INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–38
September 19, 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

Announcement 2016–26, page 376.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

T.D. 9780 page, 357.

This document contains temporary regulations pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015 regarding an election to apply the new partnership audit regime enacted by that act to certain returns of a partnership. The regulations provide the time, form, and manner for making this election. The regulations affect any partnership that wishes to elect to have the new partnership audit regime apply to its returns filed for certain taxable years beginning before January 1, 2018.

EMPLOYEE PLANS

Notice 2016–50, page 371.

This notice provides updated static mortality tables to be used for defined benefit pension plans under § 430(h)(3)(A) of the Internal Revenue Code (Code) and § 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, as amended (ERISA). These updated tables, which are being issued using the methodology in the existing final regulations under § 430(h)(3)(A), apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2017. This notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under § 417(e)(3) of the Code and § 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2017 calendar year.

EXEMPT ORGANIZATIONS

Announcement 2016–31, page 379.

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

ADMINISTRATIVE

REG–105005–16, page 380.

This document contains proposed regulations pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015 regarding an election to apply the new partnership audit regime enacted by that act to certain returns of a partnership. The regulations provide the time, form, and manner for making this election. The regulations affect any partnership that wishes to elect to have the new partnership audit regime apply to its returns filed for certain taxable years beginning before January 1, 2018.

T.D. 9785, page 361.

These final regulations define terms in the Internal Revenue Code relating to the marital status of taxpayers.

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

26 CFR 301.9100–22T

T.D. 9780

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Election into the Partnership Audit Regime Under the Bipartisan Budget Act of 2015

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015 regarding an election to apply the new partnership audit regime enacted by that act to certain returns of a partnership. The regulations provide the time, form, and manner for making this election. The regulations affect any partnership that wishes to elect to have the new partnership audit regime apply to its returns filed for certain taxable years beginning before January 1, 2018.

DATES: *Effective date*: These regulations are effective August 5, 2016.

Applicability Date: For dates of applicability, see §301.9100–22T(e) and (f).

FOR FURTHER INFORMATION CONTACT: Jenni M. Black at (202) 317-6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) to provide rules for the time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA) with respect to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

The BBA was enacted on November 2, 2015, and was amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (PATH Act) on December 18, 2015. Section 1101(a) of the BBA removes subchapter C of chapter 63 of the Internal Revenue Code (Code) effective for partnership taxable years beginning after December 31, 2017. Subchapter C of chapter 63 contains the unified partnership audit and litigation rules that were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA). These partnership audit and litigation rules are commonly referred to as the TEFRA partnership procedures.

Section 1101(b) of the BBA also removes subchapter D of chapter 63 of the Code (containing audit rules for electing large partnerships) and part IV of subchapter K of chapter 1 of the Code (prescribing the income tax treatment for electing large partnerships), effective for partnership taxable years beginning after December 31, 2017.

Section 1101(c) of the BBA replaces the rules to be removed by sections 1101(a) and (b) with a new partnership audit regime. Section 1101(c) adds a new subchapter C to chapter 63 of the Code, including amended Code sections 6221–6241. The BBA also makes related and conforming amendments to other provisions of the Code.

On December 18, 2015, President Obama signed into law the PATH Act. Section 411 of the PATH Act corrects and clarifies certain amendments made by the BBA. The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

1. *Overview of the New Partnership Audit Regime*

Section 6221(a) as added by the BBA provides that, in general, any adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof) shall be determined, and any tax attributable thereto shall be assessed and collected, at the partnership level. The applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any such item or share shall also be determined at the partnership level. Section 6221(b) as added by the BBA provides rules for partnerships that are required to furnish 100 or fewer Schedules K–1, *Partner's Share of Income, Deductions, Credits, etc.,* to elect out of this new regime. Generally, a partnership may elect out of the new regime only if each of its partners is an individual, corporation (including certain types of foreign entities), or estate. Special rules apply for purposes of determining the number of partners in the case of a partner that is an S corporation. Section 6221(b)(2)(C) provides that the Secretary by regulation or other guidance may prescribe rules for purposes of the 100-or-fewer-Schedule K–1 requirement similar to the rules for S corporations with respect to any partner that is not an individual, corporation, or estate.

Section 6223 as amended by the BBA provides that the partnership shall designate, in the manner prescribed by the Secretary, a partner or other person with a substantial presence in the United States as the partnership representative who shall have the sole authority to act on behalf of the partnership under subchapter C of chapter 63 of the Code, as amended by the BBA. In any case in which such a designation is not in effect, the Secretary may select any person as the partnership representative. A partnership and all partners of such partnership shall be bound by actions taken under subchapter C by the partnership and by any final decision in a proceeding brought under subchapter C with respect to the partnership.

Section 6225 as amended by the BBA generally addresses partnership adjustments made by the IRS and the calculation of any resulting imputed underpayment. Section 6225(a) generally provides that the amount of any imputed underpay-

ment resulting from an adjustment must be paid by the partnership. Section 6225(b) describes how an imputed underpayment is determined, and section 6225(c) describes modifications that, if approved by the IRS, may reduce the amount of an imputed underpayment. The PATH Act added to section 6225(c) a special rule addressing certain passive losses of publicly traded partnerships.

Section 6226 as amended by the BBA provides an exception to the general rule under section 6225(a)(1) that the partnership must pay the imputed underpayment. Under section 6226, the partnership may elect to have the reviewed year partners take into account the adjustments made by the IRS and pay any tax due as a result of those adjustments. In this case, the partnership is not required to pay the imputed underpayment. Section 6225(d)(1) defines the reviewed year to mean the partnership taxable year to which the item(s) being adjusted relates.

Under section 6227 as amended by the BBA, the partnership may request an administrative adjustment, which is taken into account in the partnership taxable year the administrative adjustment request (AAR) is made. The partnership generally has three years from the date of filing the return to make an AAR for that year, but may not make an AAR for a partnership taxable year after the IRS has mailed the partnership a notice of an administrative proceeding initiated with respect to the taxable year.

Section 6231 as amended by the BBA describes notices of proceedings and adjustments, including certain time frames for mailing the notices and the authority to rescind any notice of adjustment with the partnership's consent. Section 6232(a) as amended by the BBA provides that any imputed underpayment is assessed and collected in the same manner as if it were a tax imposed for the adjustment year by subtitle A, except that in the case of an AAR that reports an underpayment that the partnership elects to pay, the underpayment shall be paid when the request is filed.

Section 6234 as amended by the BBA generally provides that a partnership may seek judicial review of the adjustments within 90 days of the date the notice of final partnership adjustment is mailed. Section 6235 as amended by the BBA provides the period of limitations on making adjustments.

Section 6241 as amended by the BBA provides definitions and special rules, including rules addressing bankruptcy and treatment when a partnership ceases to exist. In particular, section 6241(4) as amended by the BBA provides that no deduction is allowed under subtitle A for any payment required to be made by a partnership under the new partnership audit regime.

2. *Effective Dates*

Pursuant to section 1101(g)(1) of the BBA, the amendments made by section 1101, which repeal the TEFRA partnership procedures and the rules applicable to electing large partnerships and which create the new partnership audit regime, generally apply to returns filed for partnership taxable years beginning after December 31, 2017. Section 1101(g)(2) of the BBA provides that, in the case of an AAR under section 6227 as amended by the BBA, the amendments made by section 1101 apply to requests with respect to returns filed for partnership taxable years beginning after December 31, 2017. Similarly, section 1101(g)(3) of the BBA provides that, in the case of an election to use the alternative to payment of the imputed underpayment by the partnership under section 6226 as amended by the BBA, the amendments made by section 1101 apply to elections with respect to returns filed for partnership taxable years beginning after December 31, 2017.

Section 1101(g)(4) of the BBA provides that a partnership may elect (at such time and in such form and manner as the Secretary may prescribe) for the amendments made under section 1101 (other than the election out of the new partnership audit regime under section 6221(b) as added by the BBA) to apply to any of its partnership returns filed for partnership taxable years beginning after November 2, 2015 (the date of the enactment of the BBA) and before January 1, 2018.

Explanation of Provisions

This Treasury decision adopts temporary regulations set forth in §301.9100–22T to provide the time, form, and manner for a partnership to make an election pursuant to section 1101(g)(4) of the BBA to have the new partnership audit regime apply to any of its partnership returns filed for a partnership taxable year beginning after November 2, 2015 and before January 1, 2018. Section 301.9100–22T(a) provides the general rule that a partnership may elect at the time and in such form and manner as described in §301.9100–22T for amendments made by section 1101 of the BBA, except section 6221(b) added by the BBA, to apply to any return of the partnership filed for an eligible taxable year (as defined in §301.9100–22T(d)). Accordingly, a partnership that elects to apply the new partnership audit regime to a partnership return filed for an eligible taxable year may not elect out of the new rules under the small partnership exception under section 6221(b) as added by BBA, with respect to that return.

Section 301.9100–22T(a) further provides that an election made not in accordance with these temporary regulations is not valid, and an election, once made, may only be revoked with consent of the IRS. An election is also not valid if it frustrates the purposes of section 1101 of the BBA, which include the collection of any imputed underpayment that may be due by the partnership under section 6225(a) as amended by the BBA. In addition, partnerships may not request an extension of time for making an election described in §301.9100–22T under §301.9100–3.

Section 301.9100–22T(d)(1) generally provides that for purposes of the temporary regulations, an eligible taxable year is any partnership taxable year beginning after November 2, 2015 and before January 1, 2018. Section 301.9100–22T(d)(2) provides exceptions to the definition of an eligible taxable year to avoid proceedings under both the TEFRA partnership procedures and the new partnership audit regime for the same partnership taxable year. To avoid these multiple proceedings, an election under these temporary regulations does not apply if the partnership has taken the affirmative step to apply the TEFRA partnership procedures with respect to the partnership return for that taxable year. This occurs when the tax matters partner has filed a request for an administrative adjustment for the partner-

ship taxable year under section 6227(c) of the TEFRA partnership procedures with respect to a partnership taxable year. Similarly, an election under these temporary regulations also does not apply if a partnership that is not subject to the TEFRA partnership procedures has filed an amended return of partnership income for the partnership taxable year.

Under the general rule in §301.9100–22T(b), an election to have the new partnership audit regime apply must be made when the IRS first notifies the partnership in writing that a partnership return for an eligible taxable year has been selected for examination (a "notice of selection for examination"). Section 301.9100–22T(b)(1) provides that a partnership that wishes to make an election must do so within 30 days of the date of the notice of selection for examination. The notice of selection for examination referred to in §301.9100–22T(b) is a notice that precedes the notice of an administrative proceeding required under section 6231(a) as amended by the BBA. Section 301.9100–22T(b) provides that the IRS will not issue a notice of an administrative proceeding, which cuts off the partnership's time for filing an AAR under section 6227 as amended by the BBA, for at least 30 days after it receives a valid election filed in accordance with §301.9100–22T(b). During the period of at least 30 days after the IRS receives a valid election and before the IRS mails the notice of an administrative proceeding, the partnership may file an AAR under section 6227 as amended by the BBA.

Section 301.9100–22T(b)(2) provides that an election must be in writing and include a statement that the partnership is electing to have the partnership audit regime enacted by the BBA apply to the partnership return identified in the IRS notification of selection for examination. The partnership must write "Election under Section 1101(g)(4)" at the top of the statement. The statement must be provided to the individual identified in the notice of selection for examination as the IRS contact for the examination. In addition, the statement must be dated and signed by the tax matters partner, as defined under section 6231(a)(7) of the TEFRA partnership procedures and the applicable regulations, or an individual who has the authority to sign the partnership return for the taxable year under examination under section 6063 of the Code, the regulations thereunder, and applicable forms and instructions. The statement must include the name, taxpayer identification number, address, and telephone number of the individual who signs the statement, as well as the partnership's name, taxpayer identification number, and tax year to which the statement applies. The statement must include representations that the partnership is not insolvent and does not reasonably anticipate becoming insolvent, the partnership is not currently and does not reasonably anticipate becoming subject to a bankruptcy petition under title 11 of the United States Code, and the partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay the potential imputed underpayment that may be determined during the partnership examination. The statement must also include a representation, signed under penalties of perjury, that the individual signing the statement is duly authorized to make the election under §301.9100–22T(b) and that, to the best of the individual's knowledge and belief, the statement is true, correct, and complete.

A partnership electing into the new partnership audit regime under the BBA will also be required to designate the partnership representative, as defined in section 6223 as amended by the BBA, and provide the partnership representative's name, taxpayer identification number, address and daytime telephone number, and any other information as required in future guidance regarding the partnership representative. The Treasury Department and the IRS expect to issue additional guidance regarding designation of a partnership representative, including who is eligible to be a partnership representative, under section 6223 as amended by the BBA.

Section 301.9100–22T(c) provides an exception to the general rule in §301.9100–22T(b) that a partnership may only elect into the new partnership audit regime after first receiving a notice of selection for examination. This exception provides that a partnership that has not received a notice of selection for examination described in §301.9100–22T(b) may make an election to have the new partnership audit regime apply to a partnership return for an eligible taxable year if the partnership wishes to file an AAR under section 6227 as amended by the BBA. Once an election is made under §301.9100–22T(c), all aspects of the new partnership audit regime, except section 6221(b) as added by the BBA, apply to the return filed for the eligible taxable year subject to the election. As with an election under §301.9100–22T(b), an election under §301.9100–22T(c) may not be revoked without consent of the IRS.

An election under §301.9100–22T(c) must be made only in the manner prescribed by the IRS in accordance with the forms and instructions and other guidance issued by the IRS. In no case may an election under §301.9100–22T(c) be made earlier than January 1, 2018. Consequently, an AAR under section 6227 as amended by the BBA may not be filed before January 1, 2018 (except by partnerships that have been issued a notice of selection for examination pursuant to the procedures discussed above). An AAR filed before that date (other than an AAR filed by a partnership that made a valid election under §301.9100–22T(b)) will be treated as an AAR by the partnership under section 6227 of the TEFRA partnership procedures, or as an amended return of partnership income for partnerships not subject to the TEFRA partnership procedures, and will prevent the partnership taxable year for which the request, or return, is filed from being an eligible taxable year. *See* §301.9100–22T(d)(2). The Treasury Department and the IRS intend to issue guidance regarding AARs under section 6227 as amended by the BBA before January 1, 2018.

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 this regulation. These temporary regulations are published pursuant to section 7805(b)(2) of the Code to provide the time, form, and manner for a

partnership to make an election pursuant to section 1101(g)(4) of the BBA to have the new partnership audit regime apply to any of its returns filed for a partnership taxable year beginning after November 2, 2015 and before January 1, 2018. Without this necessary guidance, a partnership would not be able to make a valid election pursuant to section 1101(g)(4) of the BBA. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin.** Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

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Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

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Section 301.9100–22T is also issued under section 1101(g)(4) of Pub. L. 114-74. * * * * *

Paragraph 2. Section 301.9100–22T is added to read as follows:

§301.9100–22T Time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015 for returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018 (temporary).

(a) *Election*. Pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015, Public Law 114-74 (BBA), a partnership may elect at the time and in such form and manner as described in this section for amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, to apply to any return of the partnership filed for an eligible taxable year as defined in paragraph (d) of this section. An election is valid only if made in accordance with this section. Once made, an election may only be revoked with the consent of the Internal Revenue Service (IRS). An election is not valid if it frustrates the purposes of section 1101 of the BBA. A partnership may not request an extension of time under §301.9100–3 for an election described in this section.

(b) *Election on notification by the IRS*—(1) *Time for making the election*. Except as described in paragraph (c) of this section, an election under this section must be made within 30 days of the date of notification to a partnership, in writing, that a return of the partnership for an eligible taxable year has been selected for examination (a notice of selection for examination).

(2) *Form and manner of making the election*—(i) *In general*. The partnership makes an election under this section by providing a written statement with the words "Election under Section 1101(g)(4)" written at the top that satisfies the requirements of paragraph (b)(2) of this section to the individual identified in the notice of selection for examination as the IRS contact regarding the examination.

(ii) *Statement requirements*. A statement making an election under this section must be in writing and be dated and signed by the tax matters partner, as defined under section 6231(a)(7) (prior to amendment by the BBA), and the applicable regulations, or an individual who has the authority to sign the partnership return for the taxable year under examination under section 6063, the regulations thereunder, and applicable forms and instructions. The fact that an individual dates and signs the statement making the election described in this paragraph (b) shall be prima facie evidence that the individual is authorized to make the election on behalf of the partnership. A statement making an election must include—

(A) The partnership's name, taxpayer identification number, and the partnership taxable year for which the election described in this paragraph (b) is being made;

(B) The name, taxpayer identification number, address, and daytime telephone number of the individual who signs the statement;

(C) Language indicating that the partnership is electing application of section 1101(c) of the BBA for the partnership return for the eligible taxable year identified in the notice of selection for examination;

(D) The information required to properly designate the partnership representative as defined by section 6223 as amended by the BBA, which must include the name, taxpayer identification number, address, and daytime telephone number of the partnership representative and any additional information required by applicable regulations, forms and instructions, and other guidance issued by the IRS;

(E) The following representations—

(*1*) The partnership is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment with respect to the partnership taxable year for which the election described in this paragraph (b) is being made;

(*2*) The partnership has not filed, and does not reasonably anticipate filing, voluntarily a petition for relief under title 11 of the United States Code;

(*3*) The partnership is not subject to, and does not reasonably anticipate becoming subject to, an involuntary petition for relief under title 11 of the United States Code; and

(*4*) The partnership has sufficient assets, and reasonably anticipates having sufficient assets, to pay a potential imputed underpayment with respect to the partnership taxable year that may be determined under subchapter C of chapter 63 of the Internal Revenue Code as amended by the BBA; and

(F) A representation, signed under penalties of perjury, that the individual signing the statement is duly authorized to make the election described in this paragraph (b) and that, to the best of the individual's knowledge and belief, all of the information contained in the statement is true, correct, and complete.

(iii) *Notice of Administrative Proceeding*. Upon receipt of the election described in this paragraph (b), the IRS will promptly mail a notice of administrative proceeding to the partnership and the partnership representative, as required under section 6231(a)(1) as amended by the BBA. Notwithstanding the preceding sentence, the IRS will not mail the notice of administrative proceeding before the date that is 30 days after receipt of the election described in paragraph (b) of this section.

(c) *Election for the purpose of filing an administrative adjustment request (AAR) under section 6227 as amended by the BBA*—(1) *In general*. A partnership that has not been issued a notice of selection for examination as described in paragraph (b)(1) of this section may make an election with respect to a partnership return for an eligible taxable year for the purpose of filing an AAR under section 6227 as amended by the BBA. Once an election under this paragraph (c) is made, all of the amendments made by section 1101 of the BBA, except section 6221(b) as added by the BBA, apply with respect to the partnership taxable year for which such election is made.

(2) *Time for making the election*. No election under this paragraph (c) may be made before January 1, 2018.

(3) *Form and manner of making an election*. An election under this paragraph (c) must be made in the manner prescribed by the IRS for that purpose in accordance with applicable regulations, forms and instructions, and other guidance issued by the IRS.

(4) *Effect of filing an AAR before January 1, 2018*. Except in the case of an election made in accordance with paragraph (b) of this section, an AAR filed on behalf of a partnership before January 1, 2018, is deemed for purposes of paragraph (d)(2) of this section, to be an AAR filed under section 6227(c) (prior to amendment by the BBA) or an amended return of partnership income, as applicable.

(d) *Eligible taxable year*—(1) *In general*. For purposes of this section, the term *eligible taxable year* means any partnership taxable year beginning after November 2, 2015 and before January 1, 2018, except as provided in paragraph (d)(2) of this section.

(2) *Exception if AAR or amended return filed or deemed filed*. Notwithstanding paragraph (d)(1) of this section, a partnership taxable year is not an eligible taxable year for purposes of this section if for the partnership taxable year—

(i) The tax matters partner has filed an AAR under section 6227(c) (prior to amendment by the BBA),

(ii) The partnership is deemed to have filed an AAR under section 6227(c) (prior to the amendment by the BBA) in accordance with paragraph (c)(4) of this section, or

(iii) An amended return of partnership income has been filed or has been deemed to be filed under paragraph (c)(4) of this section.

(e) *Applicability date*. These regulations are applicable to returns filed for partnership taxable years beginning after November 2, 2015 and before January 1, 2018.

(f) *Expiration date*. This section will expire on August 5, 2019.

John M. Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: July 6, 2016.

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

(Filed by the Office of the Federal Register on August 8, 2016, 8:45 a.m., and published in the issue of the Federal Register for August 5, 2016, 81 F.R. 51795)

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26 CFR 301.7701–18: Definitions; spouse, husband and wife, husband, wife, marriage.

T.D. 9785

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 20, 25, 26, 31, and 301

Definition of Terms Relating to Marital Status

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations that reflect the holdings of *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), *Windsor v. United States*, 570 U.S. ___, 133 S. Ct. 2675 (2013), and Revenue Ruling 2013–17 (2013–38 IRB 201), and that define terms in the Internal Revenue Code describing the marital status of taxpayers for federal tax purposes.

DATES: *Effective date*: These regulations are effective on September 2, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Shurtliff at (202) 317-3400 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Generation-Skipping Transfer Tax Regulations (26 CFR part 26), the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301).

On October 23, 2015, the Department of the Treasury (Treasury) and the IRS published in the **Federal Register** (80 FR 64378) a notice of proposed rulemaking (REG–148998–13), which proposed to amend the regulations under section 7701 of the Internal Revenue Code (Code) to provide that, for federal tax purposes, the terms "spouse," "husband," and "wife" mean an individual lawfully married to another individual, and the term "husband and wife" means two individuals lawfully married to each other. In addition, the proposed regulations provided that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by any state, possession, or territory of the United States. Finally, the proposed regulations clarified that the term "marriage" does not include registered domestic partnerships, civil unions, or other similar relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do

not include individuals who have entered into such a relationship.

Written comments responding to the proposed regulations were received, and one person requested a public hearing. A public hearing was held on January 28, 2016; however, the individual who requested the hearing was not able to attend, but did submit supplemental comments. When given the opportunity, no one who attended the hearing asked to speak. After consideration of the comments, Treasury and the IRS adopt the proposed regulations as revised by this Treasury Decision.

Summary of Comments and Explanation of Revisions

The IRS received twelve comments in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection at *http://www.regulations.gov*. The comments are summarized and discussed in this preamble.

I. *Comments on the proposed regulations generally*

The majority of commenters strongly supported the proposed regulations. Many commended Treasury and the IRS for publishing proposed regulations that reflect the holdings of *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), and *Windsor v. United States*, 570 U.S. ___, 133 S. Ct. 2675 (2013), instead of relying on sub-regulatory guidance. In general, commenters applauded Treasury and the IRS for determining that, in light of the *Windsor* and *Obergefell* holdings, marriages of same-sex couples should be treated the same as marriages of opposite-sex couples for federal tax purposes.

One commenter suggested that the regulations specifically reference "same-sex marriage" so that the definitions apply regardless of gender and to avoid any potential issues of interpretation. Treasury and the IRS believe that the definitions in the proposed regulations apply equally to same-sex couples and opposite-sex couples, and that no clarification is needed. Proposed §301.7701–18(a) states, without qualification, that, "[f]or federal tax purposes, the terms *spouse*, *husband*, and *wife* mean an individual lawfully married to another individual," and that the "term *husband and wife* means two individuals lawfully married to each other." The language is specifically gender neutral, which reflects the holdings in *Windsor* and *Obergefell* and is consistent with Revenue Ruling 2013–17. Similarly, the language in proposed §301.7701–18(b) refers to a marriage of two individuals, without specifying gender. Amending the regulations to specifically address a marriage of two individuals of the same sex would undermine the goal of these regulations to eliminate distinctions in federal tax law based on gender. For these reasons, the final regulations do not adopt this comment.

One comment reflected an overall negative view of same-sex marriage. However, the comment did not recommend any specific amendment to the proposed regulations. Because this comment addresses issues outside the scope of these regulations, the final regulations do not address this comment.

II. *Comments on proposed §301.7701–18(a) regarding the definition of terms relating to marital status*

Section 301.7701–18(a) of the proposed regulations provides that for federal tax purposes, the terms "spouse," "husband," and "wife" mean an individual lawfully married to another individual. The term "husband and wife" means two individuals lawfully married to each other. The preamble to the proposed regulations explains that after *Windsor* and *Obergefell*, marriages of couples of the same sex should be treated the same as marriages of couples of the opposite sex for federal tax purposes, and therefore, the proposed regulations interpret these terms in a neutral way to include same-sex as well as opposite-sex couples.

The overwhelming majority of commenters expressed support for proposed §301.7701–18(a). However, one of the commenters recommended that the IRS update all relevant forms to use the gender-neutral term "spouse" instead of "husband and wife." The commenter stated that updating the forms to use gender-neutral terms would be cost-neutral and would more accurately reflect the varied composition of today's families. The commenter further stated that updating the forms to be inclusive of same-sex couples would increase government efficiency by alleviating confusion, delays, and denials caused by current forms using outdated terms.

The commenter's recommendation relates to forms and is therefore outside the scope of these final regulations. Nevertheless, Treasury and the IRS will consider the commenter's recommendation when updating IRS forms and publications.

III. *Comments on proposed §301.7701–18(b) regarding persons who are married for federal tax purposes*

Section 301.7701–18(b) of the proposed regulations provides that a marriage of two individuals is recognized for federal tax purposes if the marriage would be recognized by any state, possession, or territory of the United States. The comments received on paragraph (b) are summarized below.

A. *Comment that proposed §301.7701–18(b) is redundant in light of Obergefell and should be removed*

One commenter stated that proposed §301.7701–18(b) is redundant and unnecessary in light of *Obergefell.* According to the commenter, after *Obergefell*, same-sex marriage should be recognized in every state. Therefore, the commenter states that there is no need for a definition of marriage for federal tax purposes and proposed §301.7701–18(b) should not be finalized.

Treasury and the IRS disagree that proposed §301.7701–18(b) is unnecessary in light of *Obergefell*. The purpose of publishing these regulations is to ensure that, regardless of the term used in the Code, a marriage between two individuals entered into in, and recognized by, any state, possession, or territory of the United States will be treated as a marriage for federal tax purposes. The majority of comments supporting the proposed regulations agree with this view and specifically applaud Treasury and the IRS for publishing regulations to make this clear rather than relying on sub-regulatory guidance. Accordingly, the comment is not adopted and a definition of marriage for federal tax purposes is included in the final regulations under §301.7701–18(b). However, the definition in proposed §301.7701–

18(b) is amended by these final regulations, as described below.

B. *Comment that the language in the proposed rule should be clarified to eliminate unintended consequences*

Another commenter recommended amending §301.7701–18(b) of the proposed regulations to simply state that the determination of an individual's marital status will be made under the laws of the relevant state, possession, or territory of the United States or, where appropriate, under the laws of the relevant foreign country (for example, the country where the marriage was celebrated or, if conflict of laws questions arise, another country). The commenter pointed out that this revision is needed to ensure that a couple's intended marital status is recognized by the IRS. Specifically, the commenter explains that the language in proposed §301.7701–18(b) makes it possible for unmarried couples living in a state that does not recognize common-law marriage to be treated as married for federal tax purposes if the couple would be treated as having entered into a common-law marriage under the law of any state, possession, or territory of the United States.

Next, the commenter explains that the language of the proposed regulations could result in questions about the validity of a divorce. Under Revenue Ruling 67–442, a divorce is recognized for federal tax purposes unless the divorce is invalidated by a court of competent jurisdiction. The language of the proposed regulations would undermine this longstanding revenue ruling if any state would recognize the couple as still married despite the divorce.

Finally, the commenter states that the language of proposed §301.7701–18(b) could create a conflict with proposed §301.7701–18(c) if at least one state, possession, or territory of the United States recognizes a couple's registered domestic partnership, civil union, or other similar relationship as marriage. The commenter points out that in such a situation, regardless of the couple's intention and where they entered into their alternative legal relationship, they could be treated as married for federal tax purposes under the language of proposed §301.7701–18(b) if any state, possession, or territory recognizes their alternative legal relationship as a marriage.

According to the commenter, these examples demonstrate that the language in proposed §301.7701–18(b) could be interpreted to treat couples who divorce or who never intended to enter into a marriage under the laws of the state where they live or where they entered into an alternative legal relationship as married for federal tax purposes. Without a change to proposed §301.7701–18(b), these couples would be required to analyze the laws of all the states, possessions, and territories of the United States to determine whether any of these laws would fail to recognize their divorce or would denominate their alternative legal relationship as a marriage

This was not the intent of the proposed regulations. Rather, the proposed regulations were intended to recognize a marriage only when a couple entered into a relationship denominated as marriage under the law of any state, territory, or possession of the United States or under the law of a foreign jurisdiction if such a marriage would be recognized by any state, possession, or territory of the United States. To address these concerns, §301.7701–18(b) is revised in the final regulations to provide a general rule for recognizing a domestic marriage for federal tax purposes and a separate rule for recognizing foreign marriages for federal tax purposes (discussed in section III.C. *Comments on marriages entered into in foreign jurisdictions* of this preamble).

Accordingly, under the general rule in §301.7701–18(b)(1) of the final regulations, a marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of the married couple's place of domicile. This revision addresses the concerns raised by the commenter and ensures that only couples entering into a relationship denominated as marriage, and who have not divorced, are treated as married for federal tax purposes. By relying on the place of celebration to determine which state, possession, or territory of the United States is the point of reference for determining whether a couple is married for federal tax purposes, this rule is consistent with the longstanding position of Treasury and the IRS regarding the determination of marital status for federal tax purposes. See Revenue Ruling 2013–17; Revenue Ruling 58–66 (1958–1 CB 60).

C. *Comments on marriages entered into in foreign jurisdictions*

Section 301.7701–18(b) of the proposed regulations generally provides that a marriage of two individuals is recognized for federal tax purposes if the marriage would be recognized by any state, possession, or territory of the United States. The preamble to the proposed regulations explains that under this rule, as a matter of comity, a marriage conducted in a foreign jurisdiction will be recognized for federal tax purposes if that marriage would be recognized in at least one state, possession, or territory of the United States. The rule in §301.7701–18(b) of the proposed regulations was intended to address both domestic and foreign marriages, regardless of where the couple is domiciled and regardless of whether the couple ever resides in the United States (or a possession or territory of the United States). One commenter suggested amending the proposed regulation to recognize marriages performed in any foreign jurisdiction, for federal tax purposes, if the marriage is recognized in at least one state, possession, or territory of the United States. Similarly, another commenter recommended amending the proposed regulation to reflect the discussion in the preamble to the proposed regulation regarding the recognition of marriages conducted in foreign jurisdictions. This commenter noted that the preamble to the proposed regulation states, "[W]hether a marriage conducted in a foreign jurisdiction will be recognized for federal tax purposes depends on whether that marriage would be recognized in at least one state, possession, or territory of the United States." The commenter recommended that, rather than relying on the preamble, language should be included in the regulations' text making this recognition explicit.

Proposed §301.7701–18(b) was drafted to apply to both domestic and foreign marriages. In light of the comments, the proposed rule has been amended to be

more explicit. To clarify how foreign marriages will be recognized for federal tax law, §301.7701–18(b) has been amended to provide a specific rule for foreign marriages. Accordingly, a new paragraph (b)(2) has been added to §301.7701–18 to provide that two individuals entering into a relationship denominated as marriage under the laws of a foreign jurisdiction are married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States. This rule enables couples who are married outside the United States to determine marital status for federal tax purposes, regardless of where they are domiciled and regardless of whether they ever reside in the United States. Although this rule requires couples to review the laws of the various states, possessions, and territories to determine if they would be treated as married, it is sufficient if they would be treated as married in a single jurisdiction and there is no need to consider the laws of all of the states, territories, and possessions of the United States. In addition, unlike the language in §301.7701–18(b) of the proposed regulations, this rule incorporates the place of celebration as the reference point for determining whether the legal relationship is a marriage or a legal alternative to marriage, avoiding the potential conflict with §301.7701–18(c) identified by the commenter, above. Finally, this rule avoids the concern that a couple intending to enter into a legal alternative to marriage will be treated as married because this rule recognizes only legal relationships denominated as marriage under foreign law as eligible to be treated as marriage for federal tax purposes. This separate rule for foreign marriages in §301.7701–18(b)(2) is consistent with the proposed regulations' intent, as described in the preamble to the notice of proposed rulemaking, and provides the clarity commenters request.

D. *Comment on common-law marriages*

One commenter stated that some states that recognize common-law marriage only do so in the case of opposite-sex couples. Accordingly, the commenter recommended amending the regulations to clarify that common-law marriages of same-sex couples will be recognized for federal tax purposes. The commenter further suggested that any same-sex couple that would have been considered married under the common law of a state but for the fact that the state's law prohibited same-sex couples from being treated as married under common law be allowed to file an amended return for any open tax year to claim married status.

As discussed in the preamble to the proposed regulations, on June 26, 2013, the Supreme Court in *Windsor* held that Section 3 of the Defense of Marriage Act, which generally prohibited the federal government from recognizing marriages of same-sex couples, is unconstitutional because it violates the principles of equal protection and due process. On June 26, 2015, the Supreme Court held in *Obergefell* that state laws are "invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples" and "that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." *Obergefell*, 576 U.S. at _ (slip op., at 23, 28).

In light of these holdings, Treasury and the IRS determined that marriages of couples of the same sex should be treated the same as marriages of couples of the opposite sex for federal tax purposes. See 80 FR 64378, 64379. Neither the proposed regulations nor these final regulations differentiate between civil marriages and common-law marriages, nor is such differentiation warranted or required for federal tax purposes. See Revenue Ruling 58-66 (treating common-law marriage as valid, lawful marriage for federal tax purposes) and Revenue Ruling 2013-17 (reiterating that common-law marriages are valid, lawful marriages for federal tax purposes). Thus, the general rules regarding marital status for federal tax purposes provided in the proposed and final regulations address marital status regardless of whether the marriage is a civil marriage or a common-law marriage.

Furthermore, even after the *Obergefell* decision, there are several states, including some states that recognize common-law marriage, that still have statutes prohibiting same-sex marriage. However, after *Obergefell*, we are unaware of any state enforcing such statutes or preventing a couple from entering into a common-law marriage because the couple is a same-sex couple. Accordingly, the commenter's suggestion has not been adopted.

In addition, Revenue Ruling 2013–17 does not distinguish between civil marriages and common-law marriages of same-sex couples. Therefore, same-sex couples in common-law marriages may rely on Revenue Ruling 2013–17 for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from the holdings of Revenue Ruling 2013–17 and the definitions provided in these regulations, provided the applicable limitations period for filing such claim under section 6511 has not expired.

IV. *Comments on proposed §301.7701–18(c) regarding persons who are not married for federal tax purposes*

Section 301.7701–18(c) of the proposed regulations provides that the terms "spouse," "husband," and "wife" do not include individuals who have entered into a registered domestic partnership, civil union, or other similar relationship not denominated as marriage under the law of a state, possession, or territory of the United States. That section further provides that the term "husband and wife" does not include couples who have entered into such a relationship and that the term "marriage" does not include such relationship.

The preamble to the proposed regulations provides several reasons for the rule in proposed regulation §301.7701–18(c). First, except when prohibited by statute, the IRS has traditionally looked to states to define marriage. Second, regardless of rights accorded to relationships such as civil unions, registered domestic partnerships, and similar relationships under state law, states have intentionally chosen not to denominate those relationships as marriage. Third, some couples deliberately choose to enter into or remain in a civil union, registered domestic partnership, or similar relationship even when they could have married or converted

these relationships to marriage, and these couples have an expectation that their relationship will not be treated as marriage for purposes of federal tax law. Finally, no Code provision indicates that Congress intended to recognize civil unions, registered domestic partnerships, or similar relationships as marriages. Several commenters submitted comments addressing this section of the proposed regulations. Many agreed with proposed §301.7701–18(c), but three did not. These comments are discussed below.

A. *Comments that specifically agree with proposed regulation §301.7701–18(c)*

In addition to the four commenters that expressed strong support for the proposed regulations generally, two commenters provided specific comments agreeing with the position taken in proposed §301.7701–18(c). One of these commenters stated that because no Code section requires, or even permits, Treasury and the IRS to allow individuals in registered domestic partnerships, civil unions, and other similar relationships, to elect a married filing status under section 6013, any extension of section 6013 is a policy choice that Congress should make. This commenter also noted that to evaluate the rights and obligations created by various state legal relationships to determine if they are the same as relationships denominated as a marriage would be a significant drain on IRS resources. Finally, the commenter provided historical examples demonstrating how states have attempted to change state family law to reduce their residents' federal income tax obligations. Based on this historical analysis, the commenter concluded that if Treasury and the IRS were to reverse their position on the status of registered domestic partnerships, civil unions, and other similar relationships, there would be nothing to prevent states from permitting a private contract to create an equivalent state-law marriage to enable their residents to choose a filing status that reduces their federal income tax obligations.

The second commenter that agreed with proposed §301.7701–18(c) observed that the proposed regulations respect the choices made by couples who entered into a civil union or registered domestic partnership with the expectation that their relationship will not be treated as a marriage for federal law purposes. The commenter also observed that the proposed regulations recognize that couples deliberately remain in these relationships, rather than marry, for lawful reasons.

B. *Comments that disagree with proposed regulation §301.7701–18(c)*

Three commenters disagreed with the proposed regulations, stating that registered domestic partnerships, civil unions, and similar formal relationships should be treated as marriage for federal tax purposes. Their comments are summarized below.

1. Comments regarding relationships with the same rights and responsibilities as marriage

Two of the commenters recommended that the substance of the legal rights and obligations of individuals in registered domestic partnerships, civil unions, and similar relationships should control whether these relationships are recognized as marriage for federal tax purposes, rather than the label applied to the relationship. These commenters stated that regardless of whether a relationship is denominated as marriage, any relationship that has the same rights and responsibilities as marriage under state law should be treated as marriage for federal tax purposes. One commenter cited registered domestic partners in California as an example of a relationship not denominated as marriage but with the same rights and responsibilities as marriage under state law. Another commenter cited civil unions in New Jersey and Connecticut as an example of a relationship not denominated as marriage where the couple has the same rights and obligations as spouses.

While some states extend the rights and responsibilities of marriage to couples in registered domestic partnerships, civil unions, or other similar relationships, as the commenters point out, these states also retain marriage as a separately denominated legal relationship. We also recognize that some states have permitted couples in those relationships to convert them to marriage under state law. Many of those states have continued to designate marriage separately from alternative legal relationships that are not a marriage, such as registered domestic partnerships, civil unions, or other similar relationships.

The IRS has traditionally recognized a couple's relationship as a marriage if the state where the relationship was entered into denominates the relationship as a marriage. See Revenue Ruling 58–66 (if a state recognizes a common-law marriage as a valid marriage, the IRS will also recognize the couple as married for purposes of federal income tax filing status and personal exemptions). Similarly, the IRS has not traditionally evaluated the rights and obligations provided by a state to determine if an alternative legal relationship should be treated as marriage for federal tax purposes.

Adopting the commenters' recommendation to treat registered domestic partnerships, civil unions, and similar relationships as married for federal tax purposes if the couple has the same rights and responsibilities as individuals who are married under state law would be inconsistent with Treasury and the IRS's longstanding position to recognize the marital status of individuals as determined under state law in the administration of the federal income tax. This position is, moreover, consistent with the reasoning of the only federal court that has addressed whether registered domestic partners should be treated as spouses under the Code. See *Dragovich v. U.S. Dept. of Treasury*, 2014 WL 6844926 (N.D. Cal. Dec. 4, 2014) (on remand following dismissal of appeal by the Ninth Circuit, 12–16628 (9th Cir. Oct. 28, 2013)) (granting government's motion to dismiss claim that section 7702B(f) discriminates because it does not interpret the term spouse to include registered domestic partners).

In addition, it would be unduly burdensome for the IRS to evaluate state laws to determine if a relationship not denominated as marriage should be treated as a marriage. It would be also be burdensome for taxpayers in these alternative legal relationships, to evaluate state law to determine marital status for federal tax purposes. Besides being burdensome, the determination of whether the relationship should be treated as a marriage could result in controversy between the IRS and

the affected taxpayers. This can be avoided by treating a relationship as a marriage only if a state denominates the relationship as a marriage, as the IRS has traditionally done.

2. Comments regarding deference to state law

Two of the commenters stated that by not recognizing registered domestic partnerships, civil unions, and other similar relationships as marriage for federal tax purposes, the IRS is disregarding the states' intent in creating these alternative legal relationships rather than deferring to state law.

To illustrate, one of the commenters noted that Illinois affords parties to a civil union the same rights and obligations as married spouses, and that when Illinois extended marriage to same-sex couples, it enacted a statutory provision permitting parties to a civil union to convert their union to a marriage during the one-year period following the law's enactment. 750 Ill. Comp. Stat. Sec. 75/65 (2014). The Illinois law also provides that, for a couple converting their civil union to a marriage, the date of marriage relates back to the date the couple entered into the civil union. The commenter stated that the fact that couples could convert their civil union to a marriage, and that the date of their marriage would relate back to the date of their union, indicates that Illinois defines civil unions as marriages.

The commenter further observed that when Delaware extended the right to marry to same-sex couples, it stopped allowing its residents to enter into civil unions. Following a one-year period during which couples could voluntarily convert their civil union into marriage, Delaware automatically converted into marriage all remaining civil unions (except those subject to a pending proceeding for dissolution, annulment or legal separation), with the date of each marriage relating back to the date that each civil union was established. The commenter concluded that the laws in Delaware and Illinois make it clear that by not recognizing civil unions and domestic partnerships as marriage, the IRS is not deferring to the state's judgment in defining marital status.

Rather than support the commenter's position, these examples actually support proposed §301.7701–18(c). As discussed in the preamble to the proposed regulations, states have carefully considered which legal relationships will be recognized as a marriage and which will be recognized as a legal alternative to marriage, and have enacted statutes accordingly. For instance, Illinois did not automatically convert all civil unions into marriages or include civil unions in the definition of marriage. Instead, it allowed couples affected by the new law to either remain in a civil union or convert their civil union into a marriage. Furthermore, under Illinois law, couples who waited longer than one year to convert their civil union into marriage must perform a new ceremony and pay a fee to have their civil union converted into and be recognized as a marriage. Moreover, Illinois continues to allow both same-sex couples and opposite-sex couples to enter into civil unions, rather than marriages.

The law in Delaware also demonstrates the care that states have taken to determine which legal relationships will be denominated as marriage. In 2014, Delaware law eliminated the separate designation of civil union in favor of recognizing only marriages for couples who want the legal status afforded to couples under state law. On July 1, 2014, Delaware automatically converted all civil unions to marriage by operation of law. Del. Code Ann. tit. 13, Sec. 218(c). Civil unions that were subject to a pending proceeding for dissolution, annulment, or legal separation as of the date the law went into effect, however, were not automatically converted. As a result, these couples are not treated as married under Delaware law, and the dissolution, annulment, or legal separation of their civil union is governed by Delaware law relating to civil unions rather than by Delaware law relating to marriage. Del. Code Ann. tit. 13, Sec. 218(d).

As these examples demonstrate, states have carefully determined which relationships will be denominated as marriage. In addition, states may retain alternatives to marriage even after allowing couples to convert those relationships to marriage. IRS's reliance on a state's denomination of a relationship as marriage to determine marital status for federal tax purposes avoids inconsistencies with a state's intent regarding the status of a couple's relationship under state law.

3. Comments regarding taxpayer expectations

As explained in the notice of proposed rulemaking, some couples have chosen to enter into a civil union or registered domestic partnership even when they could have married. In addition, some couples who are in civil unions or registered domestic partnerships have chosen not to convert those relationships into marriage when they had the opportunity to do so. In many cases, the choice not to enter into a relationship denominated as marriage was deliberate, and may have been made to avoid treating the relationship as marriage for purposes of federal law, including federal tax law.

Two commenters stated that taxpayer expectations do not support §301.7701–18(c). According to the commenters, many same-sex couples entered into a domestic partnership or civil union because at the time they were prohibited under state law from marrying. According to the commenters, now that they have the option to marry, some of these couples have remained in domestic partnerships or civil unions not by choice, but because one member of the couple has died, has become incapacitated, or otherwise lacks the capacity to enter into a marriage. One of the commenters stated that these couples are trapped in this alternative legal relationship and have no ability to marry, even if they have an expectation that their relationship be treated as a marriage for federal tax purposes. The other commenter pointed out that some taxpayers may have resisted entering into or converting their relationship into marriage because of a principled opposition to the marriage institution, but may still have an expectation of being treated as married for federal tax purposes. Thus, the commenters conclude, many taxpayers do not voluntarily enter into or remain in alternative legal relationships because of any particular expectation that they will not be treated as married for federal purposes.

The commenters stated that even if the type of relationship entered into represents a decision not to be treated as married for federal purposes, taxpayer expectations should not be taken into account for purposes of determining whether alternative legal relationships are recognized as marriage for federal tax purposes. One commenter stated that taking taxpayer expectations into account encourages tax-avoidance behavior. The other commenter stated that it is inappropriate for the IRS to determine tax policy based on taxpayers' expectations of reaping nontax benefits, such as Social Security.

However, another commenter, who also disagreed with proposed §301.7701–18(c), stated the opposite, explaining that non-tax reasons support treating alternative legal relationships as marriage for federal tax purposes. According to this commenter, because nationwide protections for employment and housing are lacking, many same-sex couples remain at risk for termination at work or eviction from an apartment if their sexual orientation is discovered. Similarly, the commenter contends that individuals in the Foreign Service who work overseas may also feel unsafe entering into a same-sex marriage. Therefore, the commenter explained, in light of these realities, registered domestic partnerships, civil unions, and similar relationships provide a level of stability and recognition for many couples through federal programs like Social Security, and, therefore, should be treated as marriages for federal tax purposes. Finally, the commentator stated that recognizing these relationships as marriages for federal tax purposes would not impede the IRS's ability to effectively administer the internal revenue laws.

Treasury and the IRS disagree with the commenters and continue to believe that the regulation should not treat registered domestic partnerships, civil unions, and other similar relationships—entered into in states that continue to distinguish these relationships from marriages—as marriage for federal tax purposes. While not all same-sex couples in registered domestic partnerships, civil unions, or similar relationships had an opportunity to marry when they entered into their relationship, after *Obergefell*, same-sex couples now have the option to marry under state law.

In addition, the fact that some couples may not voluntarily enter into marriage because of a principled opposition to marriage supports not treating alternative legal relationships as marriages for federal tax purposes because this ensures that these couples do not risk having their relationship characterized as marriage. Further, as discussed in the preamble to the proposed regulations, treating alternative legal relationships as marriages for federal tax purposes may have legal consequences that are inconsistent with these couples' expectations. For instance, the filing status of a couple treated as married for federal tax purposes is strictly limited to filing jointly or filing as married filing separately, which often results in a higher tax liability than filing as single or head of household. After *Obergefell*, a rule that treats a couple as married for federal tax purposes only if their relationship is denominated as marriage for state law purposes allows couples in a registered domestic partnership, civil union, or similar relationship to make a choice: they may either stay in that relationship and avoid being married for federal tax purposes or they may marry under state law and be treated as married for federal tax purposes. The rule recommended by the commenters would eliminate this choice.

4. Comments regarding difficulties faced by couples if alternative legal relationships are not treated as marriage

Two commenters stated that not recognizing registered domestic partnerships, civil unions, and other similar relationships as marriages for federal tax purposes makes it difficult for couples in these relationships to calculate their federal tax liability. One commenter explained that when these couples dissolve their relationships, they are required to go through the same processes that spouses go through in a divorce; alimony obligations are calculated in the same way, and property divisions occur in the same way as for spouses. Yet, because they are not treated as married for federal tax purposes, these couples cannot rely on the certainty of tax treatment associated with provisions under the Code such as sections 71 (relating to exclusion from income for alimony and separate maintenance), 215 (relating to the deduction for alimony or separate maintenance payments), 414(p) (defining qualified domestic relations orders), 1041 (relating to transfers of property between spouses incident to divorce), 2056 (relating to the estate tax marital deduction), and 2523 (relating to gifts to spouses).

The purpose of these regulations is to define marital status for federal tax law purposes. The fact that the Code includes rules that address transfers of property between individuals who are or were married should not control how marriage is defined for federal tax purposes. Rather, as discussed in this preamble, the regulations are consistent with the IRS's longstanding position that marital status for federal tax purposes is determined based on state law. See Revenue Ruling 2013–17; Revenue Ruling 58–66. Accordingly, the proposed regulations have not been changed based on this comment. In addition, although not addressed specifically in the Code, guidance relating to registered domestic partnerships, civil unions, and other similar relationships, including answers to frequently asked questions, is available at www.irs.gov.

5. Comments regarding the fact that the Code does not address the status of alternative legal relationships

After describing the reasons for not treating civil unions, registered domestic partnerships, and similar relationships as marriage for federal tax purposes, the preamble to the proposed regulations states "Further, no provision of the Code indicates that Congress intended to recognize as marriages civil unions, registered domestic partnerships, or similar relationships." That language makes clear that the Code is silent with respect to alternative legal relationships, and therefore, does not preclude the IRS from not recognizing these relationships as marriage for federal tax purposes.

Two commenters took issue with this language and stated that the government should not interpret the lack of a Code provision specifically addressing the marital status of legal alternatives to marriage

as an indication of Congressional intent that such relationships should not be recognized as marriage for federal tax purposes. In addition, the commenters explained that the reason Congress did not enact such a provision after DOMA is because it would have been inconsistent with DOMA's restriction on treating same-sex couples as married for federal law purposes.

These comments are unpersuasive. Since DOMA was enacted on September 21, 1996, many states have allowed both same-sex and opposite-sex couples to enter into registered domestic partnerships, civil unions, and similar relationships. Although it would have been inconsistent for Congress to recognize alternative legal relationships between same-sex couples as marriage under DOMA, nothing prevented Congress from recognizing these relationships as marriages for federal tax purposes in the case of opposite-sex couples. Yet, since DOMA was enacted nearly 20 years ago, Congress has passed no law indicating that opposite-sex couples in registered domestic partnerships, civil unions, or similar relationships are recognized as married for federal tax purposes. Because no Code provision specifically addresses the marital status of alternative legal relationships for federal tax purposes, there is no indication that Congress intended to recognize registered domestic partnerships, civil unions, or similar relationships as marriage for purposes of federal tax law.

C. *Final regulations under §301.7701–18(c)*

In sum, Treasury and the IRS received twelve comments with respect to the proposed regulations. Only three of those comments disagreed with the approach taken in proposed §301.7701–18(c), which provides that registered domestic partnerships, civil unions, and similar relationships not denominated as marriage by state law are not treated as marriage for federal tax purposes. Of the nine comments that supported the proposed regulations, two provided specific reasons why they agreed with the approach taken in proposed §301.7701–18(c). Accordingly, the majority of comments supported the approach taken in proposed §301.7701–18(c).

For the reasons discussed above, the points raised by the three comments that disagreed with the approach taken in proposed §301.7701–18(c) are not persuasive. Treasury and the IRS believe that federal tax law should continue to defer to states for the determination of marital status, and the rule in proposed §301.7701–18(c) does that. Any other approach would unduly burden the IRS and taxpayers by requiring an interpretation of multiple state laws and potential controversy when disagreements arise regarding this interpretation. In addition, Treasury and the IRS continue to believe that treating couples in registered domestic partnerships, civil unions, and similar relationships not denominated as marriage under state law, as married for federal tax purposes could undermine taxpayer expectations regarding the federal tax consequences of these relationships. To provide a rule that concludes otherwise would leave those couples who choose alternative legal relationships over marriage without a remedy to avoid the federal tax consequences of being married. In contrast, couples who wish to be treated as married may do so after *Windsor* and *Obergefell.*

While §301.7701–18(c) of the regulations will continue to provide that registered domestic partnerships, civil unions, and other similar relationships not denominated as marriage under state law are not recognized as married for federal tax purposes, §301.7701–18(c) is revised in the final regulations similar to revisions to §301.7701–18(b) to account for the place of celebration. As discussed in section III. *Comments on proposed §301.7701–18(b) regarding persons who are married for federal tax purposes* of this preamble, this change is necessary to ensure that there is a point of reference for which state law is applicable when determining whether the alternative legal relationship is recognized as marriage under state law. Accordingly, §301.7701–18(c) is revised in the final regulations to provide that the terms "spouse," "husband," and "wife" and "husband and wife" do not include individuals who have entered into a registered domestic partnership, civil union, or other similar relationship not denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into, regardless of domicile.

V. *Comment that the final regulations should address community-property issues*

One commenter recommended amending the proposed regulations to make a clear connection between marital status and community property tax treatment under state law. These regulations provide definitions for purposes of determining marital status for federal tax law purposes. These regulations do not provide substantive rules for the treatment of married or non-married couples under federal tax law. Accordingly, because the federal tax treatment of issues that arise under community-property law involves resolution of issues under substantive tax law, which is outside the scope of these regulations, the commenter's recommendation is not adopted by these final regulations.

Effect on Other Documents

These final regulations will obsolete Revenue Ruling 2013–17 as of September 2, 2016. Taxpayers may continue to rely on guidance related to the application of Revenue Ruling 2013–17 to employee benefit plans and the benefits provided under such plans, including Notice 2013–61, Notice 2014–37, Notice 2014–19, Notice 2014–1, and Notice 2015–86 to the extent they are not modified, superseded, obsoleted, or clarified by subsequent guidance.

Effective Date

These regulations are effective on September 2, 2016.

Statement of Availability for IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government 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. In addition, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Mark Shurtliff of the Office of the Associate Chief Counsel, Procedure and Administration.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 26, 31, 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 1.7701–1 is added to read as follows:

§1.7701–1 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

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

Par. 4. Section 20.7701–2 is added to read as follows:

§20.7701–2 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

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

Par. 6. Section 25.7701–2 is added to read as follows:

§25.7701–2 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 7. The authority citation for part 26 continues to read in part as follows:

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

Par. 8. Section 26.7701–2 is added to read as follows:

§26.7701–2 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

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

Par. 9. The authority citation for part 31 continues to read in part as follows:

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

Par. 10. Section 31.7701–2 is added to read as follows:

§31.7701–2 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 11. The authority citation for part 301 continues to read in part as follows:

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

Par. 12. Section 301.7701–18 is added to read as follows:

§301.7701–18 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general*. For federal tax purposes, the terms *spouse*, *husband*, and *wife* mean an individual lawfully married to another individual. The term *husband and wife* means two individuals lawfully married to each other.

(b) *Persons who are lawfully married for federal tax purposes*—(1) *In general*. Except as provided in paragraph (b)(2) of this section regarding marriages entered into under the laws of a foreign jurisdiction, a marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of domicile.

(2) *Foreign marriages*. Two individuals who enter into a relationship denominated as marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage

under the laws of at least one state, possession, or territory of the United States, regardless of domicile.

(c) *Persons who are not lawfully married for federal tax purposes*. The terms *spouse*, *husband*, and *wife* do not include individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship not denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into, regardless of domicile. The term *husband and wife* does not include couples who have entered into such a formal relationship, and the term *marriage* does not include such formal relationships.

(d) *Applicability date*. The rules of this section apply to taxable years ending on or after September 2, 2016.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: August 12, 2016

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

(Filed by the Office of the Federal Register on August 31, 2016, 4:15 p.m., and published in the issue of the Federal Register for September 2, 2016, 81 F.R. 60609)

Part III. Administrative, Procedural, and Miscellaneous

Updated Static Mortality Tables for Defined Benefit Pension Plans for 2017

Notice 2016–50

PURPOSE

This notice provides updated static mortality tables to be used for defined benefit pension plans under § 430(h)(3)(A) of the Internal Revenue Code (Code) and § 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, as amended (ERISA). These updated tables, which are being issued using the methodology in the existing final regulations under § 430(h)(3)(A), apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2017.

This notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under § 417(e)(3) of the Code and § 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2017 calendar year.

BACKGROUND

Section 412 of the Code provides minimum funding requirements that generally apply for defined benefit plans. Section 412(a)(2) provides that § 430 specifies the minimum funding requirements that generally apply to defined benefit plans that are not multiemployer plans. Section 430(a) defines the minimum required contribution for such a plan by reference to the plan's funding target for the plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under § 430. Under § 430(h)(3)(A), except as provided in § 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under § 430. Those tables are to be based on the actual experience of pension plans and projected trends in that experience. Section 430(h)(3)(B) provides that periodically (at least every 10 years) these mortality tables shall be revised to reflect the actual experience of pension plans and projected trends in that experience.

Section 430(h)(3)(C) provides that, upon request by a plan sponsor and approval by the Secretary, substitute mortality tables that meet the applicable requirements may be used in lieu of the standard mortality tables provided under § 430(h)(3)(A). Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability, with separate tables for those whose disabilities occurred in plan years beginning before January 1, 1995, and those whose disabilities occurred in plan years beginning after December 31, 1994. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to § 430(h)(3)(A) or the substitute mortality tables under § 430(h)(3)(C).

Mortality Tables for Purposes of § 430

Section 1.430(h)(3)–1 of the regulations provides for mortality tables, based on the tables contained in the RP-2000 Mortality Tables Report,[1] adjusted for mortality improvement using Projection Scale AA as recommended in that report. Section 1.430(h)(3)–1 generally requires the use of separate tables for nonannuitant and annuitant periods for large plans (those with over 500 participants as of the valuation date). Sponsors of small plans (those with 500 or fewer participants as of the valuation date) are permitted to use combined tables that apply the same mortality rates to both annuitants and nonannuitants.

Section 1.430(h)(3)–1 describes the methodology that the IRS will use to establish mortality tables as provided under § 430(h)(3)(A). The mortality tables set forth in § 1.430(h)(3)–1 are based on expected mortality as of 2000 and reflect the impact of expected improvements in mortality. The regulations permit plan sponsors to apply the projection of mortality improvement in either of two ways: through use of static tables that are updated annually to reflect expected improvements in mortality, or through use of generational tables. The regulations include static mortality tables for use in actuarial valuations as of valuation dates occurring in 2008 and provide that the mortality tables for valuation dates occurring in future years are to be provided in the Internal Revenue Bulletin. Notice 2008–85, 2008–42 IRB 905, sets forth the static mortality tables that apply under § 430(h)(3)(A) for valuation dates during 2009 through 2013. Notice 2013–49, 2013–32 IRB 127, provides static mortality tables for valuation dates during 2014 and 2015. Notice 2015–53, 2015–33 IRB 190, provides static mortality tables for valuation dates during 2016.

Notice 2015–53 stated that the Treasury Department and the IRS expect to issue proposed regulations revising the base mortality rates and projection factors in § 1.430(h)(3)–1 and that the new regulations would not apply until 2017. The Treasury Department and the IRS still expect to issue proposed regulations revising the base mortality rates and projection factors in § 1.430(h)(3)–1. However, in order to give sufficient time for notice and comment on the proposed regulations, the Treasury Department and the IRS expect that the final regulations will apply beginning in 2018.

As noted in Notice 2015–53, after regulations implementing new mortality tables are finalized, as additional data regarding mortality improvement for more recent years becomes available, the Treasury Department and IRS expect to regularly review trends in mortality improvement and will update the projection of mortality improvement as necessary.

Application of These Tables for Other Funding Rules

Section 1.431(c)(6)–1 provides that the same mortality assumptions that ap-

[1]The RP-2000 Mortality Tables Report was released by the Society of Actuaries in July 2000 and updated in May 2001. Society of Actuaries, RP-2000 Mortality Tables Report, at www.soa.org/Research/Experience-Study/Pension/research-rp-2000-mortality-tables.aspx.

ply for purposes of § 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the full-funding rules of § 431(c)(6). For this purpose, a multiemployer plan is permitted to apply either the annually-adjusted static mortality tables or the generational mortality tables.

Section 433 provides the minimum funding standards for CSEC plans, which are described in section 414(y). Section 433(h)(3)(B)(i) provides that the Secretary may by regulation prescribe mortality tables to be used in determining current liability for purposes of § 433(c)(7)(C). The Treasury Department and the IRS expect to issue regulations prescribing that the mortality tables described in § 430(h)(3)(A) are to be used to determine current liability under § 433(c)(7)(C).

Application of Mortality Tables for Minimum Present Value Requirements under § 417(e)(3)

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) cannot be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Under § 1.417(e)–1(d), these rules must also be used to compute the present value of a plan benefit for purposes of determining whether consent for a distribution is required under § 411(a)(11)(A).

Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year under § 430(h)(3)(A) (without regard to § 430(h)(3)(C) or (D)), modified as appropriate by the Secretary.

Rev. Rul. 2007–67, 2007–2 CB 1047, provides that, except as otherwise stated in future guidance, the applicable mortality table under § 417(e)(3) for 2008 is based on a fixed blend of 50% of the static male combined mortality rates and 50% of the static female combined mortality rates promulgated under § 1.430(h)(3)–1(c)(3) of the proposed regulations (which have since been issued as final regulations). The applicable mortality table for purposes of § 417(e)(3) is not a generational table. Rev. Rul. 2007–67 also provides that the applicable mortality table for a given year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year. Rev. Rul. 2007–67 further states that the § 417(e)(3) applicable mortality table for each subsequent year will be published in future guidance and, except as provided in that future guidance, will be determined from the § 430(h)(3)(A) tables on the same basis as the applicable mortality table for 2008. Notice 2008–85 set forth the § 417(e)(3) applicable mortality tables for distributions with annuity starting dates that occur during stability periods beginning during calendar years 2009 through 2013. Notice 2013–49 set forth the § 417(e)(3) applicable mortality tables for distributions with annuity starting dates that occur during stability periods beginning during calendar years 2014 and 2015. Notice 2015–53 set forth the § 417(e)(3) applicable mortality tables for distributions with annuity starting dates that occur during stability periods beginning during calendar year 2016.

STATIC MORTALITY TABLES FOR 2017

This notice sets forth the mortality tables for minimum funding and present value requirements for 2017.

The static mortality tables that apply under § 430(h)(3)(A) for valuation dates occurring during 2017 are set forth in the appendix to this notice. The mortality rates in these tables have been developed from the base mortality rates, projection factors, and weighting factors set forth in § 1.430(h)(3)–1(d), using the blending techniques described in the preamble to those regulations.

The static mortality tables that apply under § 417(e)(3) for distributions with annuity starting dates occurring during stability periods beginning in 2017 are set forth in the appendix to this notice in the column labeled "Unisex." These tables were derived from the tables used for § 430(h)(3)(A) following the procedures set forth in Rev. Rul. 2007–67.

Drafting Information

The principal authors of this notice are Michael Brewer and Linda S. F. Marshall of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Michael Brewer or Linda Marshall at (202) 317-6700 (not a toll-free number).

APPENDIX

Mortality tables for valuation dates occurring during 2017 and distributions subject to § 417(e)(3) with annuity starting dates occurring during stability periods beginning in 2017

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Table for Distributions Subject to § 417(e)(3)
1	0.000334	0.000334	0.000334	0.000299	0.000299	0.000299	0.000317
2	0.000225	0.000225	0.000225	0.000195	0.000195	0.000195	0.000210
3	0.000187	0.000187	0.000187	0.000146	0.000146	0.000146	0.000167
4	0.000146	0.000146	0.000146	0.000109	0.000109	0.000109	0.000128

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Table for Distributions Subject to § 417(e)(3)
5	0.000134	0.000134	0.000134	0.000098	0.000098	0.000098	0.000116
6	0.000128	0.000128	0.000128	0.000092	0.000092	0.000092	0.000110
7	0.000123	0.000123	0.000123	0.000086	0.000086	0.000086	0.000105
8	0.000113	0.000113	0.000113	0.000077	0.000077	0.000077	0.000095
9	0.000109	0.000109	0.000109	0.000073	0.000073	0.000073	0.000091
10	0.000111	0.000111	0.000111	0.000074	0.000074	0.000074	0.000093
11	0.000115	0.000115	0.000115	0.000075	0.000075	0.000075	0.000095
12	0.000119	0.000119	0.000119	0.000078	0.000078	0.000078	0.000099
13	0.000126	0.000126	0.000126	0.000081	0.000081	0.000081	0.000104
14	0.000137	0.000137	0.000137	0.000091	0.000091	0.000091	0.000114
15	0.000146	0.000146	0.000146	0.000101	0.000101	0.000101	0.000124
16	0.000154	0.000154	0.000154	0.000109	0.000109	0.000109	0.000132
17	0.000163	0.000163	0.000163	0.000117	0.000117	0.000117	0.000140
18	0.000171	0.000171	0.000171	0.000120	0.000120	0.000120	0.000146
19	0.000179	0.000179	0.000179	0.000117	0.000117	0.000117	0.000148
20	0.000187	0.000187	0.000187	0.000114	0.000114	0.000114	0.000151
21	0.000200	0.000200	0.000200	0.000111	0.000111	0.000111	0.000156
22	0.000211	0.000211	0.000211	0.000112	0.000112	0.000112	0.000162
23	0.000230	0.000230	0.000230	0.000118	0.000118	0.000118	0.000174
24	0.000247	0.000247	0.000247	0.000124	0.000124	0.000124	0.000186
25	0.000273	0.000273	0.000273	0.000132	0.000132	0.000132	0.000203
26	0.000312	0.000312	0.000312	0.000145	0.000145	0.000145	0.000229
27	0.000325	0.000325	0.000325	0.000152	0.000152	0.000152	0.000239
28	0.000335	0.000335	0.000335	0.000160	0.000160	0.000160	0.000248
29	0.000351	0.000351	0.000351	0.000169	0.000169	0.000169	0.000260
30	0.000378	0.000378	0.000378	0.000191	0.000191	0.000191	0.000285
31	0.000425	0.000425	0.000425	0.000237	0.000237	0.000237	0.000331
32	0.000479	0.000479	0.000479	0.000271	0.000271	0.000271	0.000375
33	0.000537	0.000537	0.000537	0.000295	0.000295	0.000295	0.000416
34	0.000598	0.000598	0.000598	0.000315	0.000315	0.000315	0.000457
35	0.000658	0.000658	0.000658	0.000333	0.000333	0.000333	0.000496
36	0.000716	0.000716	0.000716	0.000349	0.000349	0.000349	0.000533
37	0.000770	0.000770	0.000770	0.000364	0.000364	0.000364	0.000567
38	0.000795	0.000795	0.000795	0.000381	0.000381	0.000381	0.000588
39	0.000815	0.000815	0.000815	0.000400	0.000400	0.000400	0.000608
40	0.000834	0.000834	0.000834	0.000435	0.000435	0.000435	0.000635
41	0.000855	0.000882	0.000855	0.000477	0.000477	0.000477	0.000666
42	0.000881	0.000977	0.000882	0.000525	0.000525	0.000525	0.000704
43	0.000912	0.001120	0.000915	0.000578	0.000578	0.000578	0.000747
44	0.000949	0.001311	0.000956	0.000634	0.000634	0.000634	0.000795
45	0.000992	0.001550	0.001005	0.000671	0.000678	0.000671	0.000838
46	0.001029	0.001836	0.001051	0.000707	0.000766	0.000708	0.000880
47	0.001069	0.002170	0.001104	0.000741	0.000897	0.000745	0.000925

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Table for Distributions Subject to § 417(e)(3)
48	0.001110	0.002552	0.001162	0.000802	0.001072	0.000811	0.000987
49	0.001153	0.002981	0.001227	0.000867	0.001291	0.000885	0.001056
50	0.001196	0.003458	0.001298	0.000968	0.001553	0.000997	0.001148
51	0.001238	0.003488	0.001350	0.001083	0.001670	0.001117	0.001234
52	0.001282	0.003475	0.001432	0.001253	0.001887	0.001300	0.001366
53	0.001373	0.003523	0.001578	0.001451	0.002167	0.001519	0.001549
54	0.001473	0.003570	0.001743	0.001683	0.002506	0.001781	0.001762
55	0.001639	0.003726	0.002070	0.001953	0.002912	0.002135	0.002103
56	0.001849	0.003960	0.002519	0.002273	0.003397	0.002594	0.002557
57	0.002096	0.004270	0.002918	0.002564	0.003888	0.003015	0.002967
58	0.002385	0.004682	0.003396	0.002803	0.004363	0.003408	0.003402
59	0.002634	0.005082	0.003855	0.003066	0.004904	0.003867	0.003861
60	0.002911	0.005565	0.004406	0.003348	0.005497	0.004413	0.004410
61	0.003318	0.006263	0.005185	0.003650	0.006135	0.005093	0.005139
62	0.003649	0.006899	0.005957	0.003966	0.006817	0.005847	0.005902
63	0.004122	0.007807	0.007034	0.004292	0.007545	0.006738	0.006886
64	0.004476	0.008639	0.007954	0.004624	0.008330	0.007605	0.007780
65	0.004823	0.009567	0.009013	0.004958	0.009189	0.008576	0.008795
66	0.005328	0.010861	0.010485	0.005287	0.010119	0.009693	0.010089
67	0.005656	0.012024	0.011712	0.005607	0.011119	0.010770	0.011241
68	0.005776	0.012975	0.012715	0.005916	0.012210	0.011910	0.012313
69	0.006057	0.014333	0.014096	0.006209	0.013435	0.013165	0.013631
70	0.006117	0.015450	0.015207	0.006485	0.014844	0.014561	0.014884
71	0.006925	0.017095	0.016857	0.007072	0.016080	0.015805	0.016331
72	0.008542	0.018981	0.018764	0.008246	0.017886	0.017625	0.018195
73	0.010967	0.021143	0.020958	0.010007	0.019406	0.019183	0.020071
74	0.014200	0.023587	0.023441	0.012354	0.021508	0.021322	0.022382
75	0.018241	0.026973	0.026859	0.015288	0.023178	0.023044	0.024952
76	0.023091	0.030063	0.029990	0.018809	0.025537	0.025445	0.027718
77	0.028749	0.034264	0.034221	0.022917	0.028814	0.028754	0.031488
78	0.035215	0.039012	0.038992	0.027612	0.031762	0.031734	0.035363
79	0.042490	0.044421	0.044416	0.032894	0.035067	0.035060	0.039738
80	0.050573	0.050573	0.050573	0.038761	0.038761	0.038761	0.044667
81	0.057989	0.057989	0.057989	0.042902	0.042902	0.042902	0.050446
82	0.066374	0.066374	0.066374	0.047560	0.047560	0.047560	0.056967
83	0.073988	0.073988	0.073988	0.052808	0.052808	0.052808	0.063398
84	0.084299	0.084299	0.084299	0.058732	0.058732	0.058732	0.071516
85	0.093574	0.093574	0.093574	0.067030	0.067030	0.067030	0.080302
86	0.103746	0.103746	0.103746	0.076586	0.076586	0.076586	0.090166
87	0.117747	0.117747	0.117747	0.087502	0.087502	0.087502	0.102625
88	0.133521	0.133521	0.133521	0.097462	0.097462	0.097462	0.115492
89	0.147557	0.147557	0.147557	0.110864	0.110864	0.110864	0.129211
90	0.166587	0.166587	0.166587	0.122521	0.122521	0.122521	0.144554

Age	MALE	MALE	MALE	FEMALE	FEMALE	FEMALE	UNISEX
	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Non-Annuitant Table	2017 Annuitant Table	2017 Optional Combined Table for Small Plans	2017 Table for Distributions Subject to § 417(e)(3)
91	0.181448	0.181448	0.181448	0.134544	0.134544	0.134544	0.157996
92	0.201536	0.201536	0.201536	0.146653	0.146653	0.146653	0.174095
93	0.217406	0.217406	0.217406	0.162438	0.162438	0.162438	0.189922
94	0.233252	0.233252	0.233252	0.174224	0.174224	0.174224	0.203738
95	0.254942	0.254942	0.254942	0.185384	0.185384	0.185384	0.220163
96	0.270586	0.270586	0.270586	0.195744	0.195744	0.195744	0.233165
97	0.285785	0.285785	0.285785	0.210133	0.210133	0.210133	0.247959
98	0.307815	0.307815	0.307815	0.218634	0.218634	0.218634	0.263225
99	0.322373	0.322373	0.322373	0.225897	0.225897	0.225897	0.274135
100	0.336381	0.336381	0.336381	0.231833	0.231833	0.231833	0.284107
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834	0.301731
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498	0.313092
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044	0.324542
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055	0.335529
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116	0.345501
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811	0.353906
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725	0.361363
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441	0.368721
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544	0.375772
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617	0.382309
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246	0.388123
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015	0.393008
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507	0.396754
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308	0.399154
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Part IV. Items of General Interest

Announcement of Disciplinary Sanctions from the Office of Professional Responsibility

Announcement 2016–26

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81–38 and superseding guidance in Revenue Procedure 2014–42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer **and** signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014–42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81–38 or to comply with Circular 230 as required by Revenue Procedure 2014–42 may be determined ineligible to engage in limited practice as a representative of any taxpayer. Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or

failed to comply with any of the requirements to act as a representative.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" agreement admitting to one or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
Lafayette	Crawford, Scott M.	CPA	Suspended by default decision in expeditedproceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 3, 2016
	Gardner, Paul E., see Louisiana			
	Grodsky, Edward B., see New York			
Fullerton	McPeak, Rick L.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 3, 2016
La Habra	McKinney, Gordon A.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 28, 2016
Sacramento	Richards, James S.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 15, 2016
Trabuco Canyon	Rosenbaum, Keith A.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 25, 2016
Colorado				
Parker	Iley, Don R.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 10, 2016
Florida				
Jacksonville	Keasler, Jr., Frank R.	Attorney/ CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 21, 2016
Palm Beach Gardens	Konigsberg, Paul J.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 25, 2016

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Boynton Beach	Van De Warker, John N.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 12, 2016
Kansas				
Wichita	Boisseau, Eldon L.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 21, 2016
Louisiana				
Gretna	Gardner, Paul E.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 15, 2016
Maryland				
Monkton	Good, Tamara R.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 21, 2016
Missouri				
	Boisseau, Eldon L., see Kansas			
New Jersey				
Asbury Park	Levin, Robert J.	CPA	Suspended by consent under 31 C.F.R. § 10.51(a)(6)	Indefinite from April 12, 2016
New York				
Oceanside	Grodsky, Edward B.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 12, 2016
	Konigsberg, Paul J., see Florida			
North Carolina				
Lumberton	Chavis, Ertle K.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 15, 2016
Texas				
Ector	Cox, Sharron L.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 19, 2016
Katy	Hammond, III, Charles E.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 24, 2016

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Fair Oaks	Mitchell, James L.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 19, 2016
West Virginia				
Charlestown	Walsh, Edward J.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 12, 2016
Wisconsin				
Madison	Armstrong, Jenny R.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 3, 2016
Greendale	Noggle, John C.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 28, 2016
Sheboygan	Sherman, Scott	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 25, 2016

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

Announcement 2016–31

Table of Contents

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 19, 2016 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Mount Carmel Youth Ranch	January 1, 2008	Powell, WY

Notice of Proposed Rulemaking by Cross-reference to Temporary RegulationsElection into the Partnership Audit Regime Under the Bipartisan Budget Act of 2015

REG–105005–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations pursuant to section 1101(g)(4) of the Bipartisan Budget Act of 2015 regarding an election to apply the new partnership audit regime enacted by that act to certain returns of a partnership. The regulations provide the time, form, and manner for making this election. The regulations affect any partnership that wishes to elect to have the new partnership audit regime apply to its returns filed for certain taxable years beginning before January 1, 2018.

DATES: Written or electronic comments and requests for a public hearing must be received by October 4, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-105005–16), room 5207, Internal Revenue Service, PO 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–105005–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sentelectronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–105005–16). The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC 20224. FOR FURTHER INFORMATION CONTACT:Jenni M. Black at (202) 317-6834 (not a toll-free number).

Background and Explanation of Provisions

This notice of proposed rulemaking cross-references to temporary regulations published in the Rules and Regulations section of this issue of the **Bulletin**. The temporary regulations amend the Procedure and Administration Regulations (26 CFR part 301) to provide rules for the time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA) for taxable years beginning after November 2, 2015 and before January 1, 2018. The BBA was enacted on November 2, 2015, and was amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (PATH Act) on December 18, 2015.

The text of the temporary regulations also serves as the text of these proposed regulations. The Background and Explanation of Provisions contained in the preamble to the temporary regulations explains these proposed regulations.

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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information contained in this regulation is voluntary and will only occur if a partnership elects into the new partnership audit regime enacted by the BBA for taxable years beginning after November 2, 2015 and before January 1, 2018. In addition, the new partnership audit regime is new, and the IRS has yet to provide guidance on the application of the new partnership audit regime generally. As a result, the IRS estimates that there will not be a substantial number of small entities that elect into the regime for an eligible taxable year. However, even if a substantial number of small entities elect into the new BBA regime for an eligible taxable year, the election under this regulation requires only a short statement containing limited and readily available information. Therefore, the IRS estimates that the economic impact on electing small entities will not be significant. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

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

* * * * *

Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

* * * **

Section 301.9100–22 also issued under section 1101(g)(4) of Pub. L. 114–74.

* * * **

Par 2. Section 301.9100–22 is added to read as follows:

§301.9100–22 Time, form, and manner of making the election under section 1101(g)(4) of the Bipartisan Budget Act of 2015 for taxable years beginning after November 2, 2015 and before January 1, 2018.

[The text of this proposed section is the same as the text of §301.9100–22T published elsewhere in this issue of the **Bulletin**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on August 4, 2016, 8:45 a.m., and published in the issue of the Federal Register for August 5, 2016, 81 F.R. 51853)

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.

Numerical Finding List[1]

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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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Superseded by
Notice 2016-41, 2016-27 I.R.B. *5*

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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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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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