i) Paragraph (h)(2)(xii) of this section applies with respect to information returns required to be filed after September 17, 2024.

(ii) Paragraph (h)(2)(xxviii) of this section applies with respect to information returns required to be filed for taxable years beginning after December 31, 2024, and before January 1, 2029.

Par. 7. Section 301.6722-1 is amended by:

1. Revising paragraphs (e)(2)(xxxvii) and (xxxviii);

2. Adding paragraph (e)(2)(xxxix); and

3. Revising paragraph (g)(2).

The additions and revision read as follows:

§301.6722-1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(xxxvii) Section 6226(a)(2) (regarding statements relating to alternative to payment of imputed underpayment by a partnership) or under any other provision of this title 26 that provides for the application of rules similar to section 6226(a)(2);

(xxxviii) Section 6050Z (relating to reports relating to long-term care premium statements); or

(xxxix) Section 6050AA (relating to returns relating to QPVLI received in trade or business from individuals).

* * * * *

(g) * * *

(2) *Exceptions*.

(i) Paragraph (e)(2)(xxxv) of this section applies with respect to payee statements required to be furnished after September 17, 2024.

(ii) Paragraph (e)(2)(xxxix) of this section applies with respect to payee statements required to be furnished for taxable years beginning after December 31, 2024, and before January 1, 2029.

Frank J. Bisignano,
Chief Executive Officer.

(Filed by the Office of the Federal Register December 31, 2025, 8:45 a.m., and published in the issue of the Federal Register for January 2, 2026, 91 FR 67)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2025–27 through 2025–52 is in Internal Revenue Bulletin 2024–52, dated December 22, 2024.

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We Welcome Comments About the Internal Revenue Bulletin

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