INTERNAL REVENUE BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–32
August 8, 2016

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.

INCOME TAX

REG–102516–15, page 231.

This document contains proposed regulations that provide guidance regarding the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. These proposed regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules. In addition, these proposed regulations provide rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period.

Rev. Proc. 2016–40, page 228.

This Revenue Procedure provides two safe harbors in which the Service will not assert that a corporation lacks the requisite control for purposes of section 355(a), when a corporation (D) acquires putative control of another corporation (C) through C's issuance of stock, and C subsequently engages in a transaction that actually or effectively reverses the effect of the issuance.

T.D. 9776, page 222.

This document contains temporary regulations that provide guidance regarding the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. These temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules. In addition, these temporary regulations provide rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

226 CFR 1.50–1T: Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer (temporary)

T.D. 9776

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance regarding the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. These temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules. In addition, these temporary regulations provide rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period. Accordingly, these regulations will affect lessees of investment credit property when the lessor of such property makes an election to treat the lessee as having acquired the property and an investment credit is determined under section 46 with respect to such lessee. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Internal Revenue Bulletin.**

DATES: *Effective Date*: These regulations are effective on July 22, 2016.

Applicability Date: For date of applicability, see § 1.50–1T(f).

FOR FURTHER INFORMATION CONTACT: Jennifer A. Records, (202) 317-6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations amend the Income Tax Regulations (26 CFR part 1) under section 50(d)(5) to provide the income inclusion rules applicable to a lessee of investment credit property when a lessor elects to treat the lessee as having acquired such property. Section 50(d)(5) provides that, for purposes of the investment credit, rules similar to former section 48(d) (as in effect prior to the enactment of Revenue Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388 (November 5, 1990))) apply.

Former section 48(d)(1) permitted a lessor of new section 38 property to elect to treat that property as having been acquired by the lessee for an amount equal to its fair market value (or, if the lessor and lessee were members of a controlled group of corporations, equal to the lessor's basis). Former section 48(d)(3) provided that if the lessor made the election provided in former section 48(d)(1) with respect to any such property, the lessee would be treated for all purposes of subpart E, part IV, subchapter A, Chapter 1, subtitle A, as having acquired such property. Section 50(a)(5)(A) replaced the term "section 38 property" with the term "investment credit property."

Under former section 48(q), if a credit was determined under section 46 with respect to section 38 property, the basis of the property was reduced by 50 percent of the amount of the credit determined (or 100 percent of the amount of the credit determined in the case of a credit for qualified rehabilitation expenditures). Former section 48(d)(5) provided specific rules coordinating the effect of the former section 48(d) election with the basis adjustment rules under former section 48(q). Because the lessee would have no basis in the property that the lessee was only deemed to have acquired pursuant to the election, former section 48(d)(5)(A) provided that the basis adjustment rules under former section 48(q) did not apply. Section 50(c) replaced former section 48(q) and provides the current basis adjustment rules.

In lieu of a basis adjustment, former section 48(d)(5)(B) provided that the lessee was required to include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to the property, an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property. In the case of the rehabilitation credit, former section 48(q)(3) provided that former section 48(d)(5)(B) was to be applied without the phrase "50 percent of."

Former section 48(d)(5)(C) provided that, in the case of a disposition of property to which former section 47 (the former recapture rules) applied, the income inclusion rules of former section 48(d)(5) applied in accordance with regulations prescribed by the Secretary. Section 50(a) replaced former section 47 and provides the current recapture rules.

Explanation of Provisions

A. *Scope*

These temporary regulations provide the applicable rules that the Secretary has determined are similar to the rules of former section 48(d)(5). Thus, these temporary regulations are limited in scope to the income inclusion rules that apply when a lessor elects under § 1.48–4 of the Treasury Regulations to treat the lessee as having acquired investment credit property.

B. *In General*

Section 1.50–1T(b) provides the general rules for coordinating the basis adjustment rules under section 50(c) (the successor to former section 48(q)) with the rules under § 1.48–4 pursuant to which a lessor may elect to treat the lessee of investment credit property as having

acquired such property for purposes of calculating the investment credit. Similar to the rule in former section 48(d)(5)(A), which provided that the basis adjustment rules under former section 48(q) did not apply when a § 1.48–4 election was made, § 1.50–1T(b)(1) provides that section 50(c) does not apply when the election is made. Thus, the lessor is not required to reduce its basis in the property by the amount of the investment credit determined under section 46 (or 50 percent of the amount of the credit in the case of the energy credit under section 48).

Under § 1.50–1T(b)(2), in lieu of a basis adjustment, and similar to the rule contained in former section 48(d)(5)(B), a lessee must include in gross income an amount equal to the amount of the credit (or, in the case of the section 48 energy credit, 50 percent of the amount of the credit) determined under section 46. Generally, the lessee includes such amount ratably over the shortest recovery period applicable under the accelerated cost recovery system provided in section 168, beginning on the date the investment credit property is placed in service and continuing on each one year anniversary date thereafter until the end of the applicable recovery period. The amount required to be included by the lessee is not subject to any limitations under section 38(c) on the amount of the credit allowed based on the amount of the lessee's income tax.

Because section 50(c) replaces the old basis adjustment rules under former section 48(q), the amount the lessee is required to include in gross income under these temporary regulations in § 1.50–1T(b)(2) corresponds to the current basis adjustment amounts required under section 50(c), rather than the former basis adjustment amounts provided in former section 48(q).

C. *Special Rule for Partnerships and S Corporations*

Section 1.50–1T(b)(3) provides that, in the case of a partnership (other than an electing large partnership) or an S corporation for which an election is made under § 1.48–4 to treat such entity as having acquired the investment credit property, each partner or S corporation shareholder that is the "ultimate credit claimant" is treated as the lessee for purposes of the income inclusion rules under § 1.50–1T(b)(2). The term *ultimate credit claimant* is defined in § 1.50–1T(b)(3)(ii) as any partner or S corporation shareholder that files (or that would file) Form 3468, "Investment Credit" (or its successor form), with such partner's or S corporation shareholder's income tax return to claim the investment credit determined under section 46 that results in the corresponding income inclusion under § 1.50–1T(b)(2). Each partner or S corporation shareholder that is the ultimate credit claimant must include in gross income the amount required under § 1.50–1T(b)(2) in proportion to the amount of the credit determined under section 46 (or 50 percent of the amount of the credit in the case of the energy credit under section 48) with respect to the partner or S corporation shareholder.

The Treasury Department and the IRS believe that, because the investment credit and any limitations on the credit itself are determined at the partner or S corporation shareholder level, it is appropriate that the income inclusion occurs at the partner or shareholder level. In the case of a partnership that actually owns the investment credit property, a partner in a partnership is treated as the taxpayer with respect to the partner's share of the basis of partnership investment credit property under § 1.46–3(f)(1) and separately computes the investment credit based on its share of the basis of the investment credit property. Similarly, in the case of a lessee partnership where the lessor makes an election under § 1.48–4 to treat the partnership as having acquired investment credit property, each partner in the lessee partnership is the taxpayer with respect to whom the investment credit is determined under section 46. Each partner in the lessee partnership will separately compute the investment credit based on each partner's share of the investment credit property. The credit is therefore computed at the partner level based on partner level limitations. Section 1.704–1(b)(4)(ii), which requires allocations with respect to the investment tax credit provided by section 38 to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or qualified investment (as opposed to the investment credit itself, which is not determined at the partnership level) made in accordance with § 1.46–3(f) shall be deemed to be made in accordance with the partners' interests in the partnership.

Under similar principles, in the case of a lessor that makes an election under § 1.48–4 to treat an S corporation as having acquired investment credit property, each shareholder in the lessee S corporation is the taxpayer with respect to whom the investment credit is determined under section 46. The credit is therefore computed at the S corporation shareholder level based on shareholder level limitations.

The Treasury Department and the IRS believe that the burden of income inclusion should match the benefits of the allowable credit. Therefore, because the investment credit and any limitations on the credit are determined at the partner or shareholder level, these temporary regulations in § 1.50–1T(b)(3) provide that the gross income required to be ratably included under § 1.50–1T(b)(2) is not an item of partnership income for purposes of subchapter K or an item of S corporation income for purposes of subchapter S. Accordingly, the rules that would apply were such gross income an item of income under section 702 or section 1366, such as section 705(a) (providing for an increase in the partner's outside basis for items of income) or section 1367(a) (providing for an increase in the S corporation shareholder's stock basis for items of income) do not apply.

The Treasury Department and the IRS are aware that some partnerships and S corporations have taken the position that this income is includible by the partnership or S corporation and that their partners or S corporation shareholders are entitled to increase their bases in their partnership interests or S corporation stock as a result of the income inclusion. The Treasury Department and the IRS believe that such basis increases are inconsistent with Congressional intent as they thwart the purpose of the income inclusion requirement in former section 48(d)(5)(B) and confer an unintended benefit upon partners and S corporation shareholders of lessee partnerships and S corporations that is not available to any other credit claimant.

The investment credit rules operate to allow a taxpayer to claim the immediate benefit of the full amount of the allowable credit in exchange for the recoupment of that amount (or 50 percent of that amount in the case of the section 48 energy credit) over time. Where the taxpayer claiming the credit owns the investment credit property, the basis reduction provided in section 50(c) results in reduced cost recovery deductions over the life of the property or the realization of gain (or a reduction in the amount of loss realized) upon the disposition of the property. In the case of a lessor that elects under § 1.48–4 to treat the lessee of investment credit property as having acquired such property, § 1.50–1T(b)(2) instead requires the lessee to ratably include this amount in gross income over the life of the property.

If that lessee is a partnership or an S corporation, however, some partnerships and S corporations contend that this income inclusion is treated as an item of partnership or S corporation income that entitles their partners or S corporation shareholders to a corresponding basis increase under section 705(a) or section 1367(a). As a result of the basis increase, these partners or S corporation shareholders claim a loss (or reduce the amount of gain realized) upon the disposition of their partnership interests or S corporation shares.

As noted, the Treasury Department and the IRS have concluded that the income inclusion is not properly treated as an item of partnership income or of S corporation income. Nonetheless, had the Treasury Department and the IRS determined otherwise, the Treasury Department and the IRS believe that in addition to being inconsistent with the purpose of section 48(d)(5)(B), allowing a basis increase for the income inclusion would also be inconsistent with the purpose of sections 705 and 1367. The income to be included is a notional amount, which has no current or future economic effect on the basis of assets held by a partnership or S corporation. In general, Congress intended for sections 705 and 1367 to preserve inside and outside basis parity for partnerships and S corporations so as to prevent any unintended tax benefit or detriment to the partners or shareholders. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A225 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 384 (1954); H.R. Rep. No. 97–826, 97th Cong. 2d Sess. p. 17 (1982); S. Rep. No. 97–640, 97th Cong. 2d Sess. 16, 18 (1982); and Rev. Rul. 96–11 (1996–1 CB 140). Ultimately, the Treasury Department and the IRS have concluded that, under any approach, allowing partners and S corporation shareholders a basis increase to offset the income inclusion required by § 1.50–1T(b)(2) upon disposition of their partnership interests or S corporation shares is inappropriate, and that Congress did not intend to allow partners and S corporation shareholders the full benefit of the credit without any of the corresponding burden.

D. *Coordination with the Recapture Rules*

Section 1.50–1T(c) provides that if the investment credit recapture rules under section 50(a) are triggered (including if there is a lease termination), causing a recapture of the credit or a portion of the credit, an adjustment will be made to the lessee's (or, as applicable, the ultimate credit claimant's) gross income for any discrepancies between the total amount included in gross income under these temporary regulations in § 1.50–1T(b)(2) and the total credit allowable after recapture. The adjustment amount is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment credit property.

If the amount of the unrecaptured credit (that is, the allowable credit after taking into account the recapture amount), or 50 percent of the unrecaptured credit in the case of the energy credit, exceeds the amount previously included in gross income under § 1.50–1T(b)(2), the lessee's (or the ultimate credit claimant's) gross income is increased. The lessee (or the ultimate credit claimant) is required to include in gross income an amount equal to the excess of the amount of the credit that is not recaptured (or 50 percent of the amount of the credit that is not recaptured in the case of the energy credit) over the amount of the total increases in gross income previously made under § 1.50–1T(b)(2). This amount is in addition to the amounts previously included in gross income under § 1.50–1T(b)(2).

If the income inclusion prior to recapture under § 1.50–1T(b)(2) exceeds the unrecaptured credit (that is, the allowable credit after taking into account the recapture amount), or 50 percent of the unrecaptured credit in the case of the energy credit, the lessee's (or the ultimate credit claimant's) gross income is reduced. The lessee's or ultimate credit claimant's gross income is reduced by an amount equal to the excess of the total increases in gross income previously made under § 1.50–1T(b)(2) over the amount of the credit that is not recaptured (50 percent of the amount of the credit that is not recaptured in the case of the energy credit).

E. *Election to Accelerate Income Inclusion Outside of the Recapture Period*

Section 1.50–1T(d)(1) provides that a lessee or an ultimate credit claimant may make an irrevocable election to include in gross income any remaining income required to be taken into account under § 1.50–1T(b)(2) in the taxable year in which the lease terminates or is otherwise disposed of. Similarly, § 1.50–1T(d)(1) provides that if an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a partnership (other than an electing large partnership) or an S corporation, the ultimate credit claimant may make an irrevocable election to include in gross income any remaining income required to be taken into account under § 1.50–1T(b)(2) in the taxable year in which the ultimate credit claimant no longer owns a direct or indirect interest in the lessee of the investment credit property. The availability of this election allows a lessee or an ultimate credit claimant to account for any remaining required gross income inclusion in the taxable year in which it is exiting its investment.

This election is available only outside of the section 50(a) recapture period, and only if the lessee or the ultimate credit claimant was not already required to accelerate the gross income required to be included under § 1.50–1T(b)(2) because of a recapture event during the recapture period. Additionally, a former partner or S corporation shareholder that owns no direct or indirect interest in the lessee partnership or S corporation may not elect to

accelerate the gross income required to be included under § 1.50–1T(b)(2) at the time of a termination or disposition of the lease by the lessee partnership or S corporation. The appropriate time for a former partner or S corporation shareholder that is an ultimate credit claimant to elect income acceleration is the taxable year that it disposes of its entire interest in a lessee partnership or S corporation.

Section 1.50–1T(d)(2) provides that the election to accelerate the income inclusion must be made by the due date (including any extension of time) of the lessee's return, or, in the case of a partnership or S corporation, by the due date (including any extension of time) of the ultimate credit claimant's return for the taxable year in which the relevant event occurs (for example, the lease termination, lease disposition, or disposition of the entire interest in the lessee partnership or S corporation). The election is made by including the remaining gross income required by these temporary regulations in the taxable year of the relevant event (for example, the lease termination, lease disposition, or disposition of the entire interest in the lessee partnership or S corporation).

F. *Applicability Date*

These temporary regulations apply with respect to investment credit property placed in service on or after the date that is 60 days after the date of filing of these regulations in the **Federal Register.** The temporary regulations should not be construed to create any inference concerning the proper interpretation of section 50(d)(5) prior to the effective date of the regulations.

G. *Rev. Proc. 2014–12*

Rev. Proc. 2014–12 (2014–3 IRB 415) establishes the requirements under which the IRS will not challenge partnership allocations of section 47 rehabilitation credits by a partnership to its partners. Section 3 states that Rev. Proc. 2014–12 does not address how a partnership is required to allocate the income inclusion required by section 50(d)(5). Furthermore, section 4.07 provides that, solely for purposes of determining whether a partnership meets the requirements of that section, the partnership's allocation to its partners of the income inclusion required by section 50(d)(5) shall not be taken into account.

Because § 1.704–1(b)(4)(ii) provides that allocations of cost or qualified investment, and not the investment credit itself (which is not determined at the partnership level), made in accordance with § 1.46–3(f) shall be deemed to be made in accordance with the partners' interests in a partnership, this Treasury decision modifies Rev. Proc. 2014–12 by changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2). Additionally, because § 1.50–1T(b)(3) provides that the gross income required to be included under section 50(d)(5) is not an item of partnership income to which the rules of subchapter K apply, this Treasury decision modifies Rev. Proc. 2014–12 by deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

Effect on Other Documents

Rev. Proc. 2014–12 (2014–3 IRB 415) is modified by: (1) changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2); and (2) deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

Statement of Availability of IRS Documents

Rev. Proc. 2014–12 (2014–3 IRB 415) is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Internal Revenue Bulletin.** Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Jennifer A. Records, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of 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 continues to read in part as follows:

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

Par. 2. Section 1.50–1 is revised to read as follows:

§ 1.50–1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

(a) through (f) [Reserved]. For further guidance, see § 1.50–1T(a) through (f).

Par. 3. Section 1.50–1T is added to read as follows:

§ 1.50–1T Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer (temporary).

(a) *In general.* Section 50(d)(5) provides that, for purposes of computing the investment credit, rules similar to the rules of former section 48(d) (relating to certain

leased property) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388 (November 5, 1990))) apply. This section provides rules similar to the rules of former section 48(d)(5) that the Secretary has determined shall apply for purposes of determining the inclusion in gross income required when a lessor elects to treat a lessee as having acquired investment credit property.

(b) *Coordination with basis adjustment rules*. In the case of any property with respect to which an election is made under § 1.48–4 by a lessor of investment credit property to treat the lessee as having acquired the property—

(1) *Basis adjustment*. Section 50(c) does not apply with respect to such property.

(2) *Amount of credit included ratably in gross income*—(i) *In general*. A lessee of the property must include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to that property, an amount equal to the amount of the credit determined under section 46 with respect to that property. The ratable income inclusion under this paragraph begins on the date the investment credit property is placed in service and continues on each one year anniversary date thereafter until the end of the applicable recovery period. The lessee will include in gross income the amount of its credit determined under section 46 regardless of limitations on the amount of the credit allowed under section 38(c) based on the amount of the lessee's income tax.

(ii) *Special rule for the energy credit*. In the case of any energy credit determined under section 48(a), paragraph (b)(2)(i) of this section applies only to the extent of 50 percent of the amount of the credit determined under section 46.

(3) *Special rule for partnerships and S corporations*—(i) *In general*. For purposes of paragraph (b)(2) of this section, if the lessee of the property is a partnership (other than an electing large partnership) or an S corporation, the gross income includible under such paragraph is not an item of partnership income to which the rules of subchapter K of Chapter 1, subtitle A of the Code apply or an item of S corporation income to which the rules of subchapter S of Chapter 1, subtitle A of the Code apply. Any partner or S corporation shareholder that is an ultimate credit claimant (as defined in paragraph (b)(3)(ii) of this section) is treated as a lessee that must include in gross income the amounts required under paragraph (b)(2) of this section in proportion to the credit determined under section 46 with respect to such partner or S corporation shareholder.

(ii) *Definition of ultimate credit claimant*. For purposes of this section, the term *ultimate credit claimant* means any partner or S corporation shareholder that files (or that would file) Form 3468, "Investment Credit," with such partner's or S corporation shareholder's income tax return to claim an investment credit determined under section 46 with respect to such partner or S corporation shareholder.

(c) *Coordination with the recapture rules*—(1) *In general*. If section 50(a) requires an increase in the lessee's or the ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under § 1.48–4, the lessee or the ultimate credit claimant is required to include in gross income an amount equal to the excess, if any, of the amount of the credit that is not recaptured over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property. Such amount is in addition to the amounts the lessee or the ultimate credit claimant previously included in gross income under paragraph (b)(2) of this section.

(2) *Income inclusion exceeds unrecaptured credit*. If section 50(a) requires an increase in the lessee's or ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under § 1.48–4, the lessee's or the ultimate credit claimant's gross income shall be reduced by an amount equal to the excess, if any, of the total increases in gross income previously included under paragraph (b)(2) of this section over the amount of the credit that is not recaptured.

(3) *Special rule for the energy credit*. In the case of any energy credit determined under section 48(a), paragraphs (c)(1) and (2) of this section apply by substituting the phrase "50 percent of the amount of the credit that is not recaptured" for the phrase "the amount of the credit that is not recaptured."

(4) *Timing of income inclusion or reduction following recapture*. Any adjustment required by paragraphs (c)(1) and (2) of this section is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment credit property.

(d) *Election to accelerate income inclusion outside of the recapture period*—(1) *In general.* If after the recapture period described in section 50(a), but prior to the expiration of the recovery period described in paragraph (b)(2) of this section, there is a lease termination, the lessee otherwise disposes of the lease, or a partner or S corporation shareholder that is an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a lessee partnership (other than an electing large partnership) or S corporation, the lessee, or, in the case of a partnership or S corporation, the ultimate credit claimant may irrevocably elect to take into account the remaining amount required to be included in gross income under this section in the taxable year of the disposition or termination.

(2) *Exceptions*. The election provided under paragraph (d)(1) of this section is not available to—

(i) Lessees or ultimate credit claimants required by paragraph (c) of this section to account for the remaining amount required to be included in gross income after accounting for recapture in the taxable year in which the property was disposed of or otherwise ceased to be investment credit property under section 50(a); or

(ii) Former partners or S corporation shareholders that own no interest, either direct or indirect, in a lessee partnership or S corporation at the time of a lease termination or disposition.

(3) *Manner and time for making election*. The election under paragraph (d)(1) of this section is made by including the remaining amount required to be included under this section in gross income in the taxable year of the lease termination or disposition or the disposition of the ulti-

mate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation. The election must be made on or before the due date (including any extension of time) of the lessee's income tax return, or, in the case of a partnership or S corporation, the ultimate credit claimant's income tax return for the taxable year in which the lease termination or disposition or the disposition of the ultimate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation occurs.

(e) *Examples*. The provisions of this section may be illustrated by the following examples:

Example 1. X, a calendar year C corporation, leases nonresidential real property from Y. The property is placed in service on October 1, 2016. Y elects under § 1.48–4 to treat X as having acquired the property. X's investment credit determined under section 46 for 2016 with respect to such property is $9,750. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat X as having acquired the property, Y does not reduce its basis in the property under section 50(c). Instead, X, the lessee of the property, must include ratably in gross income over 39 years an amount equal to the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 39 years beginning with 2016 is $250 ($9,750/39 year recovery period).

Example 2. The facts are the same as in *Example 1* of this paragraph (e), except that instead of nonresidential real property, X leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. X's investment credit determined under section 46 for 2016 with respect to the property is $9,750. The shortest recovery period that could be available to the property under section 168 is 5 years. X, the lessee of the property, must include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 5 years beginning with 2016 is $975 ($4,875/5 year recovery period).

Example 3. A and B, calendar year taxpayers, form a partnership, the AB partnership, that leases nonresidential real property from Y. The property is placed in service on October 1, 2016. Y elects under § 1.48–4 to treat the AB partnership as having acquired the property. A's investment credit determined under section 46 for 2016 is $3,900 and B's investment credit determined under section 46 for 2016 is $7,800 with respect to the property. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat the AB partnership as having acquired the property, Y does not reduce its basis in the building under section 50(c). Instead, A and B, the ultimate credit claimants, must include the amount of the credit determined with respect to A and B under section 46 ratably in gross income over 39 years, the shortest recovery period available with respect to such property. Therefore, A and B must include ratably in gross income over 39 years under paragraph (b)(2) of this section an amount equal to $3,900 and $7,800, respectively. Under paragraph (b)(2) of this section, A's increase in gross income for each of the 39 years beginning with 2016 is $100 ($3,900/39 year recovery period) and B's is $200 ($7,800/39 year recovery period). Because the gross income A and B are required to include under paragraph (b)(2) of this section is not an item of partnership income, the rules under subchapter K applicable to items of partnership income do not apply with respect to such income. In particular, A and B are not entitled to an increase in the outside basis of their partnership interests under section 705(a) and are not entitled to an increase in their capital accounts under section 704(b).

Example 4. The facts are the same as in *Example 3* of this paragraph (e), except that on January 1, 2019, the lease between AB partnership and Y terminates (Y retains ownership of the property), which is a recapture event under section 50(a). A's and B's income tax for 2019 is increased under section 50(a) by $2,340 and $4,680, respectively (60% of $3,900 and $7,800, respectively, assuming that the aggregate decrease in the credits allowed under section 38 was the full amount of the investment credits determined as to A and B under section 46). Therefore, the amount of the unrecaptured credit as to A and B is $1,560 and $3,120, respectively (40% of $3,900 and $7,800, respectively). The amounts that A and B previously included in gross income under paragraph (b)(2) of this section are $300 ($100 for each of 2016, 2017, and 2018) and $600 ($200 for each of 2016, 2017, and 2018), respectively. A and B are required under paragraph (c)(1) of this section to include in gross income an amount equal to the excess of the credit that is not recaptured ($1,560 and $3,120, respectively) over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property ($300 and $600, respectively). Therefore, A and B must include in gross income $1,260 and $2,520, respectively, in the taxable year of the lease termination (2019) in addition to the recapture amounts described above.

Example 5. (i) The facts are the same as in *Example 4* of this paragraph (e), except that instead of nonresidential real property, the AB partnership leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. Because the shortest recovery period that could be available to the property under section 168 is 5 years, A and B are required under paragraph (b)(2)(ii) of this section to include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property (50% of $3,900/5, or $390, per year for A, and 50% of $7,800/5, or $780, per year for B).

(ii) The January 1, 2019 lease termination requires A's and B's income tax for 2019 to be increased under section 50(a) by $2,340 and $4,680, respectively (60% of $3,900 and $7,800, respectively). Therefore, the amount of the unrecaptured credit as to A and B is $1,560 and $3,120, respectively (40% of $3,900 and $7,800, respectively). Under paragraph (b)(2)(ii) of this section, the amounts A and B previously included in gross income are $1,170 ($390 for each of 2016, 2017, and 2018) and $2,340 ($780 for each of 2016, 2017, and 2018), respectively. A and B are entitled to a reduction in gross income under paragraph (c)(2) of this section equal to the excess of the total increases in gross income made under paragraph (b)(2)(ii) of this section ($1,170 and $2,340, respectively) over 50% of the amount of the credit that is not recaptured ($780 and $1,560, respectively). Therefore, A and B are entitled to a reduction in gross income in the amount of $390 and $780, respectively, in the taxable year of the lease termination (2019).

Example 6. (i) The facts are the same as in *Example 3* of this paragraph (e), except that on December 1, 2021, A sells its entire interest to C, and on January 1, 2022, the lease between AB partnership and Y terminates. At the time of the lease termination, B is still a partner in the AB partnership. There is no recapture event under section 50(a) because both the lease termination and the disposition of A's interest in the partnership occurred outside of the recapture period.

(ii) At the time that A sold its interest in the AB partnership to C, A had previously included $500 ($100 for each of 2016–2020) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, A must continue to include the remaining $3,400 (including $100 in 2021) in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, A may irrevocably elect to include the remaining $3,400 in gross income in the taxable year that A sold its entire interest in the AB partnership to C (2021). Pursuant to paragraph (d)(2) of this section, A cannot make this election in the taxable year of the lease termination (2022).

(iii) At the time of the lease termination, B had previously included $1,200 ($200 for each of 2016–2021) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, B must continue to include the remaining $6,600 required in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, B may irrevocably elect to include the remaining $6,600 in gross income in the taxable year of the lease termination (2022).

(f) *Applicability date*. This section applies to property placed in service on or after September 19, 2016.

(g) *Expiration date*. The applicability of this section will expire on or before July 19, 2019.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: June 1, 2016.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on July 21, 2016, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2016, 81 F.R. 47701)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of tax liability
(Also: Part I §§ 355, 1.355–1)

Rev. Proc. 2016–40

SECTION 1. PURPOSE

This revenue procedure provides fact patterns (safe harbors) in which the Internal Revenue Service (IRS) will not assert that a distributing corporation, D, lacks control of another corporation, C, within the meaning of § 355(a)(1)(A) of the Internal Revenue Code (Code), even though D and C engage in a transaction described in sections 3 and 4 of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 355(a)(1) provides that, if certain requirements are met, a corporation may distribute stock and securities of a controlled corporation to its shareholders and security holders without recognition of gain or loss by the shareholders or security holders.

.02 Section 355(a)(1)(A) provides that, for a distribution to qualify for nonrecognition treatment, the distributing corporation must distribute stock or securities of a corporation (the controlled corporation) it controls immediately before the distribution. For this purpose, "control" is defined by cross-reference to § 368(c) as ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of each other class of stock of the corporation.

.03 In Rev. Rul. 56–117, 1956–1 C.B. 180, corporation M owned all of the voting common stock and 12 percent of the non-voting preferred stock of corporation N. Disputes arose among the M shareholders, and it was decided that M would distribute its N stock to one group of M shareholders (the departing shareholders) in exchange for all their M stock. To qualify N as a controlled corporation for purposes of § 355(a)(1)(A), N issued shares of voting common stock to the preferred shareholders other than M, in exchange for all their non-voting preferred shares in a recapitalization within the meaning of § 368(a)(1)(E). After the recapitalization, M owned 93 percent of the outstanding N voting common stock and all of the outstanding N non-voting preferred stock. M then distributed all of its common and preferred N stock to the departing shareholders in exchange for all their M stock. After the distribution, the departing shareholders controlled N, and N's business was carried on under their management. The ruling holds that, under § 355(a)(1), no gain or loss was recognized to the departing shareholders upon their receipt of N stock.

.04 In Rev. Rul. 63–260, 1963–2 C.B. 147, A owned all the stock of corporation X, which owned 70 shares of the stock of corporation Y. A also owned the remaining 30 shares of Y stock. A contributed 10 shares of his Y stock to X, and, immediately thereafter, X distributed all of its 80 shares of Y stock to A. The ruling holds that the distribution did not qualify under § 355, because X, the distributing corporation, did not have control of Y immediately before the distribution except in a transitory and illusory sense.

.05 In Rev. Rul. 69–407, 1969–2 C.B. 50, corporation X owned 70 percent, and A and B owned the remaining 30 percent, of the single outstanding class of stock of corporation Y. In exchange for the surrender of all the Y stock, Y issued Class A voting stock to A and B and Class B voting stock to X. The Class A stock issued to A and B represented 20 percent, and the Class B stock issued to X represented 80 percent, of the total combined voting power of all classes of Y voting stock. The exchange qualified as a recapitalization under § 368(a)(1)(E). Following the recapitalization, X distributed all of the Class B stock to its shareholders. The ruling holds that, immediately prior to the distribution, X had control of Y, and that, under § 355, no gain or loss was recognized to X's shareholders on the distribution to them of the Y stock. The transaction was distinguished from the transaction described in Rev. Rul. 63–260, because the recapitalization resulted in a permanent realignment of voting control.

.06 Rev. Rul. 98–27, 1998–1 C.B. 1159, states that the IRS will not apply *Commissioner v. Court Holding Co.*, 324 U.S. 331 (1945) (or any formulation of the step transaction doctrine) to determine whether the distributed corporation was a controlled corporation immediately before a distribution under § 355(a) solely because of any post-distribution acquisition or restructuring of the distributed corporation, whether prearranged or not. The ruling also states that, otherwise, in applying the step transaction doctrine, all facts and circumstances will be considered (citing Rev. Rul. 63–260, 1963–2 C.B. 147), and an independent shareholder vote is only one relevant factor.

.07 Rev. Rul. 98–27 is based, in part, on § 1012(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105–34, 111 Stat. 788, 916–17, which added § 355(e) to the Code. Under § 355(e), gain is recognized to the distributing corporation on a distribution of stock or securities of a controlled corporation in connection with a planned acquisition of stock representing a 50-percent or greater interest, by vote or value, in the distributing corporation or the controlled corporation. The Conference Report accompanying the legislation states in part:

> The . . . bill does not change the present-law requirement under section 355 that the distributing corporation must distribute 80 percent of the voting power and 80 percent of each other class of stock of the controlled corporation . . . . [T]he 80-percent control requirement is expected to be administered in a manner that would prevent the tax-free spin-off of a less-than-80-percent controlled subsidiary, but would not generally impose additional restrictions on post-distribution restructurings of the controlled corporation if such restrictions would not apply to the distributing corporation. H.R. Rep. No. 105–220, at 529-30 (1997); 1997–4 C.B. 1457, at 1999–2000.

.08 As illustrated in Rev. Rul. 56–117 and Rev. Rul. 69–407, the control requirement of § 355(a)(1)(A) may be satisfied by an acquisition of control that occurs immediately before a distribution for the purpose of qualifying the distribution under § 355. However, as illustrated

in Rev. Rul. 63–260, an acquisition of control by the distributing corporation is not respected for purposes of § 355(a)(1)(A) if it is transitory or illusory. The acquisition of control must have substance under general federal tax principles.

.09 Although the § 355(e) legislative history states, and Rev. Rul. 98–27 provides, that post-distribution events are not to be taken into account in determining whether a distributing corporation has control of the distributed corporation, this interpretation of § 355 applies only after it has been determined that, at the time of the distribution, the distributing corporation otherwise had control of the distributed corporation in substance. Thus, the § 355(e) legislative history and Rev. Rul. 98–27 do not prevent the step transaction doctrine from applying to determine if, taking into account all facts and circumstances (including post-distribution events), a pre-distribution acquisition of control has substance such that a distributing corporation has control of a corporation within the meaning of § 355(a)(1)(A) immediately prior to a distribution of the stock of that corporation.

.10 The Treasury Department and the IRS recognize that determining whether an acquisition of control has substance for federal tax purposes can be difficult and fact-intensive. The Treasury Department and the IRS are concerned that, in some cases, taxpayers may not be able to determine whether such an acquisition has substance with sufficient certainty to proceed with transactions that otherwise satisfy the requirements of § 355. To resolve this uncertainty, the Treasury Department and the IRS are describing transactions in which the IRS will not assert that an acquisition of control lacks substance.

SECTION 3. TRANSACTIONS TO WHICH THIS REVENUE PROCEDURE APPLIES

This revenue procedure applies to transactions in which—

(1) D owns C stock not constituting control of C;

(2) C issues shares of one or more classes of stock to D and/or to other shareholders of C (the issuance), as a result of which D owns C stock possessing at least 80 percent of the total combined voting power of all classes of C stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of C;

(3) D distributes its C stock in a transaction that otherwise qualifies under § 355 (the distribution); and

(4) C subsequently engages in a transaction that, actually or in effect, substantially restores (a) C's shareholders to the relative interests, direct or indirect, they would have held in C (or a successor to C) had the issuance not occurred; and/or (b) the relative voting rights and value of the C classes of stock that were present prior to the issuance (an unwind).

SECTION 4. SAFE HARBORS

The IRS will not assert that a transaction described in section 3 of this revenue procedure lacks substance, and that therefore D lacked control of C immediately before the distribution, within the meaning of § 355(a)(1)(A) of the Code, if the transaction is also described in one of the following safe harbors:

.01 *No Action Taken Within 24 Months*. No action is taken (including the adoption of any plan or policy), at any time prior to 24 months after the distribution, by C's board of directors, C's management, or any of C's controlling shareholders (as defined in § 1.355–7(h)(3)) that would (if implemented) actually or effectively result in an unwind.

.02 *Unanticipated Third Party Transaction*. C engages in a transaction with one or more persons (for example, a merger of C with another corporation) that results in an unwind, regardless of whether the transaction takes place more or less than 24 months after the distribution, provided that—

(1) There is no agreement, understanding, arrangement, or substantial negotiations (within the meaning of § 1.355–7(h)(1)) or discussions (within the meaning of § 1.355–7(h)(6)) concerning the transaction or a similar transaction (applying the principles of § 1.355–7(h)(12) and (13), relating to similar acquisitions), at any time during the 24-month period ending on the date of the distribution; and

(2) No more than 20 percent of the interest in the other party, in vote or value, is owned by the same persons that own more than 20 percent in vote or value of the stock of C. For purposes of the preceding sentence, ownership is determined by application of the constructive ownership rules of § 318(a) as modified by § 304(c)(3), except that for purposes of applying § 318(a)(3)(A) and (B), the principles of § 304(c)(3)(B)(ii) (without regard to § 304(c)(3)(B)(ii)(I)) apply. In the case of a corporation the stock of which is listed on an established market (within the meaning of § 1.355–7(h)(7)), the persons referred to in the first sentence of this section 4.02(2) are limited to controlling shareholders (within the meaning of § 1.355–7(h)(3)(i), taking into account § 1.355–7(h)(8) but without regard to whether stock of a corporation is transferred) and ten-percent shareholders (within the meaning of § 1.355–7(h)(14) but without regard to the second sentence thereof or whether stock of a corporation is transferred).

SECTION 5. SCOPE AND EFFECT OF REVENUE PROCEDURE

.01 *Exclusivity*. The safe harbors provided in section 4 of this revenue procedure apply solely to determine whether an acquisition of control has substance for purposes of § 355(a)(1)(A). Further, they apply only to transactions described in section 3 of this revenue procedure. No inference should be drawn from this revenue procedure regarding the application of any federal tax principles outside the scope of this revenue procedure.

.02 *Effect of Safe Harbor Not Applying*. If a transaction is not described in one of the safe harbors in section 4 of this revenue procedure, this revenue procedure has no effect on the determination of the federal tax treatment of the transaction. Rather, in such cases, the determination of whether an acquisition of control has substance and is therefore respected for purposes of § 355(a)(1)(A), and the proper treatment of all related transactions entered into by or between the parties, will be made under general federal tax principles without regard to the provisions of this revenue procedure.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016–3, 2016–1 I.R.B. 129, is modified by deleting section 5.01(4)

(providing that the acquisition of putative control of a corporation, in certain circumstances, is an area under study in which a ruling letter will not be issued). However, the IRS may decline to issue a letter ruling addressing an acquisition of control when appropriate in the interest of sound tax administration or on other grounds when warranted by the facts or circumstances of a particular case. See Rev. Proc. 2016–1, 2016–1 I.R.B. 1, § 6.02; Rev. Proc. 2016–3, 2016–1 I.R.B. 129, §§ 2.01 and 3.01(50).

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue ruling are Frances Kelly and Theresa Abell of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Ms. Kelly at (202) 317-6975 or Ms. Abell at (202) 317-7700 (neither a toll-free number).

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective with respect to distributions that occur on or after August 8, 2016. However, taxpayers may apply this revenue procedure with respect to a distribution that occurs before August 8, 2016.

Part IV. Items of General Interest

Withdrawal of notice of proposed rulemaking; and notice of proposed rulemaking by cross-reference to temporary regulations.

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

REG–102516–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws the notice of proposed rulemaking published in the **Federal Register** on December 20, 1985, and the notice of proposed rulemaking published in the **Federal Register** on September 21, 1987. In the Rules and Regulations section of this issue of the **Internal Revenue Bulletin**, the Treasury Department and the IRS are issuing temporary regulations relating to the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 20, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG–102516–15), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–102516–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–102516–15).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer A. Records at (202) 317-6853; concerning submissions of comments and requests for a public hearing, Regina Johnson of the Publications and Regulations Branch at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On December 20, 1985, the Treasury Department and the IRS published in the **Federal Register** (50 FR 51874–01) a notice of proposed rulemaking (LR–92–73) under sections 46, 47, 48, and 167 providing proposed rules related to the determination of the amount of taxpayer's qualified investment and recapture of the investment credit with respect to mass assets. On September 21, 1987, the Treasury Department and the IRS published in the **Federal Register** (52 FR 35438–01) a notice of proposed rulemaking (LR–183–82) under sections 48, 196, 312, and 705 providing proposed rules related to the adjustment in the basis of property with respect to which a taxpayer claimed the investment credit. On April 27, 1993, the Treasury Department and the IRS withdrew (58 FR 25587–01) the proposed amendments to § 1.48–7 of the Income Tax Regulations that were published as part of the notice of proposed rulemaking (LR–183–82) published in the **Federal Register** (52 FR 35438–01) on September 21, 1987. Because of numerous statutory changes since the publication of those proposed regulations, the remainder of the proposed regulations (50 FR 51874–01 and 52 FR 35438–01) are withdrawn.

Temporary regulations in the Rules and Regulations section of this issue of the **Internal Revenue Bulletin** amend the Income Tax Regulations (26 CFR part 1) relating to section 50(d)(5). The temporary regulations provide rules regarding the income inclusion required under section 50(d)(5) of the Code by a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules and rules regarding income inclusion upon a disposition or lease termination outside of the recapture period. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Specifically, the Treasury Department and the IRS request comments regarding whether guidance is needed to address the applicability of the income inclusion rules under section 50(d)(5) to trusts, estates, and/or electing large partnerships. All comments will be available for public inspection and copying. A public hearing will be sched-

uled 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.**

Drafting Information

The principal author of these regulations is Jennifer A. Records, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under authority of 26 U.S.C. 7805, the notice of proposed rulemaking (LR–92–73) that was published in the **Federal Register** on December 20, 1985 (50 FR 51874–01), and the notice of proposed rulemaking (LR–183–82) that was published in the **Federal Register** on September 21, 1987 (52 FR 35438–01), are withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.50–1 is revised to read as follows:

§ 1.50–1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

[The text of proposed amendment to § 1.50–1 is the same as the text of § 1.50–1T(a) through (f) published elsewhere in this issue of the **Internal Revenue Bulletin.**

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on July 21, 2016, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2016, 81 F.R. 47739)

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 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

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