INTERNAL REVENUE
BULLETIN

Bulletin No. 2016–48
November 28, 2016

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

REG–122387–16, page 779.

This document withdraws portions of a notice of proposed rulemaking (INTL–49–86, subsequently converted to REG–209001–86) published in the Federal Register (53 FR 22186) on June 14, 1988, (the 1988 NPRM). The withdrawn portions relate to stock redemptions through related corporations, the application of section 956 to United States property indirectly held by a controlled foreign corporation (CFC), and certain related party factoring transactions, as well as the definition of the term "obligation" for purposes of section 956.

REG–114734–16, page 777.

This document contains proposed regulations that provide rules regarding the determination of the amount of United States property treated as held by a controlled foreign corporation (CFC) through a partnership. The proposed regulations affect United States shareholders of CFCs.

Notice 2016–65, page 772.

This notice updates the appendix to Notice 2013–1, which lists the Indian tribes who have settled tribal trust cases against the United States. Notice 2012–60 originally was published in IRB 2012–41 (October 9, 2012). Notice 2012–60 was superceded by Notice 2013–1 IRB 2013–3, and the appendix to Notice 2013–1 was superceded by Notice 2013–16 (IRB 2013–14), then Notice 2013–36, then Notice 2013–55, then Notice 2014–22, Notice 2014–38, then Notice 2014–61, and then Notice 2015–20. However, sixteen additional tribes have settled cases against the United States since the publication of Notice 2016–41, so we are seeking to publish an updated appendix to Notice 2013–1. This notice would supersede Notice 2016–41.

Notice 2016–68, page 774.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for November 2016 used under § 417(e)(3)(D), the 24-month average segment rates applicable for November 2016, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 (MAP-21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

T.D. 9792, page 751.

This document contains final regulations that provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships. In addition, the final regulations provide rules for determining whether a CFC is considered to derive rents and royalties in the active conduct of a trade or business for purposes of determining foreign personal holding company income (FPHCI), as well as rules for determining whether a CFC holds United States property as a result of certain related party factoring transactions. The final regulations affect United States shareholders of CFCs.

T.D. 9793, page 768.

This document contains final regulations that remove the 36-month non-payment testing rule from the list of identifiable events that cause a deemed discharge that must be reported to the IRS on a Form 1099–C.

EXEMPT ORGANIZATIONS

Announcement 2016–41, page 780.

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).

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

Section 954 — Foreign Base Company Income

26 CFR 1.954–2 Foreign personal holding company income.

T.D. 9792

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships. In addition, the final regulations provide rules for determining whether a CFC is considered to derive rents and royalties in the active conduct of a trade or business for purposes of determining foreign personal holding company income (FPHCI), as well as rules for determining whether a CFC holds United States property as a result of certain related party factoring transactions. This document finalizes proposed regulations, and withdraws temporary regulations, published on September 2, 2015. It also finalizes proposed regulations, and withdraws temporary regulations, published on June 14, 1988. The final regulations affect United States shareholders of CFCs.

DATES: *Effective Date*: These regulations are effective on November 3, 2016.

Applicability Dates: For dates of applicability, see §§ 1.954–2(i), 1.956–1(g), 1.956–2(h), 1.956–3(d), and 1.956–4(f).

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins, (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2015, the Department of the Treasury (Treasury Department) and the IRS published final and temporary regulations under sections 954 and 956 (TD 9733) (the 2015 temporary regulations) in the **Federal Register** (80 FR 52976, as corrected at 80 FR 66415 and 80 FR 66416). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–155164–09) (the 2015 proposed regulations) in the **Federal Register** (80 FR 53058, as corrected at 80 FR 66485) cross-referencing the temporary regulations and proposing additional regulations under section 956 regarding the treatment as United States property of property held by a CFC in connection with certain transactions involving partnerships. No public hearing was requested or held. Formal written comments were received with respect to the 2015 proposed regulations under section 956 and are available at www.regulations.gov or upon request. No comments were received with respect to the 2015 proposed regulations under section 954. This Treasury decision adopts the 2015 proposed regulations, with the changes described in the Summary of Comments and Explanation of Revisions section of this preamble, as final regulations and removes the corresponding temporary regulations. No changes are made to the regulations under section 954.

Additionally, on June 14, 1988, the Treasury Department and the IRS published temporary regulations under sections 304, 864, and 956 (TD 8209) in the **Federal Register** (53 FR 22163), which included guidance under section 956(c)(3) treating as United States property certain trade or service receivables acquired by a CFC from a related United States person in certain factoring transactions (the 1988 temporary regulations). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (INTL–49–86, subsequently converted to REG–209001–86) (the 1988 proposed regulations) in the **Federal Register** (53 FR 22186) cross-referencing the 1988 temporary regulations. Although formal written comments were received on the 1988 proposed regulations, none relate to the specific issues addressed in these final regulations. This Treasury decision adopts § 1.956–3 of the 1988 proposed regulations without substantive change as a final regulation (together with the 2015 proposed regulations adopted as final regulations, these final regulations) and removes the corresponding temporary regulations. This preamble does not discuss the formal written comments concerning other rules in the 1988 proposed regulations, which are beyond the scope of these final regulations. The other portions of the 1988 proposed regulations remain in proposed form, except to the extent withdrawn in the partial withdrawal of the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Bulletin** (REG–122387–16).

The Treasury Department and the IRS published Revenue Ruling 90–112 (1990–2 CB 186) (see § 601.601(d)(2)(ii)(*b*)), on December 31, 1990, before promulgating the rule in § 1.956–2(a)(3) that, prior to modification by this document, addressed the application of section 956 when a CFC is a partner in a partnership that holds property that would be United States property if owned directly by the CFC. This Treasury decision withdraws Revenue Ruling 90–112.

Summary of Comments and Explanation of Revisions

Section 956 determines the amount that a United States shareholder (as defined in section 951(b)) of a CFC must include in gross income with respect to the CFC under section 951(a)(1)(B). This amount is determined, in part, based on the average of the amounts of United

States property held, directly or indirectly, by the CFC at the close of each quarter during its taxable year. For this purpose, in general, the amount taken into account with respect to any United States property is the adjusted basis of the property, reduced by any liability to which the property is subject. See section 956(a) and § 1.956–1(e). Section 956(e) grants the Secretary authority to prescribe such regulations as may be necessary to carry out the purposes of section 956, including regulations to prevent the avoidance of section 956 through reorganizations or otherwise.

These final regulations retain the basic approach and structure of the 2015 proposed regulations and the portion of the 1988 proposed regulations that relates to § 1.956–3, with certain revisions, as discussed in this Summary of Comments and Explanation of Revisions.

1. *Changes to § 1.956–1 to Conform to the Current Statute*

These final regulations take into account certain statutory changes in section 13232(a) of the Revenue Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) (the 1993 Act) regarding the methodology for calculating the amount determined under section 956 with respect to a United States shareholder of a CFC. As enacted in section 12 of the Revenue Act of 1962 (Pub. L. 87–834, 76 Stat. 960) (the 1962 Act), and prior to the modification made by the 1993 Act, section 951(a)(1)(B) required a United States shareholder to include an amount in income based on its pro rata share of the CFC's "increase in earnings invested in United States property" for the relevant taxable year. Section 956 (as then in effect), in turn, defined the amount of earnings of a CFC invested in United States property at the close of a taxable year and set forth rules for determining a United States shareholder's pro rata share of the CFC's increase in earnings for a taxable year.

The 1993 Act revised the structure and operating rules for determining amounts included in income under sections 951(a)(1)(B) and 956. In general, as revised in 1993, the amount determined under section 956 is based on a United States shareholder's pro rata share of the average amount of United States property held by the CFC as of the close of each quarter of the relevant taxable year. The amendments made by the 1993 Act are effective for tax years of CFCs beginning after September 30, 1993, and for tax years of United States shareholders in which or with which such tax years of CFCs end.

On February 20, 1964, the Treasury Department and the IRS published § 1.956–1 (TD 6704 (29 FR 2599), which was amended by TD 6795 (30 FR 933) in 1965, TD 7712 (45 FR 52373) in 1980, and TD 8209 (53 FR 22163) in 1988) when the section 956 amount was still determined based on the increase of a CFC's earnings invested in United States property during the relevant tax year. Amendments to § 1.956–1 made after 1993 (TD 9402 (73 FR 35580) and TD 9530 (76 FR 36993, corrected at 76 FR 43891)) did not revise the regulation to reflect the changes to section 956(a) made by the 1993 Act. The Treasury Department and the IRS are aware that some taxpayers have attempted to apply parts of § 1.956–1 to tax years for which those parts were superseded by the 1993 Act. In order to avoid confusion, these final regulations revise the section heading of § 1.956–1 (as well as the parallel heading of § 1.956–1T), and the general rules in § 1.956–1(a), to reflect changes made in the 1993 Act. In addition, these final regulations remove the text in paragraphs (b)(1) through (3), (c), and (d) of § 1.956–1 in order to conform § 1.956–1 to the Code and reserve paragraphs (c) and (d). As a result, proposed § 1.956–1(b)(4) is redesignated as § 1.956–1(b) in these final regulations.

2. *Section 1.956–1(b) Anti-Avoidance Rule*

Prior to the 2015 temporary regulations, § 1.956–1T(b)(4) provided that a CFC would be considered to hold indirectly investments in United States property acquired by any other foreign corporation that is controlled by the foreign corporation if one of the principal purposes for creating, organizing, or funding (thorugh capital contributions or debt) such other foreign corporation is to avoid the application of section 956 with respect to the CFC. The 2015 temporary regulations modified the anti-avoidance rule in § 1.956–1T(b)(4) so that the rule can also apply when a foreign corporation controlled by a CFC is funded other than through capital contributions or debt and expanded the rule to apply to transactions involving partnerships that are controlled by a CFC.

A. *Definition of funding*

In response to the additional guidance on the term funding, a comment suggested that the modification gives rise to uncertainty concerning the application of the anti-avoidance rule and requested that the anti–avoidance rule be revised in these final regulations in one of three alternative ways in order to clarify the application of the rule: (i) reverting to the language in § 1.956–1T(b)(4) in effect prior to the 2015 temporary regulations; (ii) defining the term funding as either a related CFC contributing capital to or holding debt of the funded entity, or an unrelated person contributing capital to or holding debt of the funded entity, provided that the contribution or loan would not have been made or maintained on the same terms but for the funding CFC contributing capital to or holding debt of the unrelated person; or (iii) clarifying the scope of the term funding with examples that depict when the rule applies and illustrating that common business transactions conducted on arm's-length terms and certain other transactions would not be considered a funding for purposes of the rule.

The Treasury Department and the IRS continue to be concerned about tax planning that is inconsistent with the policy underlying section 956. The policy concerns addressed by the anti-avoidance rule are not limited to fundings by debt or equity; rather, the anti-avoidance rule should apply to all fundings with a principal purpose of avoiding the purposes of section 956, regardless of the form of the funding. The Treasury Department and the IRS have concluded that reverting to the prior formulation of the rule, which applied when there was a "funding (through capital contributions or debt)," or adopting the narrow definition of funding proposed in the comment could allow taxpayers to engage in planning that would inappropriately avoid the application of section 956.

In addition, the Treasury Department and the IRS disagree with the view expressed in the comment that the expanded scope of fundings could result in common business transactions being subject to the anti-avoidance rule. Whether a transaction is a "funding" does not alone determine whether the transaction is subject to the anti-avoidance rule because the rule applies only when a principal purpose of the funding is to avoid section 956 with respect to the funding CFC. Thus, although the 2015 temporary regulations broaden the funding standard, the "avoidance" requirement ensures that ordinary course transactions are not subject to the anti-avoidance rule.

The Treasury Department and the IRS agree, however, that examples illustrating that the anti-avoidance rule should not apply to certain common transactions would be helpful. Accordingly, these final regulations add new examples that address common transactions highlighted by the comment to further illustrate the distinction between funding transactions that are subject to the anti-avoidance rule and common business transactions to which the anti-avoidance rule does not apply. See *Example 4* through *Example 6* of § 1.956–1(b)(4). For example, *Example 5* and *Example 6* illustrate a sale of property for cash in the ordinary course of business and a repayment of a loan, respectively, to which the anti-avoidance rule does not apply. However, *Example 4* illustrates that, consistent with the holding in situation 3 in Revenue Ruling 87–89 (1987–2 CB 195), a CFC may be treated as holding United States property as a result of a deposit with an unrelated bank if the unrelated bank would not have made a loan to another person on the same terms absent the CFC's deposit.

B. *Application to Acquisitions of Property by a Partnership Controlled by a CFC*

Section 1.956–1(b)(4) of the 2015 proposed regulations expands the anti-avoidance rule to include transactions involving partnerships that are controlled by a CFC that provides funding to the partnership. Proposed § 1.956–1(b)(4)(iii) contains a coordination rule that provides that this new partnership rule applies only to the extent that the amount of United States property that a CFC would be treated as holding under the rule exceeds the amount that it would be treated as holding under proposed § 1.956–4(b). The coordination rule prevents a CFC from being treated as holding duplicative amounts of United States property as a result of a single partnership interest pursuant to the application of proposed §§ 1.956–1(b)(4) and 1.956–4(b). This rule is illustrated by *Example 4* in proposed § 1.956–1(b)(4)(iv), which is included as *Example 7* in § 1.956–1(b)(4) of these final regulations.

A comment recommended that the anti-avoidance rule should not apply in the case of a partnership in which the funding CFC is a partner, as in *Example 4* in proposed § 1.956–1(b)(4)(iv). Noting that proposed § 1.956–4(b) would treat a funding CFC that is a partner in the funded partnership as owning a share of any United States property acquired by the partnership using the funding, the comment asserted that the inclusion resulting from proposed § 1.956–4(b) is sufficient and there is no need for the anti-avoidance rule to apply to create a disproportionate inclusion that would deter taxpayers from entering into transactions in order to avoid the application of section 956. The Treasury Department and the IRS, however, do not agree with the premise of this comment that the anti-avoidance rule results in a disproportionate inclusion in this case. Rather, the Treasury Department and the IRS consider that, in the circumstances in which the anti-avoidance rule would apply, the funded entity, which is controlled by the CFC, essentially serves as a surrogate for the funding CFC with respect to the investment in United States property. Accordingly, the Treasury Department and the IRS have determined that, when a partnership acts as a surrogate for a CFC partner's investment in United States property, the CFC partner's interest in the United States property should not be limited to the CFC's attributable share of the property as determined under § 1.956–4(b). For these reasons, the comment is not adopted.

With respect to the coordination rule in proposed § 1.956–1(b)(4)(iii), another comment noted that a CFC also could be treated as holding duplicative amounts of United States property as a result of a single partnership obligation pursuant to the application of proposed §§ 1.956–1(b)(4) and 1.956–4(c). For example, suppose a domestic corporation (P) wholly owns two controlled foreign corporations (FS1 and FS2), and P is a 40% partner in a foreign partnership (FPRS), while FS1 is a 60% partner. Suppose further that FS2 loans \$100x to FPRS, which FPRS uses to acquire \$100x of United States property. In these circumstances, FS2 would be treated as holding \$40x of United States property under proposed § 1.956–4(c) and existing § 1.956–2(a) (and would not be treated as holding any United States property under proposed § 1.956–4(b)) and could be treated under proposed § 1.956–1(b)(4) and existing § 1.956–2(a) as holding the \$100x of United States property acquired by the partnership with its funding. The Treasury Department and the IRS have determined that it is appropriate to limit the amount of United States property that FS2 is treated as holding in the example to \$100x, consistent with the result that would apply if FS2 had not funded FPRS's acquisition of United States property and instead had acquired the United States property itself. (Note that, in a case where proposed § 1.956–1(b)(4) would apply, FPRS should not be treated as holding the United States property that would be treated under that rule as held by FS2, and accordingly, FS1 should not be treated as holding United States property under proposed § 1.956–4(b) in this example.) Accordingly, the coordination rule in proposed § 1.956–1(b)(4)(iii) is expanded in final § 1.956–1(b)(3) to prevent a CFC from being treated as holding duplicative amounts of United States property under the anti-avoidance rule as a result of a partnership obligation, and an additional example is added to illustrate this rule. See § 1.956–1(b)(4), *Example 8*.

Further, as noted in the preamble to the 2015 proposed regulations, the references to § 1.956–2(a)(3) in proposed § 1.956–1(b)(4)(iii) and in the examples in proposed § 1.956–1(b)(4)(iv) that illustrate the application of proposed § 1.956–1(b)

(4)(i)(C) are supplanted in these final regulations with references to § 1.956–4(b), which replaces § 1.956–2(a)(3) in these final regulations as the applicable rule concerning United States property held indirectly by a controlled foreign corporation through a partnership.

3. *Factoring Rules*

As noted in the Background section of this preamble, in 1988, the Treasury Department and the IRS proposed § 1.956–3 to address the application of section 956 to property acquired by a CFC in certain related party factoring transactions. No comments were received on these proposed rules. The 2015 proposed regulations proposed revisions to these proposed rules in § 1.956–3(b)(2)(ii) with respect to the application of section 956 to acquisitions of receivables indirectly through a nominee, pass-through entity, or related foreign corporation, and no comments were received on these proposed revisions. These final regulations adopt these portions of the 2015 proposed regulations without change, and also adopt the remainder of the rules in proposed § 1.956–3 that were proposed in the 1988 proposed regulations, with minor revisions to improve clarity and conform to existing regulations.

4. *Partnership Property Indirectly Held by a CFC Partner*

Under proposed § 1.956–4(b)(1), a CFC partner in a partnership is treated as holding its attributable share of property held by the partnership. In addition, proposed § 1.956–4(b)(1) provides that, for purposes of section 956, a partner's adjusted basis in the property of the partnership equals the partner's attributable share of the partnership's adjusted basis in the property.

Under proposed § 1.956–4(b)(2), a CFC partner's attributable share of partnership property is determined in accordance with the CFC partner's liquidation value percentage with respect to the partnership, unless the partnership agreement contains a special allocation of income (or, where appropriate, gain) with respect to a particular item or items of partnership property that differs from the partner's liquidation value percentage in a particular taxable year. In that case, the partner's attributable share of the property is determined solely by reference to the partner's special allocation with respect to the property, provided the special allocation does not have a principal purpose of avoiding the purposes of section 956.

A. *Revenue Ruling 90–112's outside basis limitation*

As noted in the Background section of this Preamble, in 1990, the Treasury Department and the IRS published Revenue Ruling 90–112, which addressed the treatment under section 956 of United States property held by a CFC indirectly through a partnership. The holding in the revenue ruling generally is consistent with § 1.956–2(a)(3) (added by TD 9008, 67 FR 58020, in 2002), as well as proposed § 1.956–4(b), in that a CFC that is a partner in a partnership is treated as indirectly holding property held by the partnership when the property would be United States property if the CFC held it directly. However, the revenue ruling includes a limitation on the measurement of United States property that is not included in the final or proposed regulations. Specifically, the revenue ruling provides that the amount of United States property taken into account for purposes of section 956 when a CFC partner indirectly owns property through a partnership is limited by the CFC's adjusted basis in the partnership.

The outside basis limitation in Revenue Ruling 90–112 has resulted in a lack of clarity concerning the determination of the amount of United States property held by a CFC partner through a partnership because neither § 1.956–2(a)(3) nor proposed § 1.956–4(b) include the limitation. A comment requested that proposed § 1.956–4(b)(1) be revised to add the outside basis limitation because the limitation is reflective of the underlying economics and consistent with the policy underlying section 956.

After consideration of the comment, the Treasury Department and the IRS have concluded that the outside basis limitation is not warranted. The rule in proposed § 1.956–4(b)(1) is based on an aggregate approach to partnerships and measures the amount of United States property indirectly held by a CFC partner on a property-by-property basis. An overall limitation on the amount of United States property a CFC partner is considered to indirectly hold through a partnership is inconsistent with this property-by-property aggregate approach to United States property held by the partnership. Additionally, a limitation determined by reference to a CFC partner's basis in its partnership interest is less consistent with section 956(a), which provides that the amount of United States property directly or indirectly held by a CFC is determined by reference to the adjusted basis of the United States property itself. Moreover, the Treasury Department and the IRS are concerned that, under the rules of subchapter K, adjustments may be made to outside basis through the allocation of liabilities pursuant to the regulations under section 752 that are inconsistent with the policy of section 956. Accordingly, the Treasury Department and the IRS have determined that an outside basis limitation should not be incorporated into the rule in proposed § 1.956–4(b)(1). Because proposed § 1.956–4(b)(1) indicates that, for purposes of section 956, a partner's adjusted basis in the property of the partnership equals the partners' attributable share of the partnership's adjusted basis in the property, no revision to the rule is necessary to clarify that there is no outside basis limitation.

Revenue Ruling 90–112 is obsoleted in the Effect on Other Documents section of this preamble. For tax years ending prior to the obsolescence of the revenue ruling, taxpayers may rely on the outside basis limitation provided in the revenue ruling.

B. *Consistent use of liquidation value percentage method for purposes of both § 1.956–4(b) and (c)*

In contrast to the rule provided in proposed § 1.956–4(b) providing that a CFC partner's attributable share of partnership property is determined in accordance with the CFC partner's liquidation value percentage, proposed § 1.956–4(c) provided that a partner's share of a partnership obligation is determined in accordance with the partner's interest in partnership profits.

The preamble to the 2015 proposed regulations requested comments as to whether a single method should be used as the general rule for determining both a partner's share of partnership assets under proposed § 1.956–4(b) and a partner's share of a partnership obligation under proposed § 1.956–4(c), and, if so, whether the appropriate measure would be a partner's interest in partnership profits, liquidation value percentage, or an alternative measure. Comments suggested that a liquidation value percentage method should be used for purposes of both sets of rules. In accordance with these comments, these final regulations retain the liquidation value percentage method set forth in proposed § 1.956–4(b), and, as discussed in Part 5.B of this Summary of Comments and Explanation of Revisions, revise the general rule in proposed § 1.956–4(c) to implement the liquidation value percentage method.

C. *Time for determining the liquidation value percentage*

A comment recommended that the liquidation value percentage of partners in a partnership should be determined on an annual basis, rather than upon formation and upon the occurrence of events described in § 1.704–1(b)(2)(iv)(*f*)(*5*) or § 1.704–1(b)(2)(iv)(*s*)(*1*) (revaluation events) as provided in proposed § 1.956–4(b)(2)(i). The comment noted that partnerships do not necessarily book up (or adjust) partnership capital accounts in connection with revaluation events and suggested that requiring a redetermination of liquidation value percentage regardless of whether a book-up occurs would impose a burden on such partnerships. The comment also noted that partners' relative economic interests in the partnership may change for reasons unrelated to revaluation events, such as when a partnership agreement provides for different profit sharing percentages that apply based on different hurdles.

The Treasury Department and the IRS continue to consider it appropriate for liquidation value percentage to be redetermined upon a revaluation event, which may result in a significant change in the partners' relative economic interests in a partnership. Accordingly, upon a revaluation event, a partnership is required to determine the partnership's capital accounts resulting from a hypothetical book up at such point in time even if the partnership did not actually book up capital accounts in connection with such an event. However, in light of the comment's observation that partners' relative economic interests in the partnership may change significantly as a result of allocations of income or other items under the partnership agreement even in the absence of a revaluation event, § 1.956–4(b)(2)(i) of these final regulations provides that a partner's liquidation value percentage must be redetermined in certain additional circumstances. Specifically, if the liquidation value percentage determined for any partner on the first day of the partnership's taxable year would differ from the most recently determined liquidation value percentage of that partner by more than 10 percentage points, then the liquidation value percentage must be redetermined on that day even in the absence of a revaluation event. For example, if the liquidation value percentage of a partner was determined upon a revaluation event to be 40 percent and, on the first day of a subsequent year before the occurrence of another revaluation event, would be less than 30 percent or more than 50 percent if redetermined on that day, then the liquidation value percentage must be redetermined on that day.

D. *Special allocations*

Proposed § 1.956–4(b)(2)(ii) defines a special allocation as an allocation of income (or, where appropriate, gain) from partnership property to a partner under a partnership agreement that differs from the partner's liquidation value percentage in a particular taxable year. In this regard, questions have arisen as to whether allocations pursuant to section 704(c) and the regulations thereunder constitute special allocations. Although a partnership agreement may reference section 704(c) or provide for the adoption of a particular section 704(c) method, allocations under section 704(c) are tax allocations required by operation of the Code and regulations. In response to these questions, the Treasury Department and the IRS have revised the definition of special allocations in final § 1.956–4(b)(2)(ii) to clarify that a special allocation is an allocation of book income or gain, rather than a tax allocation such as the allocations required under section 704(c).

Questions also have arisen as to whether certain allocations of income with respect to all of the property of a partnership, as opposed to allocations of income from a specific item or subset of partnership property, constitute special allocations described in proposed § 1.956–4(b)(2)(i). These final regulations clarify that, for purposes of these regulations, a special allocation means only an allocation of income (or, where appropriate, gain) from a subset of the property of the partnership to a partner other than in accordance with the partner's liquidation value percentage in a particular taxable year.

As noted in this Part 4 of this Summary of Comments and Explanation of Revisions, proposed § 1.956–4(b)(2)(ii) states that a partner's attributable share of an item of partnership property is not determined by reference to a special allocation with respect to the property if the special allocation has a principal purpose of avoiding the purposes of section 956. A comment requested that these final regulations provide guidance on the circumstances in which special allocations are treated as having a principal purpose of avoiding section 956. Specifically, the comment suggested that proposed § 1.956–4(b) be revised to include a presumption that a transaction does not have a principal purpose of avoiding section 956 when the allocation is respected under section 704(b) and is reasonable taking into account the facts and circumstances relating to the economic arrangement of the partners and the characteristics of the property at issue.

The determination of whether a special allocation has a principal purpose of avoiding the purposes of section 956 must take into account all of the relevant facts and circumstances, which include the factors set forth in the comment. However, an allocation adopted with a principal purpose of avoiding the purposes of section 956 could nonetheless be respected under section 704(b), which is not based on, and does not take into account, section 956 policy considerations. In addition, it is not clear what additional clarity would be added by the reasonableness requirement, which itself is necessarily a facts-and-circumstances determination. After consideration of the comment, the Treasury Department and the IRS have determined that the presumption requested by the comment is not appropriate, and the comment is not adopted.

A comment noted that determining a partner's attributable share of an item of property by reference to a special allocation of income or gain with respect to that property could produce results that are inconsistent with the liquidation value percentage approach because of the forward-looking nature of special allocations. The comment described, but did not explicitly recommend, an alternative approach that would limit the effect of a special allocation to the portion of the liquidation value that represents actual appreciation, as opposed to initial book value. The Treasury Department and the IRS recognize the conceptual issue highlighted by the comment but have determined that the alternative approach described by the comment would entail substantial administrative complexity. Additionally, the Treasury Department and the IRS continue to consider it appropriate, in cases in which special allocations are economically meaningful, to determine a partner's attributable share of property in accordance with such special allocations, since such allocations replicate the effect of owning, outside of the partnership, an interest in the property that is proportional to the special allocation.

However, the Treasury Department and the IRS have determined that special allocations with respect to a partnership controlled by a U.S. multinational group (a controlled partnership) and its CFCs are unlikely to have economic significance for the group as a whole and can facilitate inappropriate tax planning. Accordingly, the Treasury Department and the IRS are proposing a new rule in a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Bulletin** (REG–114734–16) under which a partner's attributable share of property of a controlled partnership is determined solely in accordance with the partner's liquidation value percentage, without regard to any special allocations.

5. *Obligations of Foreign Partnerships*

A. *Use of an aggregate approach as the general rule*

Pursuant to section 956(c), United States property includes an obligation of a United States person. In addition, under section 956(d) and § 1.956–2(c), a CFC is treated as holding an obligation of a United States person if the CFC is a pledgor or guarantor of the obligation. Therefore, if a CFC makes or guarantees a loan to a United States person, an income inclusion may be required with respect to the CFC under sections 951(a)(1)(B) and 956. Under the general rule in proposed § 1.956–4(c)(1), an obligation of a foreign partnership would be treated as an obligation of its partners in proportion to the partners' interest in partnership profits, unless the exception in proposed § 1.956–4(c)(2) (for obligations of partnerships in which neither the lending CFC nor any person related to the lending CFC is a partner) or the special rule in proposed § 1.956–4(c)(3) (regarding certain partnership distributions) applies. Thus, the general rule adopts an aggregate approach that would treat an obligation of a foreign partnership as an obligation of its partners.

A comment asserted that taking the aggregate approach to a foreign partnership for this purpose is overly broad and inconsistent with the policy underlying section 956. The comment states that a CFC loan to a foreign partnership results in a repatriation of CFC earnings to the United States partners in the partnership only when the loan proceeds either are used to acquire United States property or are distributed to the partners, which, according to the comment, are adequately addressed in § 1.956–1T(b)(4) and (5). Accordingly, the comment requested that the rules in § 1.956–1T(b)(4) and (5) be finalized, but that the general rule in § 1.956–4(c)(1) be removed. Thus, the comment generally advocates for the treatment of a foreign partnership as an entity, with anti-abuse rules to address certain situations. In contrast, another comment indicated that the concerns identified in the preamble to the 2015 proposed regulations "constitute an appropriate basis for the general aggregate approach of [proposed § 1.956–4(c)(1)]".

After consideration of the comments, the Treasury Department and the IRS have concluded that it is appropriate to retain the aggregate approach of the general rule in proposed § 1.956–4(c). The Treasury Department and the IRS disagree with the assertion that the aggregate approach is not supported by the policy of section 956. As discussed in the preamble to the 2015 proposed regulations, failing to treat an obligation of a foreign partnership as an obligation of its partners could allow for the deferral of U.S. taxation of CFC earnings and profits in a manner that is inconsistent with the purpose of section 956. As discussed in that preamble, the legislative history provides that Congress intended section 956 to apply when deferred CFC earnings are made available to a United States shareholder, which occurs when a United States shareholder conducts operations through a foreign partnership that are funded by deferred CFC earnings, without regard to whether there is any distribution from the partnership to the United States shareholder. In addition, as described in Section C of this Part 5 of this Summary of Comments and Explanation of Revisions, there are exceptions from the treatment of obligations as United States property under § 1.956–4(c) that the Treasury Department and the IRS have determined mitigate some of the concerns about the breadth of the general rule raised by the comment. Accordingly, the final regulations do not adopt the recommendation to abandon the aggregate approach.

B. *Liquidation value percentage method*

The preamble to the 2015 proposed regulations requested comments on whether the liquidation value percentage method or another method would be a more appropriate basis for determining a partner's share of a foreign partnership's obligation. In addition, as noted in Part 4.B of this Summary of Comments and Explanation of Revisions, the 2015 proposed regulations solicited comments on whether a single method should be used for determining both a partner's share of partnership assets under proposed § 1.956–4(b) and a partner's share of partnership obligations under proposed § 1.956–4(c).

Comments highlighted a number of issues related to applying a rule based on a partner's interest in partnership profits and noted the lack of guidance in the 2015 proposed regulations for applying this standard for purposes of proposed § 1.956–4(c). The comments stated that a partner's interest in partnership profits would be a difficult standard to apply for partnerships other than simple partnerships, because a partner's interest in partnership profits can fluctuate significantly from year to year, as well as during a taxable year. The comments noted that the proposed rule did not address whether the determination would be made based solely on the partnership's profits in the current year or whether the determination would take into account the expected profits over the term of the partnership. Moreover, under section 956(a), the amount of United States property held by a CFC as a result of being treated as holding an obligation of a related United States person under proposed § 1.956–4(c) would be the average of the amounts held by the CFC at the close of each quarter of its taxable year. Thus, under proposed § 1.956–4(c), taxpayers would need to determine a CFC partner's interest in partnership profits on a quarterly basis when a relevant partnership obligation is outstanding throughout a taxable year. As a result, calculating the amount of United States property held by a CFC in a taxable year could be complicated when a partner's interest in partnership profits is not known until the end of the taxable year (such as when there are one or more tiers of allocations of partnership profits based on various internal rate of return hurdles). Furthermore, the requirement to determine a CFC's interest in United States property on a quarterly basis could result in the calculation of a section 956 amount that is inconsistent with the annual profit allocated to the partner from the partnership for that year.

After consideration of these comments, the Treasury Department and the IRS have determined that the liquidation value percentage method should be used to determine a partner's share of a foreign partnership's obligation because of the potential for complexity in calculating a partner's interest in partnership profits for purposes of proposed § 1.956–4(c) as well as the uncertainty inherent in the method. The liquidation value percentage method is a sound indicator of a partner's interest in a partnership. Moreover, the objective rules provided in proposed § 1.956–4(b) for determining the liquidation value percentage provide more certainty than the rule in proposed § 1.956–4(c). In addition, using the same standard for determining a partner's share of partnership property and a partner's share of partnership obligations reduces complexity for taxpayers that must apply both sets of rules for purposes of section 956 with respect to a single partnership. Accordingly, these final regulations provide that an obligation of a foreign partnership is treated as an obligation of its partners in proportion to the partners' liquidation value percentage with respect to the partnership. As described in Part 4.C of this Summary of Comments and Explanation of Revisions, a partner's liquidation value percentage must be determined upon formation of a partnership and any revaluation events and in certain other circumstances in which redetermination of the liquidation value percentage would result in a significant change from the previously determined liquidation value percentage.

C. *Exceptions from general rule of aggregate treatment*

Proposed § 1.956–4(c)(2) provides an exception from the aggregate treatment of proposed § 1.956–4(c)(1) that applies if neither the CFC that holds the obligation (or is treated as holding the obligation) nor any person related to the CFC (within the meaning of section 954(d)(3)) is a partner in the partnership on the CFC's quarterly measuring date on which the treatment of the obligation as United States property is being determined. A comment suggested an additional exception from the general rule in proposed § 1.956–4(c)(1) providing for aggregate treatment of partnership obligations. The comment requested that an obligation of a foreign partnership not be treated as an obligation of its partners to the extent that the obligation arises from a routine, ordinary course transaction between the lending CFC and the foreign partnership.

The comment highlighted a fact pattern involving an obligation arising from a deposit by a CFC with a foreign partnership that acts as a coordination center for a taxpayer's cash pooling system. In this case, the comment asserted that any United States partners in the partnership should not be considered to have accessed the deferred earnings of the CFC deposited with the partnership and that, accordingly, the aggregate approach to partnership obligations should not apply to treat the CFC as holding an obligation of the United States partners for purposes of section 956. Regarding this fact pattern, the Treasury Department and the IRS observe that the short-term obligation exception in § 1.956–2T(d)(2)(iv), which applies when a CFC holds obligations of a United States person for a limited period of time during a taxable year, generally would prevent an inclusion under section 956 in the fact pattern described in the comment if the CFC had a net deposit with the partnership only for the limited period of time described in that exception. The Treasury Department and the IRS have concluded that there is no reason to provide a more expansive exception from United States property treatment for obligations of a foreign partnership with certain United States persons as partners than would apply with respect to obligations incurred directly by those same United States persons.

Another comment recommended adding a new *de minimis* exception that would provide that an obligation of a foreign partnership is not treated as an obligation of a United States person that is a partner if the United States person and its related persons own less than a specified percentage, 10% or 20%, of the profits and capital interests in the foreign partnership. The comment noted that a U.S. partner with a relatively small interest in a partnership may lack the ability to cause the partnership to make a distribution to the U.S. partner.

Although a U.S. partner with a relatively small partnership interest may not be able to compel a distribution from the partnership, the potential to directly access partnership assets is not, as the comment acknowledges, the sole or overriding consideration motivating the aggregate approach to partnerships under the proposed regulations and these final regulations. Even if the other partners in a partnership in which a United States shareholder of a CFC is a minority partner are unrelated to the United States shareholder, the United States shareholder would still benefit from the funding of the partnership's business with deferred earnings of the CFC to the extent of its interest in the partnership. Additionally, as noted in the preamble to the 2015 proposed regulations, a standard based on whether the funding CFC or a related person is a partner in the partnership, rather than whether such persons own a certain minimum interest in the partnership, is consistent with the relevant exception adopted by Congress in section 956(c)(2)(L).

Accordingly, the Treasury Department and the IRS have determined that the additional exceptions to aggregate treatment suggested in the comments are not warranted.

D. *Special obligor rule in the case of certain distributions*

The 2015 proposed regulations include a special funded distribution rule that increases the amount of a foreign partnership obligation that is treated as United States property when the following requirements are satisfied: (i) a CFC lends funds (or is a pledgor or guarantor with respect to a loan) to a foreign partnership whose obligation is, in whole or in part, United States property with respect to the CFC pursuant to proposed § 1.956–4(c)(1) and existing § 1.956–2(a); (ii) the partnership distributes an amount of money or property to a partner that is related to the CFC (within the meaning of section 954(d)(3)) and whose obligation would be United States property if held (or treated as held) by the CFC; (iii) the foreign partnership would not have made the distribution but for a funding of the partnership through an obligation held (or treated as held) by the CFC; and (iv) the distribution exceeds the partner's share of the partnership obligation as determined in accordance with the partner's interest in partnership profits. When these requirements are satisfied, proposed § 1.956–4(c)(3) provided that the amount of the partnership obligation that is treated as an obligation of the distributee partner (and thus as United States property held by the CFC) is the lesser of the amount of the distribution that would not have been made but for the funding of the partnership and the amount of the partnership obligation.

Comments suggested that taxpayers might take the position that the "but for" requirement in proposed § 1.956–4(c)(3) is not satisfied in certain situations in which CFC earnings are effectively repatriated to a partner that is a related United States person. For example, taxpayers might take the position that a partnership distribution could have been made without the funding by the CFC merely by establishing that a third party would have loaned the funds needed for the partnership to make the distribution. The Treasury Department and the IRS have determined that this position is inconsistent with the purposes of this rule. Accordingly, these final regulations clarify the funded distribution rule by providing with respect to the "but for" requirement in proposed § 1.956–4(c)(3) that a foreign partnership will be treated as if it would not have made a distribution of liquid assets but for a funding of the partnership through obligations held (or treated as held) by a CFC to the extent the foreign partnership did not have sufficient liquid assets to make the distribution immediately prior to the distribution, without taking into account the obligations. When a CFC holds (or is treated as holding) multiple obligations of the foreign partnership to which this rule could potentially apply, its applicability is determined first with respect to the obligation acquired (or treated as acquired) closest in time to the distribution, and then successively to other obligations further in time from the distribution until the distribution is fully accounted for.

6. *Comments Concerning Multiple Inclusions*

Comments were received in response to the request for comments included in the preamble to the 2015 proposed regulations concerning whether the Treasury Department and the IRS should exercise the authority granted under section 956(e) to prescribe regulations concerning situations in which multiple CFCs serve, or are treated, as pledgors or guarantors of a single obligation for purposes of section 956(d) in order to limit the aggregate inclusions of a United States shareholder with respect to a CFC under sections 951(a)(1)(B) and 956 to the unpaid principal amount of the obligation. The Treasury Department and the IRS continue to study the comments concerning multiple inclusions under section 956(d), which do not impact any of the proposed regulations adopted by this Treasury decision.

Effective/Applicability Dates

The rules in § 1.954–2(c)(1)(i) and (d)(1)(i) (regarding the active development test) apply to rents or royalties, as applicable, received or accrued during taxable years of CFCs ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, but only with respect to property manufactured, produced, developed, or created, or, in the case of acquired property, property to which substantial value has been added, on or after September 1, 2015. The rules in § 1.954–2(c)(1)(iv), (c)(2)(ii), (d)(1)(ii), and (d)(2)(ii) (regarding the active marketing test), as well as the rules in § 1.954–2(c)(2)(iii)(E), (c)(2)(viii), (d)(2)(iii)(E), and (d)(2)(v) (regarding cost-sharing arrangements), apply to rents or royalties, as applicable, received or accrued during taxable years of CFCs ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, to the extent that such rents or royalties are received or accrued on or after September 1, 2015. The section 956 anti-avoidance rules in § 1.956–1(b) apply to taxable years of CFCs ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired, including property treated as acquired as the result of a deemed exchange of property pursuant to section 1001, on or after September 1, 2015. The rules regarding factoring transactions in § 1.956–3 (other than § 1.956–3(b)(2)(ii)) apply to trade or service receivables acquired (directly or indirectly) after March 1, 1984.

The remaining rules in these final regulations apply to taxable years of CFCs ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end. In general, these remaining rules apply to property acquired, or pledges or guarantees entered into, on or after September 1, 2015, including property considered acquired, and pledges and guarantees considered entered into, on or after September 1, 2015, as a result of a deemed exchange pursuant to section 1001. See § 1.956–4(c) (dealing with obligations of foreign partnerships); §§ 1.956–2(c), 1.956–4(d), and 1.956–1(e)(2) (dealing with pledges and guarantees, including pledges and guarantees by a partnership and with respect to obligations of a foreign partnership); and § 1.956–3(b)(2)(ii) (dealing with trade and service receivables acquired from related United States persons indirectly through nominees, pass-through entities, or related foreign corporations). Two rules, however, apply to all obligations held on or after November 3, 2016. See §§ 1.956–2(a)(3) and 1.956–4(e) (dealing with obligations of disregarded entities and domestic partnerships, respectively). Finally, § 1.956–4(b) (dealing with partnership property indirectly held by a CFC) applies to property acquired on or after November 3, 2016. No inference is intended as to the application of the provisions amended by these final regulations under prior law, including in transactions involving obligations of foreign partnerships. The IRS may, where appropriate, challenge transactions under the Code, regulatory provisions under prior law, or judicial doctrines.

Effect on Other Documents

Rev. Rul. 90–112 (1990–2 CB 186) is obsolete as of November 3, 2016.

Special Analyses

Certain IRS regulations, including these regulations, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory 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, and 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. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

*****

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.956–1 also issued under 26 U.S.C. 956(d) and 956(e).

Section 1.956–2 also issued under 26 U.S.C. 956(d) and 956(e).

Section 1.956–3 also issued under 26 U.S.C. 864(d)(8) and 956(e).

Section 1.956–4 also issued under 26 U.S.C. 956(d) and 956(e).

* * * * *

Par. 2. Section 1.954–2 is amended by:

1. Revising paragraphs (c)(1)(i), (c)(1)(iv), and (c)(2)(ii).

2. Removing the word "and" at the end of paragraph (c)(2)(iii)(C).

3. Removing the period at the end of paragraph (c)(2)(iii)(D) and adding in its place a semicolon and the word "and".

4. Revising paragraphs (c)(2)(iii)(E) and (c)(2)(viii).

5. Revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(2)(ii).

6. Removing the word "and" at the end of paragraph (d)(2)(iii)(C).

7. Removing the period at the end of paragraph (d)(2)(iii)(D), and adding in its place a semicolon and the word "and".

8. Revising paragraphs (d)(2)(iii)(E) and (d)(2)(v).

9. Revising paragraph (i).

The revisions and additions read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(c) * * *

(1) * * *

(i) Property that the lessor, through its own officers or staff of employees, has manufactured or produced, or property that the lessor has acquired and, through its own officers or staff of employees, added substantial value to, but only if the lessor, through its officers or staff of employees, is regularly engaged in the manufacture or production of, or in the acquisition and addition of substantial value to, property of such kind;

* * * * *

(iv) Property that is leased as a result of the performance of marketing functions by such lessor through its own officers or staff of employees located in a foreign country or countries, if the lessor, through its officers or staff of employees, maintains and operates an organization either in such country or in such countries (collectively), as applicable, that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from the leasing of such property.

(2) * * *

(ii) *Substantiality of foreign organization*. For purposes of paragraph (c)(1)(iv) of this section, whether an organization either in a foreign country or in foreign countries (collectively) is substantial in relation to the amount of rents is determined based on all the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of rents if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 25 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section. In addition, for purposes of aircraft or vessels leased in foreign commerce, an organization will be considered substantial if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 10 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section. For purposes of paragraphs (c)(1)(iv) and (c)(2) of this section and § 1.956–2(b)(1)(vi), the term *aircraft or vessels* includes component parts, such as engines that are leased separately from an aircraft or vessel.

(iii) * * *

(E) Deductions for CST Payments or PCT Payments (as defined in § 1.482–7(b)).

* * * * *

(viii) *Cost sharing arrangements (CSAs)*. For purposes of paragraphs (c)(1)(i) and (iv) of this section, CST Payments or PCT Payments (as defined in § 1.482–7(b)(1)) made by the lessor to another controlled participant (as defined in § 1.482–7(j)(1)(i)) pursuant to a CSA (as defined in § 1.482–7(a)) do not cause the activities undertaken by that other controlled participant to be considered to be undertaken by the lessor's own officers or staff of employees.

* * * * *

(d) * * *

(1) * * *

(i) Property that the licensor, through its own officers or staff of employees, has developed, created, or produced, or property that the licensor has acquired and, through its own officers or staff of employees, added substantial value to, but only so long as the licensor, through its officers or staff of employees, is regularly engaged in the development, creation, or production of, or in the acquisition and addition of substantial value to, property of such kind; or

(ii) Property that is licensed as a result of the performance of marketing functions by such licensor through its own officers or staff of employees located in a foreign country or countries, if the licensor, through its officers or staff of employees, maintains and operates an organization either in such foreign country or in such foreign countries (collectively), as applicable, that is regularly engaged in the business of marketing, or of marketing and servicing, the licensed property and that is substantial in relation to the amount of royalties derived from the licensing of such property.

(2) * * *

(ii) *Substantiality of foreign organization*. For purposes of paragraph (d)(1)(ii) of this section, whether an organization either in a foreign country or in foreign countries (collectively) is substantial in relation to the amount of royalties is determined based on all of the facts and circumstances. However, such an organization will be considered substantial in relation to the amount of royalties if active licensing expenses, as defined in paragraph (d)(2)(iii) of this section, equal or exceed 25 percent of the adjusted licensing profit, as defined in paragraph (d)(2)(iv) of this section.

(iii) * * *

(E) Deductions for CST Payments or PCT Payments (as defined in § 1.482–7(b)).

* * * * *

(v) *Cost sharing arrangements (CSAs)*. For purposes of paragraphs (d)(1)(i) and (ii) of this section, CST Payments or PCT Payments (as defined in § 1.482–7(b)(1)) made by the licensor to another controlled participant (as defined in § 1.482–7(j)(1)(i)) pursuant to a CSA (as defined in § 1.482–7(a)) do not cause the activities undertaken by that other controlled participant to be considered to be undertaken by the licensor's own officers or staff of employees.

* * * * *

(i) *Effective/applicability dates*—(1) *Paragraphs (c)(2)(v) through (vii)*. Paragraphs (c)(2)(v) through (vii) of this section and *Example 6* of paragraph (c)(3) of this section apply to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for taxable years of United States shareholders with or within which such taxable years of the controlled foreign corporations end. Taxpayers may elect to apply paragraphs (c)(2)(v) through (vii) to taxable years of controlled foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which such taxable years of the controlled foreign corporations end. If an election is made to apply § 1.956–2(b)(1)(vi) to taxable years beginning after December 31, 2004, then the election must also be made for paragraphs (c)(2)(v) through (vii) of this section.

(2) *Other paragraphs*. Paragraphs (c)(1)(i) and (d)(1)(i) of this section apply to rents or royalties, as applicable, received or accrued during taxable years of controlled foreign corporations ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, but only with respect to property manufactured, produced, developed, or created, or in the case of acquired property, property to which substantial value has been added, on or after September 1, 2015. Paragraphs (c)(1)(iv), (c)(2)(ii), (c)(2)(iii)(E), (c)(2)(viii), (d)(1)(ii), (d)(2)(ii), (d)(2)(iii)(E), and (d)(2)(v) of this section apply to rents or royalties, as applicable, received or accrued during taxable years of controlled foreign corporations ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, to the extent that such rents or royalties are received or accrued on or after September 1, 2015. See § 1.954–2(c)(1)(i), (c)(1)(iv), (c)(2)(ii), (c)(2)(iii), (d)(1)(i), (d)(1)(ii), (d)(2)(ii), and (d)(2)(iii), as contained in 26 CFR part 1 revised as of April 1, 2015, for rules applicable to rents or royalties, as applicable, received or accrued before September 1, 2015.

* * * * *

§ 1.954–2T [Removed]

Par. 3. Section 1.954–2T is removed.

Par. 4. Section 1.956–1 is amended by:

1. Revising the section heading and paragraphs (a) and (b).

2. Removing and reserving paragraphs (c) and (d).

3. Revising paragraphs (e)(2) and (g).

The revisions read as follows:

§ 1.956–1 Shareholder's pro rata share of the average of the amounts of United States property held by a controlled foreign corporation.

(a) *In general*. Subject to the provisions of section 951(a) and the regulations thereunder, a United States shareholder of a controlled foreign corporation is required to include in gross income the amount determined under section 956 with respect to the shareholder for the taxable year but only to the extent not excluded from gross income under section 959(a)(2) and the regulations thereunder.

(b) *Amount of United States property held indirectly by a controlled foreign corporation*—(1) *General rule*. For purposes of section 956, United States property held indirectly by a controlled foreign corporation includes—

(i) United States property held on behalf of the controlled foreign corporation by a trustee or a nominee;

(ii) United States property acquired by any other foreign corporation that is controlled by the controlled foreign corporation if a principal purpose of creating, organizing, or funding by any means (including through capital contributions or debt) the other foreign corporation is to avoid the application of section 956 with respect to the controlled foreign corporation; and

(iii) Property acquired by a partnership that is controlled by the controlled foreign corporation if the property would be United States property if held directly by the controlled foreign corporation, and a principal purpose of creating, organizing, or funding by any means (including through capital contributions or debt) the partnership is to avoid the application of section 956 with respect to the controlled foreign corporation.

(2) *Control*. For purposes of paragraphs (b)(1)(ii) and (iii) of this section, a controlled foreign corporation controls a foreign corporation or partnership if the controlled foreign corporation and the other foreign corporation or partnership are related within the meaning of section 267(b) or section 707(b). For this purpose, in determining whether two corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned for the purposes of section 1563(e)(1), and stock owned with the application of section 267(c).

(3) *Coordination rule*. Paragraph (b)(1)(iii) of this section applies only to the extent that the amount of United States property that is treated under that paragraph as held indirectly by a controlled foreign corporation through the partnership exceeds the sum of—

(i) The amount of United States property described in paragraph (b)(1)(iii) of this section that is treated as held by the controlled foreign corporation as a result of the application of § 1.956–4(b) with respect to the partnership; and

(ii) The amount of United States property that is treated as held by the controlled foreign corporation as a result of the application of § 1.956–4(c) with respect to any portion of an obligation attributable to the funding described in paragraph (b)(1)(iii) of this section of the partnership by the controlled foreign corporation.

(4) *Examples*. The following examples illustrate the rules of this paragraph (b). In each example, P is a domestic corporation that wholly owns two controlled foreign corporations, FS1 and FS2.

Example 1. (i) *Facts*. FS1 sells inventory to FS2 in exchange for trade receivables due in 60 days. Avoiding the application of section 956 with respect to FS1 was not a principal purpose of establishing the trade receivables. FS2 has no earnings and profits, and FS1 has substantial accumulated earnings and profits. FS2 makes a loan to P equal to the amount it owes FS1 under the trade receivables. FS2 pays the trade receivables according to their terms.

(ii) *Result*. FS1 will not be considered to indirectly hold United States property under this paragraph (b) because the funding of FS2 through the sale of inventory in exchange for the establishment of trade receivables was not undertaken with a principal purpose of avoiding the application of section 956 with respect to FS1.

Example 2. (i) *Facts*. The facts are the same as in *Example 1* of this paragraph (b)(4), except that, with a principal purpose of avoiding the application of section 956 with respect to FS1, FS1 and FS2 agree to defer FS2's payment obligation, and FS2 does not timely pay the receivables.

(ii) *Result*. FS1 is considered to hold indirectly United States property under this paragraph (b) and § 1.956–2(a) because there was a funding of FS2, a principal purpose of which was to avoid the application of section 956 with respect to FS1.

Example 3. (i) *Facts*. FS1 has $100x of post-1986 undistributed earnings and profits and $100x post-1986 foreign income taxes, but does not have any cash. FS2 has earnings and profits of at least $100x, no post-1986 foreign income taxes, and substantial cash. Neither FS1 nor FS2 has earnings and profits described in section 959(c)(1) or section 959(c)(2). FS2 loans $100x to FS1. FS1 then loans $100x to P. An income inclusion by P of $100x under sections 951(a)(1)(B) and 956 with respect to FS1 would result in foreign income taxes deemed paid by P under section 960. A principal purpose of funding FS1 through the loan from FS2 is to avoid the application of section 956 with respect to FS2.

(ii) *Result*. Under paragraph (b)(1)(ii) of this section, FS2 is considered to indirectly hold the $100x obligation of P that is held by FS1. As a result, P has an income inclusion of $100x under sections 951(a)(1)(B) and 956 with respect to FS2, and the foreign income taxes deemed paid by P under section 960 is $0. P does not have an income inclusion under sections 951(a)(1)(B) and 956 with respect to FS1 related to the $100x loan from FS1 to P.

Example 4. (i) *Facts*. FS1 deposits $100x with BK, an unrelated foreign financial institution. FS2 subsequently borrows $100x from BK. BK would not have loaned the $100x to FS2 on the same terms absent FS1's deposit. FS2 loans the $100x borrowed from BK to P. FS2 has no earnings and profits, and FS1 has substantial accumulated earnings and profits. A principal purpose for the transactions is to avoid the application of section 956 with respect to FS1.

(ii) *Result*. FS1 is considered to hold indirectly United States property under this paragraph (b) and § 1.956–2(a) because FS1's deposit with BK, which facilitates BK's loan to FS2, is considered a funding by FS1 of FS2, a principal purpose of which was to avoid the application of section 956 with respect to FS1.

Example 5. (i) *Facts*. FS1 sells inventory to FS2 in exchange for $100x. The sale occurred in the ordinary course of FS1's trade or business and FS2's trade or business, and the terms of the sale are consistent with terms that would be observed among parties dealing at arm's length. FS1 makes a $100x loan to P. FS2 has no earnings and profits, and FS1 has substantial accumulated earnings and profits.

(ii) *Result*. FS2 will not be considered to indirectly hold United States property under this paragraph (b) because a sale in the ordinary course of business for cash on terms that are consistent with those that would be observed among parties dealing at arm's length does not constitute a funding.

Example 6. (i) *Facts*. In Year 1, FS2 loans $100x to FS1 to finance FS1's trade or business. The terms of the loan are consistent with those that would be observed among parties dealing at arm's length. In Year 2, FS1 repays the loan in accordance with the terms of the loan. Immediately after the repayment by FS1, FS2 loans $100x to P. FS2 has no earnings and profits, and FS1 has substantial accumulated earnings and profits.

(ii) *Result*. FS1 will not be considered to indirectly hold United States property under this paragraph (b) because a repayment of a loan that has terms that are consistent with those that would be observed among parties dealing at arm's length and that is repaid consistent with those terms does not constitute a funding.

Example 7. (i) *Facts*. FS1 has substantial earnings and profits. P and FS1 are the only partners in FPRS, a foreign partnership. FS1 contributes $600x cash to FPRS in exchange for a 60% interest in the partnership, and P contributes real estate located outside the United States ($400x value) to FPRS in exchange for a 40% interest in the partnership. There are no special allocations in the FPRS partnership agreement. FPRS lends $100x to P. Under § 1.956–4(b) and § 1.956–2(a), FS1 is treated as holding United States property of $60x (60% x $100x) as a result of the FPRS loan to P. A principal purpose of creating, organizing, or funding FPRS is to avoid the application of section 956 with respect to FS1.

(ii) *Result*. Before taking into account paragraph (b)(3) of this section, because FS1 controls FPRS and a principal purpose of creating, organizing, or funding FPRS was to avoid the application of section 956 with respect to FS1, FS1 is considered under paragraph (b)(1)(iii) of this section to indirectly hold the $100x obligation of P that would be United States property if held directly by FS1. However, under paragraph (b)(3) of this section, FS1 is treated as holding United States property under paragraph (b)(1)(iii) only to the extent the amount held indirectly under paragraph (b)(1)(iii) of this section exceeds the sum of the amount of the United States property that FS1 is treated as holding as a result of the application of § 1.956–4(b) with respect to FPRS. The amount of United States property that FS1 is treated as indirectly holding under paragraph (b)(1)(iii) of this section and § 1.956–2(a) ($100x) exceeds the amount determined under § 1.956–4(b) ($60x) by $40x. Thus, FS1 is considered to hold United States property within the meaning of section 956(c) in the amount of $100x ($60x under § 1.956–4(b) and $40x under paragraphs (b)(1)(iii) and (b)(3) of this section).

Example 8. (i) *Facts*. FS1 and FS2 have substantial earnings and profits. P and FS1 are the only partners in FPRS, a foreign partnership. There are no special allocations in the FPRS partnership agreement. P's liquidation value percentage with respect to FPRS is 40%, and FS1's liquidation value percentage with respect to FPRS is 60%. FS2 lends $100x to FPRS, and FPRS lends $100x to P. Under § 1.956–4(c) and § 1.956–2(a), FS2 is treated as holding United States property of $40x (40% x $100x) as a result of its loan to FPRS. A principal purpose of funding FPRS is to avoid the application of section 956 with respect to FS2.

(ii) *Result*. Before taking into account paragraph (b)(3) of this section, because FS2 controls FPRS and a principal purpose of funding FPRS was to avoid the application of section 956 with respect to FS2, FS2 is considered under paragraph (b)(1)(iii) of this section to indirectly hold the $100x obligation of P that would be United States property if held directly by FS2. However, under paragraph (b)(3) of this section, FS2 is treated as holding United States property under paragraph (b)(1)(iii) only to the extent the amount held indirectly under paragraph (b)(1)(iii) of this section exceeds the amount of United States property that FS2 is treated as holding as a result of the application of § 1.956–4(c) with respect to the obligation with which FS2 funds FPRS. The amount of United States property that FS2 is treated as indirectly holding under paragraph (b)(1)(iii) of this section and § 1.956–2(a) ($100x) exceeds the amount determined under § 1.956–4(c) ($40x) by $60x. Thus, FS2 is considered to hold United States property within the meaning of section 956(c) in the amount of $100x ($40x under § 1.956–4(c) and $60x under paragraphs (b)(1)(iii) and (b)(3) of this section). P does not have an income inclusion under sections 951(a)(1)(B) and 956 with respect to FS1 related to the P obligation held by FPRS.

(c) – (d) [Reserved]

(e) * * *

(2) *Rule for pledges and guarantees*. For purposes of this section, the amount of an obligation treated as held (before application of § 1.956–4(b)) as a result of a pledge or guarantee described in § 1.956–2(c) is the unpaid principal amount of the obligation on the applicable determination date.

* * * * *

(g) *Effective/applicability date*. (1) Paragraph (a) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and to taxable years of United States shareholders in which or with which such taxable years end.

(2) Paragraph (b) of this section applies to taxable years of controlled foreign corporations ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after September 1, 2015. See paragraph (b)(4) of § 1.956–1T, as contained in 26 CFR part 1 revised as of April 1, 2015, for the rules applicable to taxable years of controlled foreign corporations ending before September 1, 2015, and property acquired before September 1, 2015. For purposes of this paragraph (g)(2), a deemed exchange of property pursuant to section 1001 on or after September 1, 2015 constitutes an acquisition of the property on or after that date.

(3) Paragraph (e)(2) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges or guarantees entered into on or after September 1, 2015. For purposes of this paragraph (g)(3), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

* * * * *

Par. 5. Section 1.956-1T is revised to read as follows:

§ 1.956–1T Shareholder's pro rata share of the average of the amounts of United States property held by a controlled foreign corporation.

(a) through (e)(4) [Reserved]

(5) *Exclusion for certain recourse obligations*. For purposes of § 1.956–1(e)(1) of the regulations, in the case of an investment in United States property consisting of an obligation of a related person, as defined in section 954(d)(3) and paragraph (f) of § 1.954–1, a liability will not be recognized as a specific charge if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation.

(e)(6) [Reserved]. For further guidance, see § 1.956–1(e)(6).

(f) *Effective/applicability date*. Paragraph (e)(5) of this section applies to investments made on or after June 14, 1988.

(g) – (h) [Reserved]

Par. 6. Section 1.956–2 is amended by:

1. Revising paragraphs (a)(3), (c)(1), and (c)(2).

2. Adding *Example 4* to paragraph (c)(3).

3. Adding paragraph (h).

The revisions and addition read as follows:

§ 1.956–2 Definition of United States property.

(a) * * *

(3) *Treatment of disregarded entities*. For purposes of section 956, an obligation of a business entity (as defined in § 301.7701–2(a) of this chapter) that is disregarded as an entity separate from its owner for federal tax purposes under §§ 301.7701–1 through 301.7701–3 of this chapter is treated as an obligation of its owner.

* * * * *

(c) *Treatment of pledges and guarantees*—(1) *General rule*. Except as provided in paragraph (c)(4) of this section, for purposes of section 956, any obligation of a United States person with respect to which a controlled foreign corporation or a partnership is a pledgor or guarantor will be considered to be held by the controlled foreign corporation or the partnership, as the case may be. See § 1.956–1(e)(2) for rules that determine the amount of the obligation treated as held by a pledgor or guarantor under this paragraph (c). For rules that treat an obligation of a foreign partnership as an obligation of the partners in the foreign partnership for purposes of section 956, see § 1.956–4(c).

(2) *Indirect pledge or guarantee*. If the assets of a controlled foreign corporation or a partnership serve at any time, even though indirectly, as security for the performance of an obligation of a United States person, then, for purposes of paragraph (c)(1) of this section, the controlled foreign corporation or partnership will be considered a pledgor or guarantor of that obligation. If a partnership is considered a pledgor or guarantor of an obligation, a controlled foreign corporation that is a partner in the partnership will not also be treated as a pledgor or guarantor of the obligation solely as a result of its ownership of an interest in the partnership. For purposes of this paragraph, a pledge of stock of a controlled foreign corporation representing at least 66 2/3 percent of the total combined voting power of all classes of voting stock of such corporation will be considered an indirect pledge of the assets of the controlled foreign corporation if the pledge is accompanied by one or more negative covenants or similar restrictions on the shareholder effectively limiting the corporation's discretion to dispose of assets and/or incur liabilities other than in the ordinary course of business. See § 1.956–4(d) for guidance on the treatment of indirect pledges or guarantees of an obligation of a partnership attributed to its partners under § 1.956–4(c).

(3) * * *

Example 4. (i) *Facts*. USP, a domestic corporation, owns 70% of the stock of FS, a controlled foreign corporation, and a 90% interest in FPRS, a foreign partnership. X, an unrelated foreign person, owns 30% of the stock of FS. Y, an unrelated foreign person, owns a 10% interest in FPRS. There are no special allocations in the FPRS partnership agreement. FPRS borrows $100x from Z, an unrelated person. FS pledges its assets as security for FPRS's performance of its obligation to repay the $100x loan. USP's share of the $100x FPRS obligation, determined in accordance with its liquidation value percentage, is $90x. Under § 1.956–4(c), $90x of the FPRS obligation is treated as an obligation of USP for purposes of section 956.

(ii) *Result*. For purposes of section 956, under paragraph (c)(1) of this section, FS is considered to hold an obligation of USP in the amount of $90x, and thus is treated as holding United States property in the amount of $90x.

* * * * *

(h) *Effective/applicability date*. (1) Paragraph (a)(3) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations held on or after November 3, 2016.

(2) Paragraphs (c)(1), (c)(2), and *Example 4* of paragraph (c)(3) of this section apply to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges and guarantees entered into on or after September 1, 2015. For purposes of this paragraph (h)(2), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

* * * * *

Par. 7. Section § 1.956–3 is added to read as follows:

§ 1.956–3 Certain trade or service receivables acquired from United States persons.

(a) *In general*. For purposes of section 956(a) and § 1.956–1, the term "United States property" also includes any trade or service receivable if the trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person (as defined in section 7701(a)(30)) (a *related United States person*) and the obligor under the receivable is a United States person. A trade or service receivable described in this paragraph is considered to be United States property notwithstanding the exceptions (other than subparagraph (H)) contained in section 956(c)(2). The terms "trade or service receivable" and "related person" have the respective meanings given to the terms by section 864(d) and the regulations thereunder, including § 1.864–8T(b). For purposes of this section, the exception in § 1.956–2T(d)(2)(ii) does not apply to trade or service receivables described in this paragraph.

(b) *Acquisition of a trade or service receivable*—(1) *General rule*. The rules of § 1.864–8T(c)(1) apply to determine whether a controlled foreign corporation has acquired a trade or service receivable.

(2) *Indirect acquisitions*—(i) *Acquisition through unrelated person*. A trade or service receivable is considered acquired from a related person when it is acquired from an unrelated person who acquired (directly or indirectly) the receivable from a person who is a related person to the acquiring person.

(ii) *Acquisition by nominee, pass-through entity, or related foreign corporation*. A controlled foreign corporation is treated as holding a trade or service receivable that is held by a nominee on its behalf, or by a simple trust or other pass-through entity (other than a partnership) to the extent of its direct or indirect ownership or beneficial interest in such simple trust or other pass-through entity. See §§ 1.956–1(b) and 1.956–4(b) for rules that may treat a controlled foreign corporation as indirectly holding a trade or service receivable held by a foreign corporation or partnership. A controlled foreign corporation that is treated as holding a trade or service receivable held by another person (the *direct holder*) (or that would be treated as holding the receivable if the receivable were United States property or would be United States property if held directly by the controlled foreign corporation) is considered to have acquired the receivable from the person from whom the direct holder acquired the receivable. This paragraph (b)(2)(ii) does not limit the application of paragraph (b)(2)(iii) of this section. The following examples illustrate the application of this paragraph (b)(2)(ii):

Example 1. (i) *Facts*. A domestic corporation, P, wholly owns a controlled foreign corporation, FS, with substantial earnings and profits. FS contributes $200x of cash to a partnership, PRS, in exchange for an 80% partnership interest. An unrelated foreign person contributes real estate located in a foreign country with a fair market value of $50x to PRS for the remaining 20% partnership interest. There are no special allocations in the PRS partnership agreement. PRS uses the $200x of cash received from FS to purchase trade receivables from P. The obligors with respect to the trade receivables are United States persons that are not related to any partner in PRS. The liquidation value percentage, as determined under § 1.956–4(b), for FS with respect to PRS is 80%. A principal purpose of funding PRS (through FS's cash contribution) is to avoid the application of section 956 with respect to FS.

(ii) *Result*. Under § 1.956–4(b)(1), FS is treated as holding 80% of the trade receivables acquired by PRS from P, with a basis equal to $160x (80% x $200x, PRS's basis in the trade receivables). However, because FS controls PRS and a principal purpose of FS funding PRS was to avoid the application of section 956 with respect to FS, under § 1.956–1(b), if the trade receivables would be United States property if held directly by FS, FS additionally would be treated as holding the trade receivables to the extent that they exceed the amount of the receivables it holds under § 1.956–4(b), which is $40x ($200x – $160x). Accordingly, under this paragraph (b)(2)(ii), FS is treated as having acquired from P, a related United States person, the trade receivables that it is treated as holding with a basis equal to $200x ($160x + $40x). Thus, FS is treated as holding United States property with a basis of $200x under paragraph (a) of this section.

Example 2. (i) *Facts*. A domestic corporation, P, wholly owns a controlled foreign corporation, FS1, that has earnings and profits of at least $300x. FS1 organizes a foreign corporation, FS2, with a $200x cash contribution. FS2 uses the cash contribution to purchase trade receivables from P. The obligors with respect to the trade receivables are unrelated United States persons. A principal purpose of funding FS2 (through FS1's cash contribution) is to avoid the application of section 956 with respect to FS1.

(ii) *Result*. Under § 1.956–1(b), if the trade receivables held by FS2 were United States property, FS1 would be treated as holding the trade receivables held by FS2 because FS1 controls FS2 and a principal purpose of FS1 funding FS2 was to avoid the application of section 956 with respect to FS1. Accordingly, under this paragraph (b)(2)(ii), FS1 is treated as having acquired from P, a related United States person, the trade receivables that it would be treated as holding with a basis equal to $200x. Thus, FS1 is treated as holding United States property with a basis of $200x under paragraph (a) of this section.

(iii) *Swap or pooling arrangements*. A trade or service receivable of a United States person is considered to be a trade or service receivable acquired from a related United States person and subject to the rules of this section when it is acquired in accordance with an arrangement that involves two or more groups of related persons, if the groups are unrelated to each other and the effect of the arrangement is that one or more persons in each group acquire (directly or indirectly) trade or service receivables from one or more unrelated United States persons who are also parties to the arrangement in exchange for reciprocal purchases of receivables from related United States persons. The following example illustrates the application of this paragraph (b)(2)(iii):

Example. (i) *Facts*. Controlled foreign corporations A, B, C, and D are wholly-owned subsidiaries of domestic corporations M, N, O, and P, respectively. M, N, O, and P are not related persons. According to a prearranged plan, A, B, C, and D each acquire trade or service receivables from M, N, O, and/or P. The obligors under some or all of the receivables acquired by each of A, B, C, and D are United States persons.

(ii) *Result*. The effect of the prearranged plan is that each of A, B, C, and D acquires trade or service receivables of United States persons from one or more unrelated United States persons who are also parties to the arrangement, in exchange for reciprocal purchases of receivables from a related United States person. Accordingly, each of A, B, C, and D is treated as holding a trade or service receivable acquired from a related United States person and is subject to the rules of this section. As a result, each of A, B, C, and D is treated as holding an amount of United States property equal to its adjusted basis in the receivables acquired pursuant to the arrangement with respect to which the obligors are United States persons.

(iv) *Financing arrangements*. If a controlled foreign corporation participates (directly or indirectly) in a lending transaction that results in a loan to a United States person who purchases property described in section 1221(a)(1) (*inventory property*) or services from a related United States person, or to any person who purchases from a related United States person trade or service receivables under which the obligor is a United States person, or to a person who is a related person with respect to the purchaser, and if the loan would not have been made or maintained on the same terms but for the corresponding purchase, then the controlled foreign corporation is considered to have indirectly acquired a trade or service receivable described in paragraph (a) of this section. For purposes of this paragraph (b)(2)(iv), it is immaterial that the sums lent are not, in fact, the sums used to finance the purchase of the inventory property or services or trade or service receivables from a related United States person. The amount to be taken into account with respect to the United States property treated as held by a controlled foreign corporation as a result of the application of this paragraph (b)(2)(iv) is the lesser of the amount lent pursuant to a lending transaction described in this paragraph (b)(2)(iv) and the purchase price of the inventory property, services, or trade or service receivables. The following examples illustrate the application of this paragraph (b)(2)(iv):

Example 1. (i) *Facts*. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. P sells inventory property for $200x to X, an unrelated United States person. FS1 makes a $100x short-term loan to X, which loan would not have been made or maintained on the same terms but for X's purchase of P's inventory property.

(ii) *Result*. FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv). Thus, FS1 is considered to have acquired a trade or service receivable described in paragraph (a) of this section. That is, FS1 is considered to have acquired a trade or service receivable of a United States person from a related United States person. As a result, FS1 is treated as holding United States property in the amount of $100x.

Example 2. (i) *Facts*. The facts are the same as in *Example 1* of this paragraph (b)(2)(iv), except that instead of loaning money to X directly, FS1 deposits $300x with an unrelated financial institution that loans $200x to X in order for X to purchase P's inventory property. The loan would not have been made or maintained on the same terms but for the corresponding deposit.

(ii) *Result*. FS1 is considered to have acquired a trade or service receivable described in paragraph (a) of this section because FS1 indirectly participates in a lending transaction described in this paragraph (b)(2)(iv). See Rev. Rul. 87–89, 1987–2 CB 195. That is, FS1 is considered to have acquired a trade or service receivable of a United States person from a related United States person. Thus, FS1 is treated as holding United States property in the amount of $200x.

Example 3. (i) *Facts*. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. FS1 makes a $300x loan to U, an unrelated foreign corporation, in connection with U's purchase from P of receivables from the sale of inventory property by P to United States obligors for $200x.

(ii) *Result*. FS1 is considered to have acquired a trade or service receivable described in paragraph (a) of this section because FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv). That is, FS1 is considered to have acquired a trade or service receivable of a United States person from a related United States person. Thus, FS1 is treated as holding United States property in the amount of $200x.

(c) *Substitution of obligor*. For purposes of this section, the substitution of another person for a United States obligor is disregarded, unless it can be demonstrated by the parties to the transaction that the primary purpose for the arrangement was not the avoidance of section 956. The following example illustrates the application of this paragraph (c):

Example. (i) *Facts*. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation with substantial accumulated earnings and profits. P sells inventory property to X, a domestic corporation unrelated to P. To pay for the inventory property, X arranges for a foreign financing entity to issue a note to P. P then sells the note to FS1. P and X cannot demonstrate that the primary purpose for X's assignment of the payment obligation to the foreign financing entity was not the avoidance of section 956.

(ii) *Result*. The substitution of the foreign financing entity for X is disregarded, and FS1 is treated as holding an obligation of a United States person acquired from a related United States person. Thus, FS1 is treated as holding United States property in the amount of the purchase price of the note.

(d) *Effective/applicability date*—(1) Except as provided in paragraph (d)(2) of this section, this section applies to trade or service receivables acquired (directly or indirectly) after March 1, 1984.

(2) Paragraph (b)(2)(ii) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to trade or service receivables acquired on or after September 1, 2015. For purposes of this paragraph (d), a significant modification, within the meaning of § 1.1001–3(e), of a trade or service receivable on or after September 1, 2015, constitutes an acquisition of the trade or service receivable on or after that date.

§ 1.956–3T [Removed]

Par. 8. Section 1.956–3T is removed.

Par. 9. Section 1.956–4 is added to read as follows:

§ 1.956–4 Certain rules applicable to partnerships.

(a) *Overview*. This section provides rules concerning the application of section 956 to certain obligations of and property held by a partnership. Paragraph (b) of this section provides rules concerning United States property held indirectly by a controlled foreign corporation through a partnership. Paragraph (c) of this section provides rules that generally treat obligations of a foreign partnership as obligations of the partners in the foreign partnership, as well as a special rule that treats a partner that is a United States person as owing additional amounts of a partnership obligation in certain circumstances. Paragraph (d) of this section sets forth a rule concerning the application of the indirect pledge or guarantee rule to obligations of partnerships. Paragraph (e) of this section provides that obligations of a domestic partnership are obligations of a United States person. Paragraph (f) of this section provides effective and applicability dates. See §§ 1.956–1(b) and 1.956–2(c) for additional rules applicable to partnerships.

(b) *Property held indirectly through a partnership*—(1) *General rule*. For purposes of section 956, a partner in a partnership is treated as holding its attributable share of any property held by the partnership (including an obligation that the partnership is treated as holding as a result of the application of § 1.956–2(c)). A partner's attributable share of partnership property is determined under the rules set forth in paragraph (b)(2) of this section. An upper-tier partnership's attributable share of the property of a lower-tier partnership is treated as property of the upper-tier partnership for purposes of applying this paragraph (b)(1) to the partners of the upper-tier partnership. For purposes of section 956, a partner's adjusted basis in the property of the partnership equals the partner's attributable share of the partnership's adjusted basis in the property, as determined under the rules set forth in paragraph (b)(2) of this section, taking into account any adjustments to basis under section 743(b) (with respect to the partner) or section 734(b) or any similar adjustments to basis. The rules in § 1.956–1(e)(2) apply to determine the amount of an obligation treated as held by a partnership as a result of the application of § 1.956–2(c). See § 1.956–1(b) for special rules that may treat a controlled foreign corporation as holding a greater amount of United States property held by a partnership than the amount determined under this section.

(2) *Methodology*—(i) *Liquidation value percentage*—(A) *Calculation*. Except as otherwise provided in paragraph (b)(2)(ii) of this section, for purposes of paragraph (b)(1) of this section, a partner's attributable share of partnership property is determined in accordance with the partner's liquidation value percentage. For purposes of this paragraph (b)(2)(i) and paragraph (c)(1) of this section, the liquidation value of a partner's interest in a partnership is the amount of cash the partner would receive with respect to the interest if, on the applicable determination date, as provided in paragraph (b)(2)(i)(B) of this section, the partnership sold all of its assets for cash equal to the fair market value of such assets (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in § 1.752–7), paid an unrelated third party to assume all of its § 1.752–7 liabilities in a fully taxable transaction, and then liquidated. A partner's liquidation value percentage is the ratio (expressed as a percentage) of the liquidation value of the partner's interest in the partnership divided by the aggregate liquidation value of all of the partners' interests in the partnership.

(B) *Determination date*. The *determination date* with respect to a partnership is the most recent of—

(*1*) The formation of the partnership;

(*2*) An event described in § 1.704–1(b)(2)(iv)(*f*)(*5*) or § 1.704–1(b)(2)(iv)(*s*)(*1*) (a *revaluation event*), irrespective of whether the capital accounts of the partners are adjusted in accordance with § 1.704–1(b)(2)(iv)(*f*); or

(*3*) The first day of the partnership's taxable year, as determined under section 706, provided the liquidation value percentage determined for any partner on that day would differ from the most recently determined liquidation value percentage of that partner by more than 10 percentage points.

(ii) *Special allocations*. For purposes of paragraph (b)(1) of this section, if a partnership agreement provides for the allocation of book income (or, where appropriate, book gain) from a subset of the property of the partnership to a partner other than in accordance with the partner's liquidation value percentage in a particular taxable year (a *special allocation*), then the partner's attributable share of that property is determined solely by reference to the partner's special allocation with respect to the property, provided the special allocation does not have a principal purpose of avoiding the purposes of section 956.

(3) *Examples*. The following examples illustrate the rule of this paragraph (b):

Example 1. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, which, in turn, owns an interest in FPRS, a foreign partnership. The remaining interest in FPRS is owned by an unrelated foreign person. FPRS holds non-depreciable property with an adjusted basis of $100x (the "FPRS property") that would be United States property if held by FS directly. At the close of quarter 1 of year 1, the liquidation value percentage, as determined under paragraph (b)(2) of this section, for FS with respect to FPRS is 25%. There are no special allocations in the FPRS partnership agreement.

(ii) *Result*. Under paragraph (b)(1) of this section, for purposes of section 956, FS is treated as holding its attributable share of the property held by FPRS with an adjusted basis equal to its attributable share of FPRS's adjusted basis in such property. Under paragraph (b)(2) of this section, FS's attributable share of property held by FPRS is determined in accordance with FS's liquidation value percentage, which is 25%. Thus, FS's attributable share of the FPRS property is 25%, and its attributable share of FPRS's basis in the FPRS property is $25x. Accordingly, for purposes of determining the amount of United States property held by FS as of the close of quarter 1 of year 1, FS is treated as holding United States property with an adjusted basis of $25x.

Example 2. (i) *Facts*. The facts are the same as in *Example 1* of this paragraph (b)(3), except that the FPRS partnership agreement, which satisfies the requirements of section 704(b), specially allocates 80% of the income with respect to the FPRS property to FS. The special allocation does not have a principal purpose of avoiding the purposes of section 956.

(ii) *Result*. Under paragraph (b)(1) of this section, for purposes of section 956, FS is treated as holding its attributable share of property held by FPRS with an adjusted basis equal to its attributable share of FPRS's adjusted basis in such property. In general, FS's attributable share of property held by FPRS is determined in accordance with FS's liquidation value percentage. However, because the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to its special allocation. FS's special allocation percentage for the FPRS property is 80%, and thus FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is $80x. Accordingly, for purposes of determining the amount of United States property held by FS as of the close of quarter 1 of year 1, FS is treated as holding United States property with an adjusted basis of $80x.

Example 3. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, which, in turn, owns an interest in FPRS, a foreign partnership. USP owns the remaining interest in FPRS. FPRS holds property (the "FPRS property") that would be United States property if held by FS directly. The FPRS property has an adjusted basis of $100x and is anticipated to appreciate in value but generate relatively little income. The FPRS partnership agreement, which satisfies the requirements of section 704(b), specially allocates 80% of the income with respect to the FPRS property to USP and 80% of the gain with respect to the disposition of FPRS property to FS. The special allocation does not have a principal purpose of avoiding the purposes of section 956.

(ii) *Result*. Because the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to a special allocation with respect to the FPRS property. Given the income and gain anticipated with respect to the FPRS property, it is appropriate to determine FS's attributable share of the property in accordance with the special allocation of gain. Accordingly, for purposes of determining the amount of United States property held by FS in each year that FPRS holds the FPRS property, FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is $80x. Thus, FS is treated as holding United States property with an adjusted basis of $80x.

(c) *Obligations of a foreign partnership*—(1) *In general*. Except as provided in paragraphs (c)(2) and (c)(3) of this section, for purposes of section 956, an obligation of a foreign partnership is treated as a separate obligation of each of the partners in the partnership to the extent of each partner's share of the obligation. A partner's share of the partnership's obligation is determined in accordance with the partner's liquidation value percentage, as determined under the rules set forth in paragraph (b)(2)(i) of this section, without regard to the rules set forth in paragraph (b)(2)(ii) of this section. An upper-tier partnership's share of an obligation of a lower-tier partnership is treated as an obligation of the upper-tier partnership for purposes of applying this paragraph (c)(1) to the partners of the upper-tier partnership.

(2) *Exception for obligations of partnerships in which neither the lending controlled foreign corporation nor any person related to the lending controlled foreign corporation is a partner*. For purposes of applying section 956 with respect to a controlled foreign corporation, an obligation of a foreign partnership is treated as an obligation of a foreign partnership, and not as an obligation of its partners, if neither the controlled foreign corporation nor any person related to the controlled foreign corporation within the meaning of section 954(d)(3) is a partner in the partnership. For purposes of section 956, an obligation treated as an obligation of a foreign partnership pursuant to this paragraph (c)(2) is not an obligation of a United States person.

(3) *Special obligor rule in the case of certain partnership distributions*—(i) *General rule*. For purposes of determining a partner's share of a foreign partnership's obligation under section 956, if the foreign partnership distributes an amount of money or property to a partner that is related to a controlled foreign corporation within the meaning of section 954(d)(3) and whose obligation would be United States property if held (or if treated as held) by the controlled foreign corporation, and the foreign partnership would not have made the distribution but for a funding of the partnership through an obligation held (or treated as held) by a controlled foreign corporation, notwithstanding § 1.956–1(e), the partner's share of the partnership obligation is the greater of—

(A) The partner's share of the partnership obligation as determined under paragraph (c)(1) of this section; and

(B) The lesser of the amount of the distribution to the partner that would not have been made but for the funding of the partnership and the amount of the obligation (as determined under § 1.956–1(e)).

(ii) *Deemed treatment*—(A) For purposes of applying paragraph (c)(3)(i) of this section, in the case of a distribution of liquid assets by a foreign partnership to a partner, the foreign partnership is treated as if it would not have made the distribution of liquid assets to the partner but for the funding of the partnership through an obligation or obligations held (or treated as held) by the controlled foreign corporation to the extent the foreign partnership does not have sufficient liquid assets to make the distribution immediately prior to the distribution, without taking into account the obligation or obligations.

(B) If the controlled foreign corporation holds (or is treated as holding) multiple obligations of the foreign partnership, paragraph (c)(3)(ii)(A) of this section applies to the obligations in reverse chronological order starting with the obligation that was acquired (or the obligation with respect to which a pledge or guarantee was entered into) closest in time to the distribution. Paragraph (c)(3)(ii)(A) of this section applies to an obligation only to the extent that the full amount of the distribution is not otherwise treated, pursuant to paragraph (c)(3)(ii)(A) of this section, as if it would not have been made but for the funding of the partnership through one or more other obligations.

(C) For purposes of paragraph (c)(3)(ii) of this section, a significant modification, within the meaning of § 1.1001–3(e), of an obligation constitutes an acquisition of the obligation on or after that date, and a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor.

(D) For purposes of paragraph (c)(3)(ii) of this section, liquid assets means cash or cash equivalents, marketable securities within the meaning of section 453(f)(2), or an obligation owed by a related person (within the meaning of section 954(d)(3)).

(4) *Examples*. The following examples illustrate the rules of this paragraph (c):

Example 1. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, and owns an interest in FPRS, a foreign partnership. At the close of quarter 1 of year 1, the liquidation value percentage, as determined under paragraph (b)(2)(i) of this section, for USP with respect to FPRS is 90%. X, a foreign person that is unrelated to USP or FS, owns the remaining interest in FPRS. FPRS borrows $100x from FS. FS's basis in the FPRS obligation is $100x.

(ii) *Result*. Under paragraph (c)(1) of this section, for purposes of section 956, the obligation of FPRS is treated as obligations of its partners (USP and X) in proportion to each partner's liquidation value percentage with respect to FPRS. Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), the exception in paragraph (c)(2) of this section does not apply. Based on its liquidation value percentage, USP's share of the FPRS obligation is $90x. Accordingly, for purposes of section 956, $90x of the FPRS obligation held by FS is treated as an obligation of USP and is United States property within the meaning of section 956(c). Therefore, on the date the loan is made, FS is treated as holding United States property of $90x.

Example 2. (i) *Facts*. The facts are the same as in *Example 1* of this paragraph (c)(4), except that USP owns 40% of the stock of FS and is not a related person (as defined in section 954(d)(3)) with respect to FS. Y, a United States person that is unrelated to USP or X, owns the remaining 60% of the stock of FS.

(ii) *Result*. Because neither FS nor any person related to FS within the meaning of section 954(d)(3) is a partner in FPRS, the exception in paragraph (c)(2) of this section applies to treat the FPRS obligation as an obligation of a foreign partnership and not an obligation of a United States person. Therefore, paragraph (c)(1) of this section does not apply, and FS is not treated as holding United States property.

Example 3. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation. USP and FS own interests in FPRS, a foreign partnership. USP's liquidation value percentage with respect to FPRS is 60%, and FS's liquidation value percentage with respect to FPRS is 30%. USC, a domestic corporation that is unrelated to USP and FS, also owns an interest in FPRS; its liquidation value percentage is 10%. FPRS borrows $100x from an unrelated person. FS guarantees the FPRS obligation.

(ii) *Result*. Under paragraph (c)(1) of this section, for purposes of section 956, the obligation of FPRS is treated as obligations of its partners (USP, FS, and USC) in proportion to each partner's liquidation value percentage. Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), and because FS is a partner in FPRS, the exception in paragraph (c)(2) of this section does not apply. Based on their liquidation value percentages, USP's share of the FPRS obligation is $60x, and USC's share of the FPRS obligation is $10x. For purposes of section 956, $60x of the FPRS obligation is treated as an obligation of USP, and $10x of the FPRS obligation is treated as an obligation of USC. Under § 1.956–2(c)(1), FS is treated as holding the obligations of USP and USC that FS guaranteed. All of the exceptions to the definition of United States property contained in section 956 and § 1.956–2 must be considered to determine whether the obligations of USP and USC that are treated as held by FS constitute United States property. Accordingly, the obligation of USC is not United States property under section 956(c)(2)(F) and § 1.956–2(b)(1)(viii). The obligation of USP, however, is United States property within the meaning of section 956(c). Therefore, on the date the guarantee is made, FS is treated as holding United States property of $60x.

Example 4. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation. USP owns an interest in FPRS, a foreign partnership; its liquidation value percentage with respect to FPRS is 70%. A domestic corporation that is unrelated to USP and FS owns the remaining interest in FPRS; its liquidation value percentage is 30%. FPRS borrows $100x from FS and makes a distribution of $80x to USP. FPRS would not have made the distribution to USP but for the funding of FPRS by FS.

(ii) *Result*. Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), the exception in paragraph (c)(2) of this section does not apply. Moreover, an obligation of USP held by FS would be United States property. USP's share of the FPRS obligation as determined under paragraph (c)(1) of this section in accordance with USP's liquidation value percentage is $70x. Under paragraph (c)(3) of this section, USP's share of the FPRS obligation is the greater of (i) USP's attributable share of the obligation, $70x, or (ii) the lesser of the amount of the distribution, $80x, or the amount of the obligation, $100x. For purposes of section 956, therefore, $80x of the FPRS obligation is treated as an obligation of USP and is United States property within the meaning of section 956(c). Thus, on the date the loan is made, FS is treated as holding United States property of $80x.

(d) *Limitation on a partner's indirect pledge or guarantee*. For purposes of section 956 and § 1.956–2(c), a controlled foreign corporation that is a partner in a partnership is not considered a pledgor or guarantor of the portion of an obligation of the partnership attributed to its partners that are United States persons under paragraph (c) of this section solely as a result of the attribution of a portion of the partnership's assets to the controlled foreign corporation under paragraph (b) of this section.

(e) *Obligations of a domestic partnership*. For purposes of section 956, an obligation of a domestic partnership is an obligation of a United States person. See section 956(c)(2)(L) for an exception from the treatment of such an obligation as United States property.

(f) *Effective/applicability dates*. (1) Paragraph (b) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after November 3, 2016. For purposes of this paragraph (f)(1), a deemed exchange of property pursuant to section 1001 on or after November 3, 2016, constitutes an acquisition of the property on or after that date. See § 1.956–2(a)(3), as contained in 26 CFR part 1 revised as of April 1, 2016, for the rules applicable to taxable years of a controlled foreign corporation beginning on or after July 23, 2002, and ending before November 3, 2016, and with respect to property acquired before November 3, 2016, to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

(2) Except as otherwise provided in this paragraph (f)(2), paragraph (c) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations acquired, or pledges or guarantees entered into, on or after September 1, 2015, and, for purposes of paragraph (c)(3) of this section, in the case of distributions made on or after September 1, 2015. Paragraph (c)(3)(ii) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations acquired, or pledges or guarantees entered into, on or after September 1, 2015, and distributions made on or after November 3, 2016. For purposes of this paragraph (f)(2), a significant modification, within the meaning of § 1.1001–3(e), of an obligation on or after September 1, 2015 constitutes an acquisition of the obligation on or after that date. Furthermore, for purposes of this paragraph (f)(2), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modifi-

cation, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015. See § 1.956–1T(b)(5), as contained in 26 CFR part 1 revised as of April 1, 2016, for rules applicable to taxable years of controlled foreign corporations ending on or after September 1, 2015, and before November 3, 2016, and to taxable years of United States shareholders in which or with which such taxable years end, in the case of distributions made on or after September 1, 2015.

(3) Paragraph (d) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges or guarantees entered into on or after September 1, 2015. For purposes of this paragraph (f)(3), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

(4) Paragraph (e) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations held on or after November 3, 2016.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved October 17, 2016

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

(Filed by the Office of the Federal Register on November 2, 2016, 8:45 a.m., and published in the issue of the Federal Register for November 03, 2016, 81 F.R. 76497)

Section 6050.–Repealed

26 CFR 1.6050P–1: Information reporting for discharges of indebtedness by certain entities.

T.D. 9793

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Removal of the 36-month Non-payment Testing Period Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that remove the rule that a deemed discharge of indebtedness for which a Form 1099–C, "Cancellation of Debt," must be filed occurs at the expiration of a 36-month non-payment testing period. The Treasury Department and the IRS are concerned that the rule creates confusion for taxpayers and does not increase tax compliance by debtors or provide the IRS with valuable third-party information that may be used to ensure taxpayer compliance. The final regulations affect certain financial institutions and governmental entities.

DATES: *Effective Date*: These regulations are effective on November 10, 2016. *Applicability Date*: For dates of applicability, see § 1.6050P–1(h).

FOR FURTHER INFORMATION CONTACT: Eliezer Mishory at (202) 317-6844 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P of the Internal Revenue Code (Code), relating to the rule in § 1.6050P–1(b)(2)(iv) that the 36-month non-payment testing period is an identifiable event triggering an information reporting obligation on Form 1099–C for discharge of indebtedness by certain entities. On October 15, 2014, a notice of proposed rulemaking (REG–136676–13) was published in the **Federal Register** (79 FR 61791). The notice of proposed rulemaking proposed to remove the 36–month non-payment testing period. Written comments responding to the proposed regulations were received. The comments have been considered in connection with these final regulations and are available for public inspection at www.regulations.gov or on request. No public hearing was requested or held. After consideration of all the comments, the proposed regulations are adopted as final regulations without significant modification by this Treasury decision.

Statutory Provisions

Section 61(a)(12) provides that income from discharge of indebtedness is includible in gross income. Section 6050P was added to the Code by section 13252 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 312, 531–532 (1993)). Section 6050P was enacted in part "to encourage taxpayer compliance with respect to discharged indebtedness" and to "enhance the ability of the IRS to enforce the discharge of indebtedness rules." H.R. Rep. No. 103–111, at 758 (1993). As originally enacted, section 6050P generally required applicable financial entities (generally financial institutions, credit unions, and federal executive agencies) that discharge (in whole or in part) indebtedness of $600 or more during a calendar year to file information returns with the IRS and to furnish information statements to the persons whose indebtedness was discharged. In addition to other information prescribed by regulations, an applicable financial entity is required to include on the information return the debtor's name, taxpayer identification number, the date of the discharge, and the amount discharged. *See* 26 U.S.C. 6050P(a) (1994).

The Debt Collection Improvement Act of 1996 (1996 Act), Public Law 104–134 (110 Stat. 1321, 1321–368 through 1321–369 (1996)) was enacted on April 26, 1996. Section 31001(m)(2)(B)(i) and (ii) of the 1996 Act amended section 6050P to expand the reporting requirement to cover "applicable entities," which includes any executive, judicial, or legislative agency, not just federal executive agencies, and any previously covered applicable financial entity. Effective for discharges of indebtedness occurring after December 31, 1999, section 533(a) of the Ticket to Work and Work Incentives Improvement Act of 1999 (1999 Act), Public Law 106–170 (113 Stat. 1860, 1931 (1999)), added subparagraph (c)(2)(D) to section 6050P, to further expand entities covered by the reporting requirements to include any organization the "significant trade or business of which is the lending of money."

On April 4, 2000, the IRS released Notice 2000–22 (2000–1 CB 902) to provide penalty relief to organizations that were newly made subject to section 6050P by the 1999 Act (organizations with a significant trade or business of lending money). The relief applied to penalties for failure to file information returns or furnish payee statements for discharges of indebtedness occurring before January 1, 2001. On December 26, 2000, the IRS released Notice 2001–8 (2001–1 CB 374) to extend the penalty relief for organizations described in Notice 2000–22 for discharges of indebtedness that occurred prior to the first calendar year beginning at least two months after the date that appropriate guidance is issued.

Regulatory History

On December 27, 1993, temporary regulations under section 6050P relating to the reporting of discharge of indebtedness by applicable financial entities were published in the **Federal Register** (TD 8506; 58 FR 68301). The temporary regulations provided that an applicable financial entity must report a discharge of indebtedness upon the occurrence of an identifiable event that, considering all the facts and circumstances, indicated the debt would never have to be repaid. The temporary regulations provided a non-exhaustive list of three identifiable events that would give rise to the reporting requirement under section 6050P: (1) a discharge of indebtedness under title 11 of the United States Code (Bankruptcy Code); (2) an agreement between the applicable financial entity and the debtor to discharge the indebtedness, provided that the last event to effectuate the agreement has occurred; and (3) a cancellation or extinguishment of the indebtedness by operation of law. These regulations were effective for discharges of indebtedness occurring after December 31, 1993.

A concurrently published notice of proposed rulemaking (IA–63–93; 58 FR 68337) proposed to adopt those and other rules in the temporary regulations. Written comments were received in response to the notice of proposed rulemaking, and testimony was given at a public hearing held on March 30, 1994. In response to the comments and testimony, the IRS provided, in Notice 94–73 (1994–2 CB 553), interim relief from penalties for failure to comply with certain of the reporting requirements of the temporary regulations for discharges of indebtedness occurring before the later of January 1, 1995, or the effective date of final regulations under section 6050P.

On January 4, 1996, prior to the amendments made by the 1996 Act, final regulations relating to the information reporting requirements of applicable financial entities for discharges of indebtedness were published in the **Federal Register** (TD 8654; 61 FR 262) (the 1996 final regulations). The 1996 final regulations were generally effective for discharges of indebtedness occurring after December 21, 1996, although applicable financial entities at their discretion could apply the 1996 final regulations to any discharge of indebtedness occurring on or after January 1, 1996, and before December 22, 1996. Finally, the preamble to these regulations provided that the temporary regulations and the interim relief provided in Notice 94–73 remained in effect until December 21, 1996.

In response to objections by commenters, the 1996 final regulations did not adopt the facts and circumstances test to determine whether a discharge of indebtedness had occurred and information reporting was required. Instead, the 1996 final regulations provided that a person's indebtedness is deemed to be discharged for information reporting purposes only upon the occurrence of an identifiable event specified in an exhaustive list under § 1.6050P–1(b)(2), whether or not an actual discharge has occurred on or before the date of the identifiable event. *See* § 1.6050P–1(a)(1).

Section 1.6050P–1(b)(2) of the 1996 final regulations listed eight identifiable events that trigger information reporting obligations on the part of an applicable financial entity: (1) a discharge of indebtedness under the Bankruptcy Code; (2) a cancellation or extinguishment of an indebtedness that renders the debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or state court, as described in section 368(a)(3)(A)(ii) (other than a discharge under the Bankruptcy Code); (3) a cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection (but only if, and only when, the debtor's statute of limitations affirmative defense has been upheld in a final judgment or decision in a judicial proceeding, and the period for appealing it has expired) or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding; (4) a cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness; (5) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding; (6) a discharge of indebtedness pursuant to an agreement between an applicable entity and a debtor to discharge indebtedness at less than full consideration; (7) a discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; and (8) the expiration of a 36-month non-payment testing period.

The first seven identifiable events are specific occurrences that typically result from an actual discharge of indebtedness. The eighth identifiable event, the expiration of a 36-month non-payment testing period, may not result from an actual discharge of indebtedness. The 36-month non-payment testing period was added to the 1996 final regulations as an additional identifiable event in response to concerns of creditors that the facts and circumstances approach taken in the temporary and proposed regulations was unclear regarding the effect of continuing collection activity. Creditors proposed (among other things) that the final regulations require reporting after a fixed time period during which there had been no collection efforts.

Section 1.6050P–1(b)(2)(iv) of the 1996 regulations sets forth the 36-month non-payment testing period rule (the 36–month rule). Under that rule, a rebuttable presumption arises that an identifiable event has occurred if a creditor does not receive a payment within a 36-month testing period. The creditor may rebut the presumption if the creditor engaged in significant bona fide collection activity at any time within the 12–month period ending at the close of the calendar year or if the facts and circumstances existing as of January 31 of the calendar year following the expiration of the non-payment testing period indicate that the indebtedness has not been discharged. A creditor's decision not to rebut the presumption that an identifiable event has occurred pursuant to the 36–month rule is not an indication that it has discharged the debt, but the creditor is nonetheless required, for information reporting purposes, to report amounts on a Form 1099–C to the debtor taxpayer. Taxpayers receiving Forms 1099–C may conclude that the debts have, in fact, been discharged, causing the taxpayers to erroneously include in income the amounts reported on Forms 1099–C even though creditors may continue to attempt to collect the debt after issuing a Form 1099–C as required by the 36–month rule. *See* § 1.6050P–1(a)(1) and (b)(2)(iv). Finally, the 1996 final regulations provided that an identifiable event with respect to the 36–month non-payment testing period in § 1.6050P–1(b)(2)(i)(H) and (b)(2)(iv) could not occur prior to December 31, 1997. *See* § 1.6050P–1(b)(2)(iv)(C) of the 1996 regulations.

On October 25, 2004, final regulations reflecting the amendments to section 6050P(c) made by the 1999 Act were published in the **Federal Register** (TD 9160; 69 FR 62181). These regulations describe circumstances in which an organization has a significant trade or business of lending money and provide three safe harbors under which organizations will not be considered to have a significant trade or business of lending money.

On November 10, 2008, final and temporary regulations were published in the **Federal Register** (TD 9430; 73 FR 66539) (the 2008 regulations) to amend the regulations under section 6050P to exempt from the 36–month rule entities that were not within the scope of section 6050P as originally enacted (organizations with a significant trade or business of lending money and agencies other than federal executive agencies). The changes made by the 2008 regulations reduced the burden on these entities and protected debtors from receiving information returns that reported discharges of indebtedness from these entities before a discharge had occurred. The 2008 regulations also added § 1.6050P–1(b)(2)(v), which provided that, for organizations with a significant trade or business of lending money and agencies other than federal executive agencies that were required to file information returns pursuant to the 36–month rule in a tax year prior to 2008 and failed to file them, the date of discharge would be the first identifiable event, if any, described in § 1.6050P–1(b)(2)(i)(A) through (G) that occurs after 2007. On September 17, 2009, final regulations were published in the **Federal Register** (TD 9461; 74 FR 47728–01) adopting the 2008 regulations without change.

Notice 2012–65

Even after the amendments to the regulations in 2008 and 2009, concerns continued to arise about the 36-month rule, and taxpayers remained confused regarding whether the receipt of a Form 1099–C represents cancellation of indebtedness that must be included in gross income. To address those concerns, in Notice 2012–65 (2012–52 IRB 773 (Dec. 27, 2012)), the Treasury Department and the IRS requested comments from the public regarding whether to remove or modify the 36–month rule as an identifiable event for purposes of information reporting under section 6050P. Ten comments were received, all recommending removal or revision of the 36–month rule. Several commenters generally expressed concerns that the expiration of a 36–month non-payment testing period does not necessarily coincide with an actual discharge of the indebtedness, leading to confusion on the part of the debtor and, in some instances, uncertainty on the part of the creditor regarding whether it may lawfully continue to pursue the debt. Additionally, commenters noted that the IRS's ability to collect tax on discharge of indebtedness income may be undermined if the actual discharge occurs in a different year than the year of information reporting.

Proposed Regulations

In response to the comments received, on October 15, 2014, a notice of proposed rulemaking (REG–136676–13) proposing removing the 36–month rule was published in the **Federal Register** (79 FR 61791). The Treasury Department and the IRS agreed that information reporting under section 6050P should generally coincide with the actual discharge of a debt. Because reporting under the 36–month rule may not reflect a discharge of indebtedness, a debtor may conclude that the debtor has taxable income even though the creditor has not discharged the debt and continues to pursue collection. Issuing a Form 1099–C before a debt has been discharged may also cause the IRS to initiate compliance actions even though a discharge has not occurred. Additionally, § 1.6050P–1(e)(9) provides that no additional reporting is required if a subsequent identifiable event occurs. Therefore, in cases in which the Form 1099–C is issued because of the 36–month rule but before the debt is discharged, the IRS does not subsequently receive third-party reporting when the debt is discharged. The IRS's ability to enforce collection of tax for discharge of indebtedness income may, thus, be diminished when the information reporting does not reflect an actual cancellation of indebtedness.

Section 1.6050P–1(b)(2)(i)(H), (b)(2)(iv), and (b)(2)(v) were proposed to be removed on the date final regulations are published in the Federal Register. The proposed regulations also proposed conforming amendments to the effective/applicability date provision, § 1.6050P-1(h).

Explanation and Summary of Comments

The notice of proposed rulemaking invited comments on the proposed removal of the 36–month rule. A public hearing was not requested and none was held. Four comments were received. All commenters supported the proposal and agreed that the 36–month rule did not increase compliance and caused confusion, and supported its removal. Accordingly, these final regulations adopt the proposed regulations without change (except as described in the Applicability Date section of this preamble), remove the 36–month rule from the list of identifiable events, and remove related provisions.

Applicability Date

The notice of proposed rulemaking proposed to amend the effective/applicability date paragraph in § 1.6050P–1(h) to remove references to the 36–month rule that were added along with the 36–month rule in TD 9461, 74 FR 47728–01, and such amendments would have been both effective and applicable as of the date of publication of these final regulations in the **Federal Register.** The Treasury Department and the IRS have determined that it is not in the interest of sound tax administration to have the removal of the 36–month rule apply for a portion of a calendar year. Therefore, these final regulations do not adopt the effective/applicability date provision of the proposed regulations. Information returns required to be filed under section 6050P must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the identifiable event occurs and payee statements must be furnished on or before January 31 of the year following the calendar year in which the identifiable event occurs. The final regulations are applicable to information returns required to be filed, and payee statements required to be furnished, after December 31, 2016. Because the deadline for filing information returns and furnishing payee statements for calendar year 2016 would be after December 31, 2016, the expiration of the 36–month testing period during 2016 does not create a requirement to file information returns and furnish payee statements. However, § 1.6050P–1 (as contained in 26 CFR part 1, revised April 2016) continues to apply to information returns required to be filed, and payee statements required to be furnished, on or before December 31, 2016.

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. 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. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Eliezer Mishory of the Office of Associate Chief Counsel (Procedure and Administration).

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6050P–1 is amended by:

1. Removing paragraphs (b)(2)(i)(H), (b)(2)(iv), and (b)(2)(v).
2. Adding the word "or" at the end of paragraph (b)(2)(i)(F).
3. Removing the semicolon and adding a period in its place at the end of paragraph (b)(2)(i)(G).
4. Revising paragraph (h).

The revision reads as follows:

§ 1.6050P–1 Information reporting for discharge of indebtedness by certain entities.

* * * * *

(h) *Applicability dates*. This section applies to information returns required to be filed, and payee statements required to be furnished, after December 31, 2016. Section 1.6050P–1 (as contained in 26 CFR part 1, revised April 2016) applies to information returns required to be filed, and payee statements required to be furnished, on or before December 31, 2016.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

October 17, 2016.

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

(Filed by the Office of the Federal Register on November 09, 2016, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2016, 81 F.R. 78908)

Part III. Administrative, Procedural, and Miscellaneous

Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases

Notice 2016–65

BACKGROUND

Notice 2013–1, 2013–3 IRB 281, provides guidance on the federal tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes. Additional tribes have settled tribal trust cases against the United States since publication of Notice 2013–1. This notice provides an updated Appendix that reflects the additional settlement agreements.

EFFECT ON OTHER DOCUMENTS

Notice 2013–1 Appendix is modified and superseded.

FURTHER INFORMATION

For further information regarding this notice, please contact Jon Damm at phone number (202) 317-8493 (not a toll-free number).

Appendix

Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe of Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation

Appendix

Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians
43. Spirit Lake Dakotah Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe
62. Yoruk Tribe
63. Cheyenne River Sioux Tribe
64. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony
65. Seminole Nation of Oklahoma
66. Otoe-Missouria Tribe of Oklahoma
67. Samish Indian Nation
68. Tonkawa Tribe of Indians of Oklahoma
69. Yakama Nation
70. Miami Tribe of Oklahoma
71. Shoshone Indian Tribe and the Northern Arapahoe Indian Tribe of the Wind River Reservation
72. Pueblo of Laguna
73. Navajo Nation
74. Caddo Nation of Oklahoma
75. Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation
76. Chickasaw Nation
77. Choctaw Nation
78. Klamath Tribe

Appendix

Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

79. Skokomish Indian Tribe
80. Quinault Indian Nation
81. Southern Utah Indian Tribe
82. Confederated Tribes of the Umatilla Indian Reservation
83. White Earth Nation
84. Kickapoo Tribe of Oklahoma
85. Sisseton Wahpeton Oyate of the Lake Traverse Reservation
86. Grand Traverse Band of Ottawa and Chippewa Indians
87. Muscogee (Creek) Nation of Oklahoma
88. Gila River Indian Community
89. Aleut Community of St. Paul Island
90. San Carlos Apache Tribe
91. Comanche Nation
92. Colorado River Indian Tribes
93. Jicarilla Apache Nation
94. Pueblo of Acoma
95. Penobscot Indian Nation
96. Seminole Tribe of Florida

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2016–68

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code specifies the minimum funding requirements that apply to single-employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007–81, the monthly corporate bond yield curve derived from October 2016 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of October 2016 are, respectively, 1.57, 3.45, and 4.39.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2015, 2016, and 2017 were published in Notice 2014–50, 2014–40 I.R.B. 590, Notice 2015–61, 2015–39 I.R.B. 408, and Notice 2016–54, 2016–40 I.R.B. 429, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for November 2016 without adjustment for the 25-year average segment rate limits are as follows:

[1] Pursuant to § 433(h)(3)(A), the 3rd segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

Applicable Month	First Segment	Second Segment	Third Segment
November 2016	1.53	3.76	4.74

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for November 2016 adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month		Adjusted 24-Month Average Segment Rates		
			First Segment	Second Segment	Third Segment
2015	November	2016	4.72	6.11	6.81
2016	November	2016	4.43	5.91	6.65
2017	November	2016	4.16	5.72	6.48

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for October 2016 is 2.50 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2046. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

For Plan Years Beginning in *Month*	*Year*	30-Year Treasury Weighted Average	Permissible Range 90%	to	105%
November	2016	2.92	2.62		3.06

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for October 2016 are as follows:

First Segment	Second Segment	Third Segment
1.57	3.45	4.39

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 202-317-8698 (not toll-free calls).

Table I
Monthly Yield Curve for October 2016
Derived from October 2016 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.94	20.5	4.13	40.5	4.42	60.5	4.53	80.5	4.58
1.0	1.16	21.0	4.15	41.0	4.43	61.0	4.53	81.0	4.58
1.5	1.35	21.5	4.16	41.5	4.43	61.5	4.53	81.5	4.58
2.0	1.49	22.0	4.17	42.0	4.43	62.0	4.53	82.0	4.58
2.5	1.60	22.5	4.18	42.5	4.44	62.5	4.53	82.5	4.58
3.0	1.67	23.0	4.19	43.0	4.44	63.0	4.53	83.0	4.58
3.5	1.74	23.5	4.20	43.5	4.44	63.5	4.54	83.5	4.58
4.0	1.81	24.0	4.21	44.0	4.45	64.0	4.54	84.0	4.59
4.5	1.90	24.5	4.22	44.5	4.45	64.5	4.54	84.5	4.59
5.0	1.99	25.0	4.23	45.0	4.45	65.0	4.54	85.0	4.59
5.5	2.10	25.5	4.24	45.5	4.46	65.5	4.54	85.5	4.59
6.0	2.22	26.0	4.25	46.0	4.46	66.0	4.54	86.0	4.59
6.5	2.35	26.5	4.26	46.5	4.46	66.5	4.55	86.5	4.59
7.0	2.48	27.0	4.27	47.0	4.47	67.0	4.55	87.0	4.59
7.5	2.61	27.5	4.27	47.5	4.47	67.5	4.55	87.5	4.59
8.0	2.74	28.0	4.28	48.0	4.47	68.0	4.55	88.0	4.59
8.5	2.87	28.5	4.29	48.5	4.47	68.5	4.55	88.5	4.59
9.0	2.99	29.0	4.30	49.0	4.48	69.0	4.55	89.0	4.59
9.5	3.10	29.5	4.30	49.5	4.48	69.5	4.55	89.5	4.59
10.0	3.21	30.0	4.31	50.0	4.48	70.0	4.55	90.0	4.60
10.5	3.31	30.5	4.32	50.5	4.48	70.5	4.56	90.5	4.60
11.0	3.40	31.0	4.33	51.0	4.49	71.0	4.56	91.0	4.60
11.5	3.49	31.5	4.33	51.5	4.49	71.5	4.56	91.5	4.60
12.0	3.56	32.0	4.34	52.0	4.49	72.0	4.56	92.0	4.60
12.5	3.63	32.5	4.34	52.5	4.49	72.5	4.56	92.5	4.60
13.0	3.70	33.0	4.35	53.0	4.50	73.0	4.56	93.0	4.60
13.5	3.75	33.5	4.36	53.5	4.50	73.5	4.56	93.5	4.60
14.0	3.80	34.0	4.36	54.0	4.50	74.0	4.56	94.0	4.60
14.5	3.85	34.5	4.37	54.5	4.50	74.5	4.57	94.5	4.60
15.0	3.89	35.0	4.37	55.0	4.51	75.0	4.57	95.0	4.60
15.5	3.92	35.5	4.38	55.5	4.51	75.5	4.57	95.5	4.60
16.0	3.96	36.0	4.38	56.0	4.51	76.0	4.57	96.0	4.60
16.5	3.98	36.5	4.39	56.5	4.51	76.5	4.57	96.5	4.60
17.0	4.01	37.0	4.39	57.0	4.51	77.0	4.57	97.0	4.61
17.5	4.03	37.5	4.40	57.5	4.52	77.5	4.57	97.5	4.61
18.0	4.05	38.0	4.40	58.0	4.52	78.0	4.57	98.0	4.61
18.5	4.07	38.5	4.41	58.5	4.52	78.5	4.57	98.5	4.61
19.0	4.09	39.0	4.41	59.0	4.52	79.0	4.58	99.0	4.61
19.5	4.11	39.5	4.41	59.5	4.52	79.5	4.58	99.5	4.61
20.0	4.12	40.0	4.42	60.0	4.52	80.0	4.58	100.0	4.61

Part IV. Items of General Interest

Notice of Proposed Rulemaking

United States Property Held by Controlled Foreign Corporations Through Partnerships with Special Allocations

REG–114734–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking

SUMMARY: This document contains proposed regulations that provide rules regarding the determination of the amount of United States property treated as held by a controlled foreign corporation (CFC) through a partnership. The proposed regulations affect United States shareholders of CFCs.

DATES: Written or electronic comments and requests for a public hearing must be received by February 1, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114734–16), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114734–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–114734–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose E. Jenkins, (202) 317-6934; concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free call).

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of this issue of the **Bulletin**, the Department of Treasury (Treasury Department) and the IRS are issuing final regulations that amend the Income Tax Regulations (26 CFR part 1) relating to sections 954 and 956. Under § 1.956–4(b), a CFC that is a partner in a partnership determines its share of United States property held by the partnership in accordance with the CFC's liquidation value percentage in the partnership, or, when relevant, based on a special allocation of income (or, where appropriate, gain) from the property. This document proposes to amend § 1.956–4(b) so that a CFC that is a partner in a controlled partnership determines its share of United States property held by the partnership under the liquidation value percentage method, regardless of the existence of any special allocation of income or gain from the property.

Explanation of Provisions

Section 956 determines the amount that a United States shareholder (as defined in section 951(b)) of a CFC must include in gross income with respect to the CFC under section 951(a)(1)(B). This amount is determined, in part, based on the average of the amounts of United States property held, directly or indirectly, by the CFC at the close of each quarter during its taxable year. For this purpose, in general, the amount taken into account with respect to any United States property is the adjusted basis of the property, reduced by any liability to which the property is subject. See section 956(a) and § 1.956–1(e). Section 956(e) grants the Secretary authority to prescribe such regulations as may be necessary to carry out the purposes of section 956, including regulations to prevent the avoidance of section 956 through reorganizations or otherwise.

Under § 1.956–4(b), a CFC that is a partner in a partnership generally is treated as holding its share of United States property held by the partnership in accordance with the CFC partner's liquidation value percentage in the partnership. However, if there is a special allocation of income (or, where appropriate, gain) from United States property that does not have a principal purpose of avoiding the purposes of section 956, the partner's attributable share of that property is determined solely by reference to the special allocation. See § 1.956–4(b)(2)(ii). The Treasury Department and the IRS have concluded that, in general, these rules provide a reasonable means of determining a partner's interest in property held by a partnership for purposes of section 956 because they generally result in an allocation of specific items of property that corresponds with each partner's economic interest in that property, including any income or gain that may be subject to special allocations.

The Treasury Department and the IRS are concerned, however, that special allocations with respect to a partnership that is controlled by a single multinational group are unlikely to have economic significance for the group as a whole and can facilitate tax planning that is inconsistent with the purposes of section 956. Accordingly, these proposed regulations propose to revise § 1.956–4(b) such that a partner's attributable share of each item of property of a partnership controlled by the partner would be determined solely in accordance with the partner's liquidation value percentage, even if income or gain from the property is subject to a special allocation. Specifically, under proposed § 1.956–4(b)(2)(iii), the rule in § 1.956–4(b)(2)(ii) requiring a partner's attributable share of partnership property to be determined by reference to special allocations with respect to the property would not apply in the case of a partnership controlled by the partner. For this purpose, a partner is treated as controlling a partnership if the partner and the partnership are related within the meaning of section 267(b) or section 707(b), substituting "at least 80 percent" for "more than 50 percent". The examples in § 1.956–4(b)(3) are proposed to be modified in accordance with the proposed rule.

These proposed regulations are proposed to be effective for taxable years of CFCs ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting them as final regulations, and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after the date of publication in the **Federal Register** of the

Treasury decision adopting them as final regulations. The IRS may, where appropriate, challenge transactions under currently applicable Code or regulatory provisions or judicial doctrines.

Special Analyses

Certain IRS regulations, including these regulations, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory 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, and 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. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register.**

Drafting Information

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

*****

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.956–4 also issued under 26 U.S.C. 956(d) and 956(e).

Par. 2. Section 1.956–4 is amended by:

1. Revising paragraph (b)(2)(ii).
2. Adding paragraph (b)(2)(iii).
3. Adding a sentence at the end of paragraph (i) of *Example 2* of paragraph (b)(3).
4. Revising paragraph (ii) of *Example 2* of paragraph (b)(3).
5. Revising *Example 3* of paragraph (b)(3).
6. Adding *Example 4* to paragraph (b)(3).
7. Revising paragraph (f)(1).

The revisions and additions read as follows:

§ 1.956–4 Certain rules applicable to partnerships.

* * * * *

(b) * * *

(2) * * *

(ii) *Special allocations*. Except as otherwise provided in paragraph (b)(2)(iii) of this section, for purposes of paragraph (b)(1) of this section, if a partnership agreement provides for the allocation of book income (or, where appropriate, book gain) from a subset of the property of the partnership to a partner other than in accordance with the partner's liquidation value percentage in a particular taxable year (a *special allocation*), then the partner's attributable share of that property is determined solely by reference to the partner's special allocation with respect to the property, provided the special allocation does not have a principal purpose of avoiding the purposes of section 956.

(iii) *Limitation on special allocations in the case of a controlled partnership*. Paragraph (b)(2)(ii) of this section does not apply to determine a partner's attributable share of partnership property in the case of a partnership controlled by the partner. For purposes of this paragraph (b)(2)(iii), a partner controls a partnership when the partner and the partnership are related within the meaning of section 267(b) or section 707(b), determined by substituting "at least 80 percent" for "more than 50 percent" wherever it appears.

(3) * * *

Example 2. (i) *Facts*. * * * FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section.

(ii) *Result*. Under paragraph (b)(1) of this section, for purposes of section 956, FS is treated as holding its attributable share of the property held by FPRS with an adjusted basis equal to its attributable share of FPRS's adjusted basis in such property. In general, FS's attributable share of property held by FPRS is determined in accordance with FS's liquidation value percentage. However, because FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section and because the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to its special allocation. FS's special allocation percentage for the FPRS property is 80%, and thus FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is $80x. Accordingly, for purposes of determining the amount of United States property held by FS as of the close of quarter 1 of year 1, FS is treated as holding United States property with an adjusted basis of $80x.

Example 3. (i) *Facts*. USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, which, in turn, owns a 25% capital and profits interest in FPRS, a foreign partnership. The remaining 75% capital and profits interest in FPRS is owned by an unrelated foreign person. Thus, FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section. FPRS holds property (the "FPRS property") that would be United States property if held by FS directly. The FPRS property has an adjusted basis of $100x and is anticipated to appreciate in value but generate relatively little income. The FPRS partnership agreement, which satisfies the requirements of section 704(b), specially allocates 80% of the income with respect to the FPRS property to the unrelated foreign person and 80% of the gain with respect to the disposition of FPRS property to FS. The special allocation does not have a principal purpose of avoiding the purposes of section 956.

(ii) *Result*. Because FPRS is not controlled by FS within the meaning of paragraph (b)(2)(iii) of this section, and the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to a special allocation with respect to the FPRS property. Given the income and gain anticipated with respect to the FPRS property, it is appropriate to determine FS's attributable share of the property in accordance with the special allocation of gain. Accordingly, for purposes of determining the amount of United States property held by FS in each year that FPRS holds the FPRS property, FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is $80x. Thus, FS is treated as holding United States property with an adjusted basis of $80x.

Example 4. (i) *Facts*. The facts are the same as in *Example 3* of this paragraph (b)(3), except that USP owns the 75% capital and profits interest in FPRS rather than an unrelated foreign person. Thus, FS controls FPRS within the meaning of paragraph (b)(2)(iii) of this section. At the close of quarter 1 of year 1, the liquidation value percentage, as determined under paragraph (b)(2) of this section, for FS with respect to FPRS is 25%.

(ii) *Result*. Because FPRS is controlled by FS within the meaning of paragraph (b)(2)(iii) of this section, under paragraph (b)(2)(iii) of this section, FS's attributable share of the FPRS property is not determined by reference to the special allocation of gain with respect to the FPRS property. Accordingly, for purposes of determining the amount of United States property held by FS in each year that FPRS holds the FPRS property, FS's attributable share of the FPRS property is determined under paragraph (b)(2)(i) in accordance with FS's liquidation value percentage, which is 25%, and its attributable share of FPRS's basis in the FPRS property is $25x. Thus, FS is treated as holding United States property with an adjusted basis of $25x.

* * * * *

(f) * * *

(1) Except as otherwise provided in this paragraph (f)(1), paragraph (b) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after November 3, 2016. Paragraphs (b)(2)(ii) and (iii) of this section, as well as *Example 2*, *Example 3*, and *Example 4* of paragraph (b)(3) of this section, apply to taxable years of controlled foreign corporations ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation, and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation. For purposes of this paragraph (f)(1), a deemed exchange of property pursuant to section 1001 on or after November 3, 2016 constitutes an acquisition of the property on or after that date, and a deemed exchange of property pursuant to section 1001 on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation constitutes an acquisition of the property on or after that date.

See § 1.956–2(a)(3), as contained in 26 CFR part 1 revised as of April 1, 2016, for the rules applicable to taxable years of a controlled foreign corporation beginning on or after July 23, 2002, and ending before November 3, 2016, and with respect to property acquired before November 3, 2016, to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

John Dalrymple
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 31, 2016, 4:15 p.m., and published in the issue of the Federal Register for November 03, 2016 81 F.R. 76497)

Partial Withdrawal of Notice of Proposed Rulemaking

Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions through Related Corporations

REG–122387–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws portions of a notice of proposed rulemaking (INTL–49–86, subsequently converted to REG–209001–86) published in the **Federal Register** (53 FR 22186) on June 14, 1988, (the 1988 NPRM). The withdrawn portions relate to stock redemptions through related corporations, the application of section 956 to United States property indirectly held by a controlled foreign corporation (CFC), and certain related party factoring transactions, as well as the definition of the term "obligation" for purposes of section 956.

DATES: Sections 1.304–4, 1.956–1(b)(4), 1.956–2(d)(2), and 1.956–3(b)(2)(ii) of proposed rules published in the **Federal Register** on June 14, 1988, are withdrawn as of November 3, 2016.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins, (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1988, the Department of Treasury (Treasury Department) and the IRS published in the **Federal Register** proposed regulations (INTL–49–86, subsequently converted to REG–209001–86, 53 FR 22186), including: (i) proposed 1.304–4, which provides a special rule regarding the use of a related corporation to acquire for property the stock of another commonly owned corporation; (ii) proposed § 1.956–1(b)(4), which describes United States property indirectly held by a CFC for purposes of section 956; (iii) proposed § 1.956–2(d)(2), which sets forth the definition of "obligation" for purposes of section 956; and (iv) proposed § 1.956–3, which provides guidance on the treatment of certain trade or service receivables received in factoring transactions as United States property for purposes of section 956, including rules in proposed § 1.956–3(b)(2)(ii) that address the acquisition of a trade or service receivable by a nominee or pass-through entity. The regulations were proposed by cross-reference to temporary regulations in §§ 1.304–4T, 1.956–1T(b)(4), 1.956–2T(d), and 1.956–3T that were published in the same issue of the **Federal Register** (TD 8209, 53 FR 22163). This document withdraws certain of these proposed regulations because the rules in the proposed regulations are supplanted by final regulations or other proposed regulations.

Specifically, in the Rules and Regulations section of this issue of the **Bulletin**, the Treasury Department and the IRS are issuing final regulations that contain rules in § 1.956–1(b) concerning United States property indirectly held by a CFC for purposes of section 956, and rules in § 1.956–3(b)(2)(ii) concerning the acquisition by a nominee, pass-through entity, or related foreign corporation for purposes of the section 956 rules governing factoring transactions. The final regulations in §§ 1.956–1(b) and 1.956–3(b)(2)(ii) were included in a notice of proposed rulemaking (REG–155164–09) published in the **Federal Register** on September 2, 2015 (80 FR 53058, as corrected at 80 FR 66485). Thus, the rules in proposed §§ 1.956–1(b)(4) and 1.956–3(b)(2)(ii) provided in the 1988 NPRM are withdrawn. As described in the preamble to the final regulations published in the Rules and Regulations section of this issue of the **Bulletin,** the remainder of the rules in § 1.956–3 proposed in the 1988 NPRM also are included in the final regulations, with minor modifications.

Additionally, on December 30, 2009, the Treasury Department and the IRS published in the **Federal Register** proposed regulations (74 FR 69043), which contain in proposed § 1.304–4 special rules regarding the use of related corporations to avoid the application of section 304 that supplant the rules set forth in the 1988 NPRM. On December 26, 2012, final regulations including § 1.304–4 as proposed in 2009 were published in the **Federal Register** (TD 9606, 77 FR 75844). Accordingly, the rule in the 1988 NPRM that addresses section 304 is withdrawn.

Furthermore, on April 8, 2016, the Treasury Department and the IRS published in the **Federal Register** proposed regulations (81 FR 20588), which contain in proposed § 1.956–2(d) a definition of obligation for purposes of section 956, as well as several exceptions from the definition, including those set forth in the 1988 NPRM. Accordingly, the rule in the 1988 NPRM that addresses the definition of obligation is withdrawn.

* * * * *

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §§ 1.304–4, 1.956–1(b)(4), 1.956–2(d)(2), and 1.956–3(b)(2)(ii) of the notice of proposed rulemaking (INTL–49–86) published in the **Federal Register** on June 14, 1988, (53 FR 22186) are withdrawn.

John M Dalrymple
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 02, 2016, 8:45 a.m., and published in the issue of the Federal Register for November 03, 2016, 81 F.R. 76544)

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

Announcement 2016–41

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 November 28, 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.

Tri-County Behavioral Health Providers Portland, Oregon	Effective Date of Revocation 1/1/2013
Gregory's Journey Williamsport, PA	Effective Date of Revocation 7/1/2013

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]

Bulletin 2016–27 through 2016–48

Action on Decision:

2016-01, 2016-16 I.R.B. *580*
2016-02, 2016-31 I.R.B. *193*
2016-03, 2016-40 I.R.B. *424*

Announcements:

2016-21, 2016-27 I.R.B. *8*
2016-23, 2016-27 I.R.B. *10*
2016-24, 2016-30 I.R.B. *170*
2016-25, 2016-31 I.R.B. *205*
2016-26, 2016-38 I.R.B. *389*
2016-27, 2016-33 I.R.B. *238*
2016-28, 2016-34 I.R.B. *272*
2016-29, 2016-34 I.R.B. *272*
2016-30, 2016-37 I.R.B. *355*
2016-31, 2016-38 I.R.B. *392*
2016-32, 2016-40 I.R.B. *434*
2016-33, 2016-39 I.R.B. *422*
2016-34, 2016-39 I.R.B. *422*
2016-35, 2016-39 I.R.B. *423*
2016-36, 2016-39 I.R.B. *423*
2016-37, 2016-39 I.R.B. *423*
2016-38, 2016-43 I.R.B. *523*
2016-39, 2016-45 I.R.B. *720*
2016-41, 2016-48 I.R.B. *780*

Notices:

2016-40, 2016-27 I.R.B. *4*
2016-41, 2016-27 I.R.B. *5*
2016-42, 2016-29 I.R.B. *67*
2016-43, 2016-29 I.R.B. *132*
2016-44, 2016-29 I.R.B. *132*
2016-45, 2016-29 I.R.B. *135*
2016-46, 2016-31 I.R.B. *202*
2016-47, 2016-35 I.R.B. *276*
2016-48, 2016-33 I.R.B. *235*
2016-49, 2016-34 I.R.B. *265*
2016-50, 2016-38 I.R.B. *384*
2016-51, 2016-37 I.R.B. *344*
2016-52, 2016-40 I.R.B. *425*
2016-53, 2016-39 I.R.B. *421*
2016-54, 2016-40 I.R.B. *429*
2016-55, 2016-40 I.R.B. *432*
2016-57, 2016-40 I.R.B. *432*
2016-58, 2016-41 I.R.B. *438*
2016-59, 2016-42 I.R.B. *457*
2016-60, 2016-42 I.R.B. *458*
2016-61, 2016-46 I.R.B. *722*
2016-62, 2016-46 I.R.B. *725*
2016-63, 2016-45 I.R.B. *683*
2016-64, 2016-46 I.R.B. *726*
2016-65, 2016-48 I.R.B. *772*
2016-66, 2016-47 I.R.B. *747*

Notices:—Continued

2016-68, 2016-48 I.R.B. *774*
2016-67, 2016-47 I.R.B. *751*

Proposed Regulations:

REG-163113-02, 2016-36 I.R.B. *329*
REG-147196-07, 2016-29 I.R.B. *32*
REG-123854-12, 2016-28 I.R.B. *15*
REG-150992-13, 2016-44 I.R.B. *537*
REG-131418-14, 2016-33 I.R.B. *248*
REG-102516-15, 2016-32 I.R.B. *231*
REG-109086-15, 2016-30 I.R.B. *171*
REG-134016-15, 2016-31 I.R.B. *205*
REG-134122-15, 2016-46 I.R.B. *728*
REG-101689-16, 2016-30 I.R.B. *170*
REG-103058-16, 2016-33 I.R.B. *238*
REG-105005-16, 2016-38 I.R.B. *380*
REG-108792-16, 2016-36 I.R.B. *320*
REG-108934-16, 2016-44 I.R.B. *532*
REG-114734-16, 2016-48 I.R.B. *777*
REG-122387-16, 2016-48 I.R.B. *779*
REG-123600-16, 2016-43 I.R.B. *523*
REG-130314-16, 2016-45 I.R.B. *718*

Revenue Procedures:

2016-37, 2016-29 I.R.B. *136*
2016-39, 2016-30 I.R.B. *164*
2016-40, 2016-32 I.R.B. *228*
2016-41, 2016-30 I.R.B. *165*
2016-42, 2016-34 I.R.B. *269*
2016-43, 2016-36 I.R.B. *316*
2016-44, 2016-36 I.R.B. *316*
2016-45, 2016-37 I.R.B. *344*
2016-46, 2016-37 I.R.B. *345*
2016-47, 2016-37 I.R.B. *346*
2016-48, 2016-37 I.R.B. *348*
2016-49, 2016-42 I.R.B. *462*
2016-50, 2016-43 I.R.B. *522*
2016-51, 2016-42 I.R.B. *465*
2016-52, 2016-42 I.R.B. *520*
2016-53, 2016-44 I.R.B. *530*
2016-54, 2016-45 I.R.B. *685*
2016-55, 2016-45 I.R.B. *707*

Revenue Rulings:

2016-17, 2016-27 I.R.B. *1*
2016-18, 2016-31 I.R.B. *194*
2016-19, 2016-35 I.R.B. *273*
2016-20, 2016-36 I.R.B. *279*
2016-23, 2016-39 I.R.B. *382*
2016-24, 2016-39 I.R.B. *395*
2016-25, 2016-41 I.R.B. *435*
2016-26, 2016-45 I.R.B. *538*

Treasury Decisions:

9772, 2016-28 I.R.B. *11*
9773, 2016-29 I.R.B. *56*

Treasury Decisions:—Continued

9774, 2016-30 I.R.B. *151*
9775, 2016-30 I.R.B. *159*
9776, 2016-32 I.R.B. *222*
9777, 2016-36 I.R.B. *282*
9778, 2016-31 I.R.B. *196*
9779, 2016-33 I.R.B. *233*
9780, 2016-38 I.R.B. *357*
9781, 2016-35 I.R.B. *274*
9782, 2016-36 I.R.B. *301*
9783, 2016-39 I.R.B. *396*
9784, 2016-39 I.R.B. *402*
9785, 2016-38 I.R.B. *375*
9786, 2016-42 I.R.B. *442*
9789, 2016-44 I.R.B. *527*
9790, 2016-45 I.R.B. *540*
9791, 2016-47 I.R.B. *734*
9792, 2016-48 I.R.B. *751*
9793, 2016-48 I.R.B. *768*

[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.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2016–27 through 2016–48

Notices:

2009-89
Modified by
Notice 2016-51, 2016-37 I.R.B. *344*

2012-54
Obsoleted by
Notice 2016-51, 2016-37 I.R.B. *344*

2013-1
Modified by
Notice 2016-41, 2016-27 I.R.B. *5*

2013-1
Superseded by
Notice 2016-41, 2016-27 I.R.B. *5*

2013-1
Modified by
Notice 2016-65, 2016-48 I.R.B. *772*

2013-1
Superseded by
Notice 2016-65, 2016-48 I.R.B. *772*

2013-67
Modified by
Notice 2016-51, 2016-37 I.R.B. *344*

2015-63
Superseded by
Notice 2016-58, 2016-41 I.R.B. *438*

Revenue Procedures:

2003-16
Modified by
Rev. Proc. 2016-47, 2016-37 I.R.B. *346*

2007-44
Clarified by
Rev. Proc. 2016-37, 2016-29 I.R.B. *136*

2007-44
Modified by
Rev. Proc. 2016-37, 2016-29 I.R.B. *136*

2007-44
Superseded by
Rev. Proc. 2016-37, 2016-29 I.R.B. *136*

2009-33
Modified by
Rev. Proc. 2016-48, 2016-37 I.R.B. *348*

Revenue Procedures:—Continued

2015-36
Modified by
Rev. Proc. 2016-37, 2016-29 I.R.B. *136*

2016-3
Modified by
Rev. Proc. 2016-40, 2016-32 I.R.B. *228*

2016-3
Modified by
Rev. Proc. 2016-45, 2016-37 I.R.B. *228*

2016-3
Supplemented by
Rev. Proc. 2016-50, 2016-43 I.R.B. *522*

2016-29
Modified by
Rev. Proc. 2016-39, 2016-30 I.R.B. *164*

Treasury Decisions:

2013-17
Obsoleted by
T.D. 9785 2016-38 I.R.B. *375*

2014-12
Modified by
T.D. 9776 2016-32 I.R.B. *222*

[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.

Internal Revenue Service
Washington, DC 20224

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/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.