INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–51
December 19, 2016

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

INCOME TAX

REG–125946–10, page 868.

These proposed regulations relate to the establishment of dollar-value, last-in, first-out (LIFO) inventory pools by certain taxpayers that use the inventory price index computation (IPIC) pooling method. The proposed regulations provide rules regarding the proper pooling of manufactured or processed goods and wholesale or retail (resale) goods.

Rev. Rul. 2016–28, page 805.

Interest rates: underpayments and overpayments. The rates for interest determined under section 6621 of the code for the calendar quarter beginning January 1, 2017, will be 4 percent for overpayments (3 percent in the case of a corporation), 4 percent for underpayments, and 6 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 1.5 percent.

Notice 2016–69, page 832.

This notice provides that the IRS will not assert that cash payments an employer makes to § 170(c) organizations (in exchange for vacation, sick, or personal leave that its employees elect to forgo) constitute gross income or wages of the employees under certain circumstances relating to Hurricane Matthew.

Notice 2016–75, page 832.

This notice provides guidance on section 45R of the Internal Revenue Code (Code) for certain small employers that cannot offer a qualified health plan (QHP) through a Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in which a QHP through a SHOP Exchange will not be available for the 2016 calendar year (the counties, which are listed in the notice, are all in Wisconsin). With respect to those employers, this notice provides transition relief allowing employers to claim the credit by satisfying the pre-2014 rules.

Notice 2016–76, page 834.

The notice provides phased-in the application of the section 871(m) dividend equivalent regulations that were finalized in September of 2015. The notice provides that the section 871(m) regulations: (1) only apply to delta-one transactions in calendar year 2017, and (2) will apply to non-delta-one transactions beginning in calendar year 2018. The notice also provides phased-in enforcement of the section 871(m) regulations, including the qualified derivatives dealer rules.

EMPLOYEE PLANS

REG–107424–12, page 861.

These proposed regulations provide guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. The proposed regulations would provide guidance on changes made by the Pension Protection Act of 2006 and would provide other modifications to these rules as well.

ESTATE TAX

T.D. 9797, page 819.

Final regulations that provide transition rules providing that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (2) regarding the value of property included in a decedent's gross estate for federal estate tax purposes before June 30, 2016, need not have done so until June 30, 2016. These final regulations are applicable to executors and other persons who file federal estate tax returns required by section 6018(a) or (b) after July 31, 2015.

Finding Lists begin on page ii.

ADMINISTRATIVE

REG–102952–16, page 860.

The proposed regulations implement Congress's recent changes to the paid preparer due diligence statute, expanding the due diligence statute to include claims of the child tax credit, the additional child tax credit, and/or the American opportunity tax credit, and providing that the amount of the penalty will be adjusted for inflation.

Rev. Proc. 2016–58, page 839.

The revenue procedure sets forth the loss payment patterns and discount factors for accident year 2016 for purposes of § 846 of the Internal Revenue Code.

Rev. Proc. 2016–59, page 849.

This revenue procedure prescribes the salvage discount factors for the 2016 accident year. These factors must be used to compute discounted estimated salvage recoverable under § 832 of the Internal Revenue Code.

T.D. 9798, page 821.

This document contains the amendments to the regulations that provide user fees for installment agreements. The amendments affect taxpayers who wish to pay their liabilities through installment agreements.

T.D. 9799, page 827.

The final and temporary regulations implement Congress's recent changes to the paid preparer due diligence statute, expanding the due diligence statute to include claims of the child tax credit, the additional child tax credit, and/or the American opportunity tax credit, and providing that the amount of the penalty will be adjusted for inflation.

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.

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Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Rev. Rul. 2016–28

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2016 is the rate published in Revenue Ruling 2016–26, 2016–45 IRB 538, to take effect beginning November 1, 2016. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of October 2016 is 1 percent. Accordingly, an overpayment rate of 4 percent (3 percent in the case of a corporation) and an underpayment rate of 4 percent are established for the calendar quarter beginning January 1, 2017. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning January 1, 2017 is 1.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2017, is 6 percent. These rates apply to amounts bearing interest during that calendar quarter.

Sections 6654(a)(1) and 6655(a)(1) provide that the underpayment rate established under section 6621 applies in determining the addition to tax under sections 6654 and 6655 for failure to pay estimated tax for any taxable year. Thus, the 4 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2017. Pursuant to section 6621(b)(2)(B), in determining the addition to tax under section 6654 for any taxable year for an individual, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the 4th month following the taxable year. In addition, pursuant to section 6603(d)(4), the rate of interest on section 6603 deposits is 1 percent for the first calendar quarter in 2017.

Interest factors for daily compound interest for annual rates of 1.5 percent, 3 percent, 4 percent and 6 percent are published in Tables 8, 11, 13 and 17 of Rev. Proc. 95–17, 1995–1 C.B. 562, 565, 567 and 571.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sarah McLemore of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. McLemore at (202) 317-6844 (not a toll-free number).

APPENDIX A

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559

TABLE OF INTEREST RATES PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986 OVERPAYMENTS AND UNDERPAYMENTS		
PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES FROM JAN. 1, 1987 – Dec. 31, 1998						
	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	4%	13	567
Jul. 1, 2011-—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	3%	11	565

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 2012—Mar. 31, 2012	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	3%	11	565
Apr. 1, 2015—Jun. 30, 2015	3%	11	565
Jul. 1, 2015—Sep. 30, 2015	3%	11	565
Oct. 1. 2015—Dec. 31, 2015	3%	11	565
Jan. 1, 2016—Mar. 31, 2016	3%	59	613
Apr. 1, 2016—Jun. 30, 2016	4%	61	615
Jul. 1, 2016—Sep. 30, 2016	4%	61	615
Oct. 1, 2016—Dec. 31, 2016	4%	61	615
Jan. 1, 2017—Mar. 31, 2017	4%	13	567

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	2%	57	611	3%	59	613

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 — PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 2012—Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015—Jun.30, 2015	2%	9	563	3%	11	565
Jul. 1. 2015—Sep. 30, 2015	2%	9	563	3%	11	565
Oct. 1, 2015—Dec. 31, 2015	2%	9	563	3%	11	565
Jan. 1, 2016—Mar. 31, 2016	2%	57	611	3%	59	613
Apr. 1, 2016—Jun. 30, 2016	3%	59	613	4%	61	615
Jul. 1, 2016—Sep. 30, 2016	3%	59	613	4%	61	615
Oct. 1, 2016—Dec. 31, 2016	3%	59	613	4%	61	615
Jan. 1, 2017—Mar. 31, 2017	3%	11	565	4%	13	567

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 31, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569
Apr. 1, 2011—Jun. 30, 2011	6%	17	571
Jul. 1, 2011—Sep. 30, 2011	6%	17	571
Oct. 1, 2011—Dec. 31, 2011	5%	15	569
Jan. 1, 2012—Mar. 31, 2012	5%	63	617
Apr. 1, 2012—Jun. 30, 2012	5%	63	617
Jul. 1, 2012—Sep. 30, 2012	5%	63	617
Oct. 1, 2012—Dec. 31, 2012	5%	63	617
Jan. 1, 2013—Mar. 31, 2013	5%	15	569
Apr. 1, 2013—Jun. 30, 2013	5%	15	569
Jul. 1, 2013—Sep. 30, 2013	5%	15	569
Oct. 1, 2013—Dec. 31, 2013	5%	15	569
Jan. 1, 2014—Mar. 31, 2014	5%	15	569
Apr. 1, 2014—Jun. 30, 2014	5%	15	569
Jul. 1, 2014—Sep. 30, 2014	5%	15	569
Oct. 1, 2014—Dec. 31, 2014	5%	15	569
Jan. 1, 2015—Mar. 31, 2015	5%	15	569
Apr. 1, 2015—Jun. 30, 2015	5%	15	569
Jul. 1, 2015—Sep. 30, 2015	5%	15	569
Oct. 1, 2015—Dec. 31, 2015	5%	15	569
Jan. 1, 2016—Mar. 31, 2016	5%	63	617
Apr. 1, 2016-—Jun.30, 2016	6%	65	619
Jul. 1, 2016-—Sep. 30, 2016	6%	65	619

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2016-—Dec.31, 2016	6%	65	619
Jan. 1, 2017—Mar. 31, 2017	6%	17	571

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		
Apr. 1, 2011—Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—Dec. 31, 2011	0.5%*		
Jan. 1, 2012—Mar. 31, 2012	0.5%*		
Apr. 1, 2012—Jun. 30, 2012	0.5%*		
Jul. 1, 2012—Sep. 30, 2012	0.5%*		
Oct. 1, 2012—Dec. 31, 2012	0.5%*		
Jan. 1, 2013—Mar. 31, 2013	0.5%*		
Apr. 1, 2013—Jun. 30, 2013	0.5%*		
Jul. 1, 2013—Sep. 30, 2013	0.5%*		
Oct. 1, 2013—Dec. 31, 2013	0.5%*		
Jan. 1, 2014—Mar. 31, 2014	0.5%*		
Apr. 1, 2014—Jun. 30, 2014	0.5%*		

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 2014—Sep. 30, 2014	0.5%*		
Oct. 1, 2014—Dec. 31, 2014	0.5%*		
Jan. 1, 2015—Mar. 31, 2015	0.5%*		
Apr. 1, 2015—Jun. 30, 2015	0.5%*		
Jul. 1, 2015—Sep. 30, 2015	0.5%*		
Oct. 1, 2015—Dec. 31, 2015	0.5%*		
Jan. 1, 2016—Mar. 31, 2016	0.5%*		
Apr. 1, 2016—Jun. 30, 2016	1.5%	56	610
Jul. 1, 2016—Sep. 30, 2016	1.5%	56	610
Oct. 1, 2016—Dec. 31, 2016	1.5%	56	610
Jan. 1, 2017—Mar. 31, 2017	1.5%	8	562

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent published in Appendix A of this Revenue Ruling.

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26 CFR 1.6035–2

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

TD 9797

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide transition rules providing that executors and other persons required to file or furnish a statement under section 6035(a)(1) or (2) regarding the value of property included in a decedent's gross estate for federal estate tax purposes before June 30, 2016, need not have done so until June 30, 2016. These final regulations are applicable to executors and other persons who file federal estate tax returns required by section 6018(a) or (b) after July 31, 2015.

DATES: *Effective Date*. These regulations are effective on December 2, 2016.

Applicability Dates: For date of applicability, see § 1.6035–2(b).

FOR FURTHER INFORMATION CONTACT: Theresa Melchiorre (202) 317-6859 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6018(a) requires executors to file federal estate tax returns with respect to (1) certain estates of citizens or residents of the United States and (2) certain estates of nonresidents that are not citizens of the United States. If an executor is unable to make a complete federal estate tax return as to any property that is a part of a decedent's gross estate, section 6018(b) requires every person or beneficiary holding such property, upon notice from the Secretary, to make a federal estate tax return as to such part of the gross estate.

On July 31, 2015, the President of the United States signed into law H.R. 3236, *The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*, Public Law 114–41, 129 Stat. 443 (Act). Section 2004 of the Act added new section 6035.

Section 6035 imposes reporting requirements with regard to the value of property included in a decedent's gross estate for federal estate tax purposes. Section 6035(a)(1) provides that the executor of any estate required to file a return under section 6018(a) must file with the Secretary and furnish to the person acquiring any interest in property included in the decedent's gross estate, a statement identifying the value of each interest in such property as reported on such return and such other information with respect to such interest as the Secretary may prescribe.

Section 6035(a)(2) provides that each other person required to file a return under section 6018(b) must file with the Secretary and furnish to each person who holds a legal or beneficial interest in the property to which such return relates, a statement identifying the same information described in section 6035(a)(1).

Section 6035(a)(3)(A) provides that each statement required to be filed or furnished under section 6035(a)(1) or (2) is to be filed or furnished at such time as the Secretary may prescribe, but in no case at

a time later than the earlier of (i) the date that is 30 days after the date on which the return under section 6018 was required to be filed (including extensions actually granted, if any) or (ii) the date which is 30 days after the date such return is filed.

On August 21, 2015, the Treasury Department and the IRS issued Notice 2015–57, 2015–36 IRB 294. That notice delayed until February 29, 2016, the due date for any statements required by section 6035.

On February 11, 2016, the Treasury Department and the IRS issued Notice 2016–19, 2016–09 IRB 362. That notice provided that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before March 31, 2016, need not have done so until March 31, 2016.

On March 4, 2016, the Treasury Department and the IRS published temporary regulations (TD 9757) in the **Federal Register** (81 FR 11431–01) providing transition relief under § 1.6035–2T. The temporary regulations extended the due date for statements required by section 6035 to March 31, 2016, as provided in Notice 2016–19.

Also on March 4, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 11486–01) proposed regulations (REG–127923–15). The text of TD 9757 served as the text of the proposed regulations regarding the transition relief provided under § 1.6035–2T.

On March 23, 2016, the Treasury Department and the IRS issued Notice 2016–27, 2016–15 IRB 576. That notice provided that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before June 30, 2016, need not have done so until June 30, 2016.

On June 27, 2016, the Treasury Department and the IRS held a public hearing on the proposed regulations. In addition to the comments received at the hearing, the Treasury Department and the IRS received numerous written comments. Both at the hearing and in written comments, commenters commented favorably on the transition relief providing extensions of time to file and furnish the statements required by section 6035(a)(1) or (2) that the Treasury Department and the IRS had granted in TD 9757 and the notices (including Notice 2016–27 issued after TD 9757 was published in the Federal Register).

Explanation of Provisions

These final regulations reiterate the statement in Notice 2016–27 and provide that executors or other persons required to file or furnish a statement under section 6035(a)(1) or (2) before June 30, 2016, need not have done so until June 30, 2016. These final regulations are issued within 18 months of the date of the enactment of the statutory provisions to which the final regulations relate and, as authorized by section 7805(b)(2), are applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

Statement of Availability of IRS Documents

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

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

In addition, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) did not apply to TD 9757 because TD 9757 was excepted from the notice and comment requirements of section 553(b) and (c) of the Administrative Procedure Act under the interpretative rule and good cause exceptions provided by section 553(b)(3)(A) and (B). The Act included an immediate effective date, thus making the first required statements due 30 days after enactment. It was necessary to provide more time to provide the statements required by section 6035(a), to allow the Treasury Department and the IRS sufficient time to issue both substantive and procedural guidance on how to comply with the section 6035(a) requirement, and to provide executors and other affected persons the opportunity to review this guidance before preparing the required statements. TD 9757 reiterated the relief in Notice 2016–19 and, because of the immediate need to provide relief, notice and public comment pursuant to 5 U.S.C. 553(b) and (c) was impracticable, unnecessary, and contrary to the public interest. Public comment, however, was received on TD 9757 and all the notices, including Notice 2016–27, at the public hearing held on June 27, 2016, and in written comments submitted on the proposed regulations that cross-referenced and included the text of TD 9757.

It has been certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule primarily affects individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Although it is anticipated that there may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, TD 9757 and notice of the proposed rulemaking that cross-referenced and included the text of TD 9757 was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of these final regulations is Theresa Melchiorre, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

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Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

* * * * *

Section 1.6035–2 also issued under 26 U.S.C. 6035(b).

* * * * *

§ 1.6035–2T [Removed]

Par. 2. Section 1.6035–2T is removed.

Par. 3. Section 1.6035–2 is revised to read as follows:

§ 1.6035–2 Transitional relief.

(a) *Statements due before June 30, 2016*. Executors and other persons required to file or furnish a statement under section 6035(a)(1) or (2) after July 31, 2015 and before June 30, 2016, need not have done so until June 30, 2016.

(b) *Applicability Date*. This section is applicable to executors and other persons who file a return required by section 6018(a) or (b) after July 31, 2015.

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2016.

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

(Filed by the Office of the Federal Register on December 1, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 2, 2016, 81 F.R. 86953)

26 CFR 300.1, amended; 26 CFR 300.2, amended

T.D. 9798

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

User Fees for Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide user fees for installment agreements. The final regulations affect taxpayers who wish to pay their liabilities through installment agreements.

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

Applicability date: These regulations apply to installment agreements entered into, restructured, or reinstated on or after January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Maria Del Pilar Austin at (202) 317-5437; concerning cost methodology, Eva Williams, at (202) 803-9728 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the User Fee Regulations under 26 CFR part 300. On August 22, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 56550) a notice of proposed rulemaking (REG–108792–16) relating to the user fees charged for entering into and reinstating and restructuring installment agreements. The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A-25 (the OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular allows agencies to impose user fees for services that confer a special benefit to identifiable recipients beyond those accruing to the general public. The agency must calculate the full cost of providing those benefits, and, in general, the amount of a user fee should recover the full cost of providing the service, unless the Office of Management and Budget (OMB) grants an exception under the OMB Circular.

The notice of proposed rulemaking proposed to increase the user fees under § 300.1 for entering into an installment agreement from $120 to $225 and for entering into a direct debit installment agreement from $52 to $107. The notice of proposed rulemaking proposed to increase the user fee under § 300.2 for restructuring or reinstating an installment agreement from $50 to $89. The notice of proposed rulemaking proposed the introduction of two new types of online installment agreements under § 300.1, each subject to a separate user fee: (1) an online payment agreement with a fee of $149 and (2) a direct debit online payment agreement with a fee of $31. Under the notice of proposed rulemaking, the user fee for low-income taxpayers, as defined in § 300.1(b)(3), would continue to be $43 for entering into a new installment agreement, except that the lower fee of $31 for a direct debit online payment agreement would apply to all taxpayers. Under § 300.2(b), the fee for low-income taxpayers restructuring or reinstating an installment agreement would be reduced to $43 from $50. The new user fee rates were proposed to be effective beginning on January 1, 2017. As explained in the notice of proposed rulemaking, the proposed fees bring user fee rates for installment agreements in line with the full cost to the IRS of providing these taxpayer-specific services. In particular, the new user fee structure offers taxpayers more tailored installment agreement options, including a $31 user fee for direct debit online payment agreements, which ensures that taxpayers are not charged more for their chosen installment agreement option than the actual cost incurred by the IRS in providing the type of installment agreement selected by

taxpayers. Because OMB has granted an exception to the full cost requirement for low-income taxpayers, low-income taxpayers would continue to pay the reduced fee of $43 for any new installment agreement, except where they request a $31 direct debit online payment agreement, and would pay the reduced $43 fee for restructuring or reinstating an installment agreement.

No public hearing on the notice of proposed rulemaking was held because one was not requested. Five comments were received. After careful consideration of the comments, this Treasury Decision adopts the proposed regulations without change.

Summary of Comments

The first comment suggested that filing a tax return and requesting an installment agreement should not be a two-step process and that taxpayers requesting an installment agreement with the filing of their returns should not be subject to a higher user fee. The comment expressed concern with tying eligibility for the $31 user fee to submitting a request for a direct debit online payment agreement. The comment also noted the length of time it takes the IRS to initiate direct debit installment agreement payments. The comment asserted that taxpayers requesting installment agreements with the filing of their tax returns and paying via direct debit should be entitled to the $31 user fee.

These regulations deal with only the user fees for installment agreements and not the administration of the installment agreement program generally, and so this comment is addressed only to the extent it relates to user fees for installment agreements. As explained in the notice of proposed rulemaking, agencies are required to set user fees at an amount that recovers the full cost of providing the service unless an agency requests, and the OMB grants, an exception to the full cost requirement. The proposed installment agreement fees are structured to reflect the full cost to the IRS to establish and monitor the different types of installment agreements associated with each user fee. The costs to the IRS for installment agreements are the same to the IRS whether the taxpayer requests an installment agreement at the same or a different time from filing its tax return. The regulations now offer taxpayers additional types of installment agreements to choose from, including a low-cost user fee of $31 for a direct debit online payment agreement. A taxpayer may file a return and then request a direct debit online payment agreement and would be charged a fee of only $31. As discussed in the notice of proposed rulemaking, the IRS incurs higher costs in establishing and monitoring all other forms of installment agreements. If a taxpayer chooses to request an installment agreement other than a direct debit online payment agreement, that taxpayer must pay the full cost of that user fee unless the taxpayer qualifies as a low-income taxpayer. The length of time required to establish direct debit installment agreements that the comment described is due to IRS budget cuts in recent years that have resulted in lower staffing levels combined with increased workloads. During peak times of the year, the IRS has more installment agreements to process than available staff to process them and backlogs occur. In addition, there are Federal e-pay requirements that also add time in processing installment agreements paid by direct debit. However, taxpayers using the online payment agreement service receive immediate confirmation of direct debit online payment agreements. Taxpayers requesting installment agreements via a Form 9465 when e-filing are not entitled to the lower $31 user fee under the proposed regulations because the costs associated with processing the Form 9465 are greater than those incurred for taxpayers using the online payment agreement service. At the time taxpayers submit Form 9465 with their e-filed returns, the IRS has no way of determining whether the taxpayers qualify for an installment agreement or whether the payment proposal meets streamlined processing criteria. While the IRS continues to explore ways to make this process completely automated, at this time the process to review a regular installment agreement request requires IRS staff involvement that direct debit online payment agreements do not.

The second comment expressed concern that the proposed increase in user fees was too high and asked whether "any consideration [has] been given to increasing the time frame for an exten[s]ion [from] 120[]days to 180[]days." It appears that the latter part of this comment is referring to the full pay agreement that has no user fee but requires the taxpayer to full pay within 120 days. The extension of the time period for full pay agreements is unrelated to the proposed increase in the user fees for installment agreements. With regard to the increase in fee, the fee increase is consistent with the requirement under the OMB Circular that agencies that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing those services. In the notice of proposed rulemaking, the IRS provided a detailed analysis of how it calculated the full cost of this service and the fee is consistent with the full cost of the particular service.

The third comment provided examples of taxpayers with varying circumstances and opined that increasing the user fee for installment agreements would be unfair to taxpayers who are so situated. For taxpayers whose income falls at or below 250 percent of the poverty level as established by the U.S. Department of Health and Human Services and updated annually, the proposed regulations continue to offer a reduced fee for low-income taxpayers of $43, and extend the $43 fee to low-income taxpayers restructuring or reinstating installment agreements. In addition, the proposed regulations establish a lower fee of $31 for online direct debit installment agreements that is available to all taxpayers. Thus, even if taxpayers do not qualify for the reduced low-income taxpayer fee, the proposed regulations permit all taxpayers the option to pay the lower $31 fee by establishing direct debit online payment agreements.

The fourth comment had four main concerns and additional concerns with respect to each of these main concerns.

The fourth comment's first main concern challenged the IRS's application of the OMB Circular. The comment opined that an installment agreement is not a special benefit as provided under the OMB Circular for several reasons. Specifically, the comment noted that if a taxpayer does not have assets to levy, then relief of levy is not a benefit to that taxpayer. The comment suggested that the IRS receives a

benefit when a taxpayer enters into an installment agreement and as a result, the installment agreement does not provide a special benefit for purposes of the OMB Circular. The comment questioned how many installment agreements resulted in payments that the IRS would not have otherwise received. The comment also questioned whether installment agreement income is a benefit to the fisc or whether the IRS could use levies to secure the same amount of payment. The comment stated that the IRS is required to enter into certain installment agreements pursuant to section 6159(c) and questioned how a statutory requirement could be considered a special benefit. The comment quoted Section 6(1)(4) of the OMB Circular, which provides that "[n]o charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public." The comment opined that because the IRS may receive some benefit, the specific beneficiary of an installment agreement is incompletely identified. Finally, the comment noted that the OMB Circular allows for exceptions to charging full cost and questioned whether it is good public policy to increase the user fee considering that some installment agreements are statutorily required and help bring noncompliant taxpayers into compliance.

As described in the preamble to the proposed regulations, each taxpayer entering into an installment agreement receives the special benefit of paying an outstanding tax obligation over time rather than immediately. This special benefit does not accrue to the general public because taxpayers are otherwise obligated to pay any outstanding taxes immediately when due. The taxpayer receives this special benefit regardless of whether the taxpayer has any assets on which the IRS could levy. In addition to paying an outstanding tax obligation over time rather than immediately, there are also the special benefits of avoiding enforcement action generally and, for timely filed returns, a reduction of the section 6651 failure to pay penalty to 0.25 percent during any month during which an installment agreement is in effect. The enforcement actions that are put on hold during the pendency of an installment agreement include wage garnishments, the filing of notices of federal tax liens, and the making of levies. Even if it is argued that the government derives some general benefit from collecting outstanding tax liabilities to which it is inarguably entitled, it is still appropriate under the OMB Circular to charge a user fee for entering into, reinstating, or restructuring an installment agreement because installment agreements provide "specific services to specific individuals." *Seafarers Int'l Union of N. Am. v. U.S. Coast Guard*, 81 F.3d 179, 183 (D.C. Cir. 1996). The benefit to the government generally of collecting on outstanding tax liabilities is a benefit that accrues to the public generally and does not diminish the special benefit provided to an identifiable taxpayer who requests an installment agreement. As noted in the notice of proposed rulemaking, the IOAA permits the IRS to charge a user fee for providing a "service or thing of value." 31 U.S.C. 9701(b). A government activity constitutes a "service or thing of value" when it provides "special benefits to an identifiable recipient beyond those that accrue to the general public." See the OMB Circular Section 6(a)(1). Among other things, a "special benefit" exists when a government service is performed at the request of a taxpayer and is beyond the services regularly received by other members of the same group or the general public. See OMB Circular Section 6(a)(1)(c). Under the IOAA, agencies may impose "specific charges for specific services to specific individuals or companies." See *Fed. Power Comm'n v. New England Power Co.*, 415 U.S. 345, 349 (1974); see also *Seafarers*, 81 F.3d at 182–83 (D.C. Cir. 1996) ("[A] user fee will be justified under the IOAA if there is a sufficient nexus between the agency service for which the fee is charged and the individuals who are assessed.").

Section 6(a)(3) of the OMB Circular explains that "when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (*i.e.*, the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies." While it is true that installment agreements benefit tax administration and collection, and by extension the public fisc, the benefit is incidental to the special benefits of allowing taxpayers to satisfy their Federal tax liabilities over time rather than when due as required by the Code and avoiding enforcement actions.

By the very nature of government action, the general public will almost always experience some benefit from an activity that is subject to a user fee. See, e.g., *Seafarers*, 81 F.3d at 184–85 (D.C. Cir. 1996). However, as long as the activity confers a specific benefit upon an identifiable beneficiary, it is permissible for the agency to charge the beneficiary a fee even though the public will also experience an incidental benefit. See *Engine Mfrs. Ass'n v. E.P.A.*, 20 F.3d 1177, 1180 (D.C. Cir. 1994) ("If the agency does confer a specific benefit upon an identifiable beneficiary . . . then it is of no moment that the service may incidentally confer a benefit upon the general public as well.") citing *Nat'l Cable Television Ass'n v. FCC*, 554 F.2d 1094, at 1103 (D.C. Cir. 1976). It is permissible for a service for which a user fee is charged to generate an "incidental public benefit," and there is no requirement that the agency weigh this public benefit against the specific benefit to the identifiable recipient. *Seafarers*, 81 F.3d at 183–84 (D.C. Cir. 1996). Furthermore, the benefit to the fisc of collecting outstanding taxes is not an additional benefit to the government because the IRS would collect those amounts through other means absent the installment agreement. Even so, an agency is still entitled to charge for services that assist a person in complying with her statutory duties. See *In Elec. Indus Ass'n v. FCC*, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

While the IRS is required to enter into certain installment agreements pursuant to section 6159(c), the IRS may still charge a fee for providing that service. In fact, under the OMB Circular, there are several examples of special benefits (e.g., passport, visa, patent) for which the issuing agency may charge a fee even though the agency is required to issue such benefit if the individual meets certain statutory or regulatory requirements. In addition, a

taxpayer meeting the criteria in section 6159(c) must still submit a request for an installment agreement before one is established. Section 6159(c) requires that the IRS enter into the installment agreement provided that the taxpayer establishes its eligibility for such an agreement. In that situation, the IRS incurs the costs of establishing and monitoring these installment agreements as with any other installment agreement. Therefore, it is proper under the OMB Circular to charge a user fee for providing this service.

The IRS has taken public policy into consideration and is providing multiple user fee options to tailor the user fees to the specific IRS costs in establishing and monitoring the installment agreements. As a result, the IRS has introduced a reduced fee of $31 for direct debit online payment agreements. This $31 reduced fee is available to all taxpayers choosing to obtain the special benefits of installment agreements by using this service. The $31 reduced fee reflects the substantially lower costs the IRS incurs for establishing and monitoring direct debit online payment agreements. Thus, the installment agreement user fee structure now more closely reflects the full cost of processing each specific type of installment agreement.

The fourth comment's second main concern was that the IRS charges user fees inconsistently because, for example, the IRS does not charge user fees for toll-free telephone service, estimated income tax payments, walk-in service, notice letters, annual filing season program record of completion, and administrative appeals within the IRS.

The IRS's user fee policies are consistent with the OMB Circular. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency, that is, user fees that "are subject to policies prescribed by the President. . . ." One of the OMB Circular's stated objectives is to "ensure that each service . . . provided by an agency to specific recipients be self-sustaining." OMB Circular Section 5(a). The General Policy of the OMB Circular states that "a user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." OMB Circular Section 6. The presumption under the OMB Circular is that agencies are encouraged, but not mandated, to charge user fees where special benefits are provided to identifiable individuals. Installment agreements are such special benefits. For purposes of these regulations, the IRS need only take into consideration comments relating to the installment agreement user fees and need not address comments relating to other services for which no fee is charged. With respect to installment agreement user fees, the IRS has charged fees since 1995 in accordance with the OMB Circular that requires full cost unless an exception is granted. The OMB Circular requires the IRS to review the user fees it charges for special services biennially to ensure that the fees are adjusted for cost. See OMB Circular Section 8(e). The new installment agreement user fee structure is consistent with that requirement.

The fourth comment's third main concern questioned the "optics" of increasing installment agreement user fees because of IRS budget constraints. As discussed in this Summary of Comments, the IRS has determined that the proposed installment agreement user fees are appropriate and consistent with the OMB Circular, and the question of "optics" raised in this comment is not relevant in this analysis. Section 6(a)(2)(a) of the OMB Circular provides that user fees will be sufficient to recover the full cost to the Government of providing the service except as provided in Section 6(c) of the OMB Circular. The exceptions in Section 6(c)(2) of the OMB Circular provide that agency heads may recommend to the OMB that exceptions to the full cost requirement be made when either (1) the cost of collecting the user fee would represent an unduly large part of the fee or (2) any other condition exists that, in the opinion of the agency head, justifies an exception. The cost of collecting the proposed user fees for the various types of installment agreements will not represent an unduly large part of the fee for the activity because it occurs automatically with the first installment payment. As noted above, Section 6(a)(2)(a) of the OMB Circular requires that user fees recover the full cost to the government of providing the service and nothing in the OMB Circular mandates agency heads to seek an exception to the full cost requirement. Nonetheless, the Commissioner of Internal Revenue has determined that there is a compelling tax administration reason for seeking an exception to the full cost requirement for low-income taxpayers.

The fourth comment's fourth main concern focused on the overall amount of the proposed user fees and included a number of related comments on the size of the fees, the agency's methodology in calculating the fees, and the efforts the IRS has taken to minimize the costs of providing these services. The comment questioned why the IRS decided not to change the $43 user fee for low-income taxpayers. The comment asked why the increase in costs of these services exceeded the rate of inflation during the past two years. The comment also questioned the IRS's efficiency in providing this special benefit and the IRS's concern in ensuring that its costs are driven down when providing this service. The comment expressed concern that if installment agreement volumes remained the same, the agency would increase its user fee receipts by tens of millions of dollars. Finally, the comment noted that the user fees do not depend on the balance due under an installment agreement and questioned why the user fee is taken from the first payments due under the installment agreement.

Contrary to what the comment asserted, the per-unit cost of the installment agreement program has not generally increased, rather it has generally decreased. In the 2013 biennial review, the IRS determined that the full cost of an installment agreement was $282, the full cost of an installment agreement paid by way of direct debit was $122, and the full cost of restructuring and reinstating an installment agreement was $85. See 78 FR 53702 (2013 Regulations). In connection with the 2013 biennial review and the 2013 Regulations, the IRS had requested and received an exception to the full cost requirement under the OMB Circular for the installment agreement user fees. As a result, the 2013 Regulations did not charge full cost for any of the installment agreement options. Requesting an exception to the full cost requirement of the OMB Circular is within the discretion of

the agency head and must be approved by the Office of Management and Budget. In the 2015 biennial review, the IRS determined that the full cost of an installment agreement is $225, the full cost of an installment agreement paid by way of direct debit is $107, and the full cost of restructuring and reinstating an installment agreement is $89. Thus, contrary to the comment's assertion, the cost of the installment agreement program has generally decreased rather than generally increased during the span of two years. Furthermore, the IRS always strives to make its services cost-effective. The decrease in the installment agreement costs since 2013 demonstrates one of the ways the IRS seeks to make its services most cost effective for the public. The IRS also seeks new ways to makes its services more accessible to taxpayers. The IRS has worked to improve the usability of the online payment agreement application that provides for significantly lower costs. The user fee for the online payment agreement is $149, and if the installment agreement is paid by way of direct debit, is only $31. Practitioners can submit an online payment agreement application on behalf of their clients to secure lower fees. For smaller tax liabilities, the IRS has established procedures for setting up installment agreements utilizing guaranteed, streamlined, or in-business express criteria that are quicker to process and do not require securing a collection of information statement. See I.R.M. 5.14.5. The IRS has never based its user fee on the amount of liability due under the agreement, which would be inconsistent with the full cost requirement under the OMB Circular. The IRS, however, has provided taxpayers the option to pay their liability in full over 120 days without being charged any user fee. Furthermore, under the new fee structure, taxpayers choose a specific installment agreement service and pay the cost of the service. For example, a taxpayer may choose a direct debit online payment agreement and pay only $31 or a taxpayer may choose a regular installment agreement and pay $225. With regard to the user fee being taken from the first payments due under the installment agreement, this is not relevant for purposes of the regulations as this is not addressed in the regulations. Regardless, the OMB Circular requires user fees to be "collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services." Section 6(a)(2)(C) of the OMB Circular. Instead of requiring the taxpayer to pay the entire fee in advance of the IRS entering into the installment agreement, the IRS allows the taxpayer to pay the fee with the first installment agreement payments, thereby lessening the burden on the taxpayer and making installment agreements more accessible to taxpayers.

The fifth comment had three suggestions: (1) eliminate installment agreement user fees for low-income taxpayers, (2) revise internal guidelines to place less emphasis on speedy collection practices and more emphasis on viable collection practices, and (3) increase the transparency of the installment agreement user fees in publications.

The fifth comment's first suggestion was that the IRS should waive the entire user fee for low-income taxpayers and thereby incentivize them to enter into installment agreements instead of being placed in currently not collectible status or entering into an offer in compromise. According to the comment, this would increase the amount of revenue that the IRS collects and encourage taxpayers to enter into compliance. The comment pointed out that there is no user fee for a low-income taxpayer entering an offer in compromise. The IRS's response to a similar comment made to the installment agreement fee increase proposed in the 2013 notice of proposed rulemaking pointed out that the offer in compromise fee is charged for mere consideration of the offer and is not refunded if it is not accepted. The comment claimed that the IRS contradicted itself by further responding that the purpose of a user fee is to recover the cost to the government for a particular service to the recipient.

The comment opined that by waiving the low-income taxpayer user fee entirely, the number of low-income taxpayers making payments on their tax liabilities could increase. By way of example, the comment posited the possibility of a low-income taxpayer submitting an offer in compromise, paying no fee, and the IRS ultimately collecting less than it would have if it had allowed the low-income taxpayer to enter into an installment agreement with a complete fee waiver. According to the comment, if a low-income taxpayer enters into currently not collectible status and makes voluntary payments, those payments will be sporadic and less than would be collected from an installment agreement since the taxpayer would not receive monthly reminders. The comment referenced the IRS's response to a similar comment made to the installment agreement fee increase proposed in the 2013 notice of proposed rulemaking, to which the IRS responded that generally taxpayers who have the ability to pay their tax liability over time (and thus are eligible for installment agreements) will not qualify for currently not collectible status. In response, the comment suggested that many taxpayers that qualify for currently not collectible status may be mistakenly placed into installment agreements because the taxpayers may feel pressured to make payments, the taxpayers misstate their expenses and income, or the taxpayers are willing to cut back on their monthly living expenses. The comment provided examples to show how the $43 fee created disincentives for low-income taxpayers to enter into installment agreements in cases where the liability was relatively small. The comment requested that the IRS clarify that the user fee does not have to be paid up front but may be paid in installments if the taxpayer's monthly installment payment is less than the user fee.

The IRS considered the effect of the user fee on low-income taxpayers in 2006 and 2013 when the installment agreement user fees were updated. Both times, the IRS determined that the user fee should remain $43 for low-income taxpayers. The IRS again has determined that the user fee for installment agreements (other than for a direct debit online payment agreement) should remain at $43 for low-income taxpayers, both because requiring the full rate would be financially burdensome to low-income taxpayers and because waiving the fee entirely is not fiscally sustainable for the IRS given the constraints on its resources for tax administration. Typically, a taxpayer that is able to pay in full the liability under an installment agreement is not eligible to enter

into an offer in compromise. As discussed in the preamble to T.D. 9647, 78 FR 72016–01, a taxpayer that is in currently not collectible status is typically not eligible to enter into an installment agreement. The low-income taxpayers that enter into installment agreements described in the examples the comment presented do so as a result of the taxpayers' choices or erroneous submissions of information to the IRS. Thus, the comment's hypothetical low-income taxpayer is the exception not the general rule. To ensure that low-income taxpayers are more aware of the fee options for the various types of installment agreements, the IRS will be revising its publications to make them consistent with the final regulations.

The fifth comment's second main concern was that low-income taxpayers are not always aware of the availability of the reduced fee and as a consequence some low-income taxpayers pay the regular fee. The comment suggested that IRS employees could do more to make low-income taxpayers aware of their options. The comment also asserted that installment agreements are set up not to allow low-income taxpayers to modify payments based on unforeseen changes in economic circumstances. The comment stated this can result in low-income taxpayers defaulting and either become subject to collection action or subject to the installment agreement reinstatement fee of $89 under the proposed regulations.

The comment requested that the IRS revise its procedures in the Internal Revenue Manual to place less emphasis on timely collection practices and more emphasis on viable collection practices.

The fifth comment's concerns about tax administration are generally beyond the scope of these regulations. However, for purposes of clarification, under the proposed regulations the user fee for reinstating an installment agreement for a low-income taxpayer would be $43, not $89. Furthermore, while these concerns do not affect the content of these final regulations, the IRS will consider these comments when updating the procedures in the Internal Revenue Manual for entering into installment agreements.

The fifth comment's third suggestion was for the IRS to clearly communicate to the public both through the internet and in hard copy publications the revised fee schedule so that taxpayers may make informed decisions when deciding the manner of setting up an installment agreement. The comment suggested that taxpayers who lack access to the internet, lack computer efficiency, lack a bank account, or have other disabilities or barriers should not be subjected to the higher user fees.

The IRS will be updating its electronic and hard copy publications to reflect the user fees in the final regulations. As explained in the proposed notice of rulemaking and in this Summary of Comments, the purpose of the user fees for installment agreements is to recover the full cost to the IRS of providing this special benefit to specific beneficiaries and the user fees in these final regulations are in accordance with the OMB Circular.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Low-income taxpayers and taxpayers entering into direct debit online payment agreements will be charged a lower fee, which lessens the economic impact of these regulations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking 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 regulations is Maria Del Pilar Austin of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. In § 300.1, paragraphs (b) and (d) are revised to read as follows:

§ 300.1 Installment agreement fee.

* * * * *

(b) *Fee*. The fee for entering into an installment agreement before January 1, 2017, is $120. The fee for entering into an installment agreement on or after January 1, 2017, is $225. A reduced fee applies in the following situations:

(1) For installment agreements entered into before January 1, 2017, the fee is $52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account. The fee is $107 when the taxpayer pays by way of a direct debit from the taxpayer's bank account for installment agreements entered into on or after January 1, 2017;

(2) For online payment agreements entered into before January 1, 2017, the fee is $120, except that the fee is $52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account. The fee is $149 for entering into online payment agreements on or after January 1, 2017, except that the fee is $31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account; and

(3) Notwithstanding the type of installment agreement and method of payment, the fee is $43 if the taxpayer is a low-income taxpayer, that is, an individual

who falls at or below 250 percent of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary, except that the fee is $31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account with respect to online payment agreements entered into on or after January 1, 2017;

* * * * *

(d) *Applicability date*. This section is applicable beginning January 1, 2017.

Par. 3. In § 300.2, paragraphs (b) and (d) are revised to read as follows:

§ 300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) *Fee*. The fee for restructuring or reinstating an installment agreement before January 1, 2017, is $50. The fee for restructuring or reinstating an installment agreement on or after January 1, 2017, is $89. If the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250 percent of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary, then the fee for restructuring or reinstating an installment agreement on or after January 1, 2017 is $43.

* * * * *

(d) *Applicability date*. This section is applicable beginning January 1, 2017.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2016.

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

(Filed by the Office of the Federal Register on November 29, 2016, 11:15 a.m., and published in the issue of the Federal Register for December 2, 2016, 81 F.R. 86955)

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26 CFR 1.6695–2 and 26 CFR 1.6695–2T: Tax return preparer due diligence requirements for certain credits

Tax Return Preparer Due Diligence Penalty under Section 6695(g)

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

[TD 9799]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that modify existing regulations related to the penalty under section 6695(g) of the Internal Revenue Code (Code) relating to tax return preparer due diligence. These temporary regulations implement recent law changes that expand the tax return preparer due diligence penalty under section 6695(g) so that it applies to the child tax credit (CTC), additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). The temporary regulations affect tax return preparers. The substance of the temporary regulations is included in the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Internal Revenue Bulletin.**

DATES: *Effective Date*: These regulations are effective on December 5, 2016.

Applicability Date: For dates of applicability, see § 1.6695–2T(e).

FOR FURTHER INFORMATION CONTACT: Rachel L. Gregory, 202-317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these temporary and final regulations is in § § 1.6695–2(b) and 1.6695–2T(b) and is reported on Form 8867, "Paid Preparer's Due Diligence Checklist." Responses to this collection of information are mandatory. The collection of information in current § 1.6695–2 was previously reviewed and approved under control number 1545-1570. Control number 1545-1570 was discontinued in 2014, as the burden for the collection of information contained in § 1.6695–2 is reflected in the burden on Form 8867 under control number 1545-1629.

Background

This document contains amendments to 26 CFR parts 1 and 602 under section 6695(g) of the Code, imposing a penalty on tax return preparers who fail to comply with the due diligence requirements imposed by the Secretary by regulations with respect to determining the eligibility for, or the amount of, the EIC. Section 6695(g) was added to the Code because Congress believed more thorough efforts by tax return preparers are important to improving EIC compliance. H.R. Rep. No. 105–148, 105th Cong. 1st Sess., p. 512 (June 24, 1997).

Enacted by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (11 Stat. 788, 955 (1997)), and effective for taxable years beginning after December 31, 1996, section 6695(g) originally imposed a $100 penalty on an income tax return preparer who failed to meet the EIC due diligence requirements set forth in regulations prescribed by the Secretary. Section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Pub. L. 110–28 (121 Stat. 112, 200 (2007)) amended the penalty to apply to all tax return preparers. Section 501(a) of the United States-Korea Free Trade Agreement Implementation Act, Pub. L. 112–41 (125 Stat. 428, 459 (2011)), amended section 6695(g) to increase the amount of the penalty to $500, effective for returns required to be filed after December 31, 2011. Section 208(c), Div. B of the Tax Increase Prevention Act of

2014, Pub. L. 113–295 (128 Stat. 4010, 4073 (2014)) (2014 Act), added section 6695(h), which indexes the penalty amount for inflation, effective for returns or claims for refund filed after December 31, 2014.

Section 1.6695–2 implements section 6695(g) by imposing due diligence requirements on persons who are tax return preparers under section 7701(a)(36) with respect to determining eligibility for, or the amount of, the EIC. The due diligence requirements set forth in § 1.6695–2(b) are that the preparer must: (1) complete and submit Form 8867, "Paid Preparer's Earned Income Credit Checklist;" (2) complete the Earned Income Credit Worksheet (Worksheet), as contained in the Form 1040 instructions or record the preparer's computation of the credit, including the method and information used to make the computation; (3) not know or have reason to know that any information used by the preparer in determining eligibility for, and the amount of, the EIC is incorrect and make reasonable inquiries when required, documenting those inquiries and responses contemporaneously (knowledge requirement); and (4) retain, for three years from the applicable date, the Form 8867, the Worksheet (or alternative records), and the record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer, including the identity of any person furnishing information and a copy of any document relied on by the preparer.

To comply with the knowledge requirement under § 1.6695–2(b)(3), the tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. Examples in § 1.6695–2(b)(3)(ii) illustrate this requirement. This knowledge requirement is consistent with the verification requirement imposed on all tax return preparers with respect to preparation of any tax return or claim for refund under the accuracy-related standards set forth in § 1.6694–1(e).

A tax return preparer is required to submit the Form 8867 to the IRS when the preparer electronically files the tax return. If a tax return preparer required to complete the Form 8867 is not electronically filing the taxpayer's return with the IRS, § 1.6695–2(b)(1) provides rules for submission of the form. If the tax return preparer required to complete the Form 8867 is not the signing tax return preparer, the preparer satisfies the submission requirement by providing a copy of the completed Form 8867 to the signing tax return preparer. If the tax return preparer required to complete the Form 8867 is the signing tax return preparer but the taxpayer is not electronically filing the return, the preparer must provide a copy of the completed Form 8867 to the taxpayer to be attached to the return being filed with the IRS.

Section 1.6695–2(c) provides that a firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to a penalty if certain conditions apply. Under this rule, a firm will be subject to a penalty if and only if one or more members of principal management (or principal officers) of the firm or branch participated in, or prior to the time the return was filed, knew of the failure to comply with the due diligence requirements; the firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements; or, through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) the firm disregarded its own reasonable and appropriate compliance procedures. A firm subject to a section 6695(g) penalty under this section is not eligible for the exception to the penalty in § 1.6695–2(d). Under this exception, the penalty will not be applied if the tax return preparer can demonstrate to the satisfaction of the IRS that, considering all of the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements, and the failure to meet the due diligence requirements with respect to the particular tax return or claim for refund was isolated and inadvertent.

Section 207, Div. Q of the Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114–113 (129 Stat. 2242, 3082 (2015)) (PATH Act) amended section 6695(g) by expanding the scope of the due diligence requirements to also include claims of the CTC/ACTC under section 24 and the AOTC under section 25A(a)(1), effective for taxable years beginning after December 31, 2015.

These temporary regulations reflect the changes made to section 6695(g) by the PATH Act by expanding the due diligence requirements to the CTC/ACTC and the AOTC. These temporary regulations also conform the regulation to the 2014 Act, reflecting that the penalty is to be adjusted for inflation.

Explanation of Provisions

The temporary regulations amend § 1.6695–2 to implement the changes made by the PATH Act that extend the preparer due diligence requirements to returns or claims for refund including claims of the CTC/ACTC and/or AOTC in addition to the EIC. As a result of these changes, one return or claim for refund may contain claims for more than one credit subject to the due diligence requirements. Pursuant to the statute, each failure to comply with the due diligence requirements set forth in regulations prescribed by the Secretary results in a penalty. The section 6695(g) requirements apply to each credit claimed, meaning more than one penalty could apply to a single return or claim for refund. The temporary regulations provide examples to show how multiple penalties could apply when one return or claim for refund is filed.

The Form 8867 has been revised for the 2016 tax year and is a single checklist to be used for all applicable credits (EIC, CTC/ACTC, and/or AOTC) on the return or claim for refund subject to the section 6695(g) due diligence requirements. The Form 8867 was streamlined to eliminate unnecessary redundancy with other forms and schedules. These changes were intended to reduce burden while increasing the utility of the Form 8867 as a checklist for tax return preparers to more accurately determine taxpayer eligibility for credits, thereby reducing errors and increasing compliance by preparers and taxpayers. The temporary regulations clarify § 1.6695–2(b)(1)(ii) to illustrate that the completion of Form 8867 can be based on information pro-

vided by the taxpayer to the preparer or otherwise reasonably obtained or previously known by the preparer.

The examples provided in § 1.6695–2(b)(3)(ii) have been updated to provide more insight into when a tax return preparer has satisfied the due diligence knowledge requirement, including for purposes of the CTC and AOTC. The updates to the examples in § 1.6695–2T(b)(3)(ii) illustrate that the knowledge requirement for purposes of due diligence can be satisfied in conjunction with a tax return preparer's information-gathering activities done for the purpose of accurately completing other aspects of a tax return or claim for refund. New examples, Example 2 and Example 4, have also been added to illustrate that in certain circumstances a tax return preparer may satisfy the knowledge requirement based on existing knowledge without having to make additional reasonable inquiries. Another new example, Example 7, provides an example of due diligence for purposes of the AOTC.

Section 1.6695–2(a) is amended by the temporary regulations to reflect the changes made by section 208(c) of the 2014 Act, requiring the IRS to index the penalty for inflation for returns or claims for refund filed after December 31, 2014. In addition, § 1.6695–2T(c)(3) clarifies the parenthetical therein by removing the words "or ascertained."

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 assessment is not required. For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses.

Drafting Information

The principal author of this regulation is Rachel L. Gregory, Office of the Associate Chief Counsel (Procedure & Administration).

* * * * *

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6695–2T is also issued under 26 U.S.C. 6695(g).

* * * * *

Par. 2. Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) and (ii), (b)(4)(i)(B) and (C), and (c)(3) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain credits.

(a) [Reserved]. For further guidance regarding the penalty for failure to meet due diligence requirements with respect to certain credits, see § 1.6695–2T(a).

(b) * * *

(1) * * *

(i) [Reserved]. For further guidance regarding the completion of Form 8867, see § 1.6695–2T(b)(1)(i).

* * * * *

(ii) [Reserved]. For further guidance regarding the information used to complete the Form 8867, see 1.6695–2T(b)(1)(ii).

(2) [Reserved]. For further guidance regarding computation, see § 1.6695–2T(b)(2).

(3) * * *

(i) [Reserved]. For further guidance regarding the knowledge requirement, see § 1.6695–2T(b)(3)(i).

(ii) [Reserved]. For current examples, see § 1.6695–2T(b)(3)(ii).

(4) * * *

(i) * * *

(B) [Reserved]. For further guidance on the retention of records, see § 1.6695–2T(b)(4)(i)(B).

(C) [Reserved]. For further guidance on the retention of records, see § 1.6695–2T(b)(4)(i)(C).

* * * * *

(c) * * *

(3) [Reserved]. For further guidance on the special rule for firms, see § 1.6695–2T(c)(3).

* * * * *

Par. 3. Section 1.6695–2T is added to read as follows:

§ 1.6695–2T Tax return preparer due diligence requirements for certain credits (Temporary).

(a) *Penalty for failure to meet due diligence requirements*–(1) *In general*. A person who is a tax return preparer (as defined in section 7701(a)(36)) of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the child tax credit (CTC) and additional child tax credit (ACTC) under section 24, the American opportunity tax credit (AOTC) under section 25A(i), or the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty as prescribed in section 6695(g) (indexed for inflation under section 6695(h)) for each failure. A separate penalty applies with respect to each credit claimed on a return or claim for refund for which the due diligence requirements of this section are not satisfied and for which the exception to penalty provided by paragraph (d) of this section does not apply.

(2) *Examples*. The provisions of paragraph (a)(1) of this section are illustrated by the following examples:

Example 1. Preparer A prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer A did not meet the due diligence requirements under this section with respect to the CTC or the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer A is subject to two penalties under section 6695(g): one for failure to meet the due diligence requirements for the CTC and a second penalty for failure to meet the due diligence requirements for the AOTC.

Example 2. Preparer B prepares a federal income tax return for a taxpayer claiming the CTC and the AOTC. Preparer B did not meet the due diligence requirements under this section with respect to the CTC claimed on the taxpayer's return, but Preparer B did meet the due diligence requirements under this section with respect to the AOTC claimed on the taxpayer's return. Unless the exception to penalty provided by paragraph (d) of this section applies, Preparer B is subject to one penalty under section 6695(g) for the failure to meet the due diligence requirements for the CTC. Preparer B is not subject to a penalty under section 6695(g) for failure to meet the due diligence requirements for the AOTC.

(b) [Reserved]. For further guidance, see § 1.6695–2(b).

(1) *Completion and submission of Form 8867*. (i) The tax return preparer must complete Form 8867, "Paid Preparer's Due Diligence Checklist," or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS), and—

(A) through (C) [Reserved]. For further guidance, see § 1.6695–2(b)(1)(i)(A) through (C).

(ii) The tax return preparer's completion of Form 8867 must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(2) *Computation of credit or credits*. (i) When computing the amount of a credit described in paragraph (a) of this section to be claimed on a return or claim for refund, the tax return preparer must either—

(A) Complete the worksheet in the Form 1040, 1040A, 1040EZ, and/or Form 8863 instructions or such other form including such other information as may be prescribed by the IRS applicable to each credit described in paragraph (a) of this section claimed on the return or claim for refund; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's computation of the credit or credits claimed on the return or claim for refund, including the method and information used to make the computations.

(ii) The tax return preparer's completion of an applicable worksheet described in paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation of the credit or credits permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained or known by the tax return preparer.

(3) *Knowledge*—(i) *In general*. The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, any credit described in paragraph (a) of this section and claimed on the return or claim for refund is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files any inquiries made and the responses to those inquiries.

(ii) *Examples*. The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. In 2018, Q, a 22 year-old taxpayer, engages Preparer C to prepare Q's 2017 federal income tax return. Q completes Preparer C's standard intake questionnaire and states that she has never been married and has two sons, ages 10 and 11. Based on the intake sheet and other information that Q provides, including information that shows that the boys lived with Q throughout 2017, Preparer C believes that Q may be eligible to claim each boy as a qualifying child for purposes of the EIC and the CTC. However, Q provides no information to Preparer C, and Preparer C does not have any information from other sources, to verify the relationship between Q and the boys. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer C must make reasonable inquiries to determine whether each boy is a qualifying child of Q for purposes of the EIC and the CTC, including reasonable inquiries to verify Q's relationship to the boys, and Preparer C must contemporaneously document these inquiries and the responses.

Example 2. Assume the same facts as in *Example 1* of this paragraph (b)(3)(ii). In addition, as part of preparing Q's 2017 federal income tax return, Preparer C made sufficient reasonable inquiries to verify that the boys were Q's legally adopted children. In 2019, Q engages Preparer C to prepare her 2018 federal income tax return. When preparing Q's 2018 federal income tax return, Preparer C is not required to make additional inquiries to determine the boys relationship to Q for purposes of the knowledge requirement in paragraph (b)(3) of this section.

Example 3. In 2018, R, an 18 year-old taxpayer, engages Preparer D to prepare R's 2017 federal income tax return. R completes Preparer D's standard intake questionnaire and states that she has never been married, has one child, an infant, and that she and her infant lived with R's parents during part of the 2017 tax year. R also provides Preparer D with a Form W–2 showing that she earned $10,000 during 2017. R provides no other documents or information showing that R earned any other income during the tax year. Based on the intake sheet and other information that R provides, Preparer D believes that R may be eligible to claim the infant as a qualifying child for the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer D must make reasonable inquiries to determine whether R is eligible to claim these credits, including reasonable inquiries to verify that R is not a qualifying child of her parents (which would make R ineligible to claim the EIC) or a dependent of her parents (which would make R ineligible to claim the CTC), and Preparer D must contemporaneously document these inquiries and the responses.

Example 4. The facts are the same as the facts in *Example 3* of this paragraph (b)(3)(ii). In addition, Preparer D previously prepared the 2017 joint federal income tax return for R's parents. Based on information provided by R's parents, Preparer D has determined that R is not eligible to be claimed as a dependent or as a qualifying child for purposes of the EIC or CTC on R's parents' return. Therefore, for purposes of the knowledge requirement in paragraph (b)(3) of this section, Preparer D is not required to make additional inquiries to determine that R is not her parents' qualifying child or dependent.

Example 5. In 2018, S engages Preparer E to prepare his 2017 federal income tax return. During Preparer E's standard intake interview, S states that he has never been married and his niece and nephew lived with him for part of the 2017 tax year. Preparer E believes S may be eligible to claim each of these children as a qualifying child for purposes of the EIC and the CTC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer E must make reasonable inquiries to determine whether each child is a qualifying child for purposes of the EIC and the CTC, including reasonable inquiries about the children's parents and the children's residency, and Preparer E must contemporaneously document these inquiries and the responses.

Example 6. W engages Preparer F to prepare her federal income tax return. During Preparer F's standard intake interview, W states that she is 50 years old, has never been married, and has no children. W further states to Preparer F that during the tax year she was self-employed, earned $10,000 from her business, and had no business expenses or other income. Preparer F believes W may be eligible for the EIC. To meet the knowledge requirement in paragraph (b)(3) of this section, Preparer F must make reasonable inquiries to determine whether W is eligible for the EIC, including reasonable inquiries to determine whether W's business income and expenses are correct, and Preparer F must contemporaneously document these inquiries and the responses.

Example 7. Y, who is 32 years old, engages Preparer G to prepare his federal income tax return. Y completes Preparer G's standard intake questionnaire and states that he has never been married. As part of Preparer G's client intake process, Y provides Preparer G with a copy of the Form 1098–T Y received showing that University M billed $4,000 of qualified tuition and related expenses for Y's enrollment or attendance at the university and that Y was at least a half-time undergraduate student. Preparer G believes that Y may be eligible for the AOTC. To meet the knowledge requirements in paragraph (b)(3) of this section, Preparer G must make reasonable inquiries to determine whether Y is eligible for the AOTC, as Form 1098–T does not contain all the information needed to determine eligibility for the AOTC or to calculate the amount of the credit if Y is eligible, and contemporaneously document these inquiries and the responses.

(4) *Retention of records*. (i) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(i).

(A) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(i)(A).

(B) A copy of each completed worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 and the applicable worksheets required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 and/or an applicable worksheet required under paragraph (b)(2)(i)(A) of this section (or other record of the tax return preparer's computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) through (iii) [Reserved]. For further guidance, see § 1.6695–2(b)(4)(ii) through (iii).

(c) [Reserved]. For further guidance, see § 1.6695–2(c).

(1) through (2) [Reserved]. For further guidance, see § 1.6695–2(c)(1) through (2).

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) [Reserved]. For further guidance, see § 1.6695–2(d).

(e) *Applicability date*. This section applies to tax returns and claims for refund prepared on or after December 5, 2016 with respect to tax years beginning after December 31, 2015. For returns and claims for refund prepared before December 5, 2016 with respect to tax years beginning before January 1, 2016, the rules that apply are contained in § 1.6695–2 in effect prior to December 5, 2016. (See 26 CFR part 1 revised as of April 2016).

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

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. In § 602.101, paragraph (b) is amended by removing the entry for § 1.6695–2 from the table.

John M Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: November 21, 2016.

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

(Filed by the Office of the Federal Register on December 2, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 5, 2016, 81 F.R. 87444)

Part III. Administrative, Procedural, and Miscellaneous

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of Hurricane Matthew

Notice 2016–69

This notice provides guidance on the treatment of leave-based donation programs to aid victims of Hurricane Matthew.

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of Hurricane Matthew, employers may have adopted or may be considering adopting leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations). This notice provides guidance for income and employment tax purposes on the treatment of cash payments made by employers under leave-based donation programs for the relief of victims of Hurricane Matthew.

The Service will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the § 170(c) organizations for the relief of victims of Hurricane Matthew; and (2) paid to the § 170(c) organizations before January 1, 2018.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of § 170 rather than the rules of § 162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W–2.

DRAFTING INFORMATION

For further information, please contact Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free number).

Section 45R – 2016 Guidance with Respect to the Tax Credit for Employee Health Insurance Expenses of Certain Small Employers

Notice 2016–75

I. PURPOSE

This notice provides guidance on section 45R of the Internal Revenue Code-(Code) for certain small employers that cannot offer a qualified health plan (QHP) through the Small Business Health Options Program (SHOP) Exchange because the employer's principal business address is in a county in Wisconsin in which a QHP through a SHOP Exchange will not be available for all or part of 2016 calendar year. Section IV of this notice includes a list of those counties. With respect to those employers in Wisconsin, this notice provides guidance on how to satisfy the requirements for the section 45R credit for coverage provided during the 2016 calendar year and the portion of a health plan year beginning in 2016, if any, that continues into 2017. (See Notice 2014–6, 2014 I.R.B. 279 and Notice 2015–08, 2015 I.R.B. 589 for guidance on counties in other states in which a QHP through a SHOP Exchange might not be available during 2014 and 2015.)

II. BACKGROUND

Section 45R was added to the Code by section 1421 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Pub. L. No. 111–148. Section 45R offers a tax credit to certain small employers that provide health insurance coverage to their employees (eligible small employers). The credit generally is available for taxable years beginning after December 31, 2009. For taxable years beginning after December31, 2013, the credit is available only with respect to premiums paid by a small employer for a QHP offered by the employer to its employees through a SHOP Exchange, and is available only for a period of two consecutive taxable years. Additionally, for taxable years beginning after December 31, 2013, the maximum credit rate is increased to 50 percent from 35 percent for eligible small employers (and to 35 percent from 25 percent for tax-exempt eligible small employers). An eligible small employer may claim the credit by filing an income tax return and attaching Form 8941, "Credit for Small Employer Health Insurance Premiums" (or in the case of tax-exempt eligible small employers, filing Form 990–T, "Exempt Organization Business Income Tax Return," and attaching Form 8941).

The Treasury Department and the IRS issued final regulations under section 45R on June 30, 2014 (79 FR 36640). The regulations provide guidance on determining eligibility for the credit and calculating and claiming the credit.

The Treasury Department and the IRS have been advised by the Department ofHealth and Human Services (HHS) that for calendar year 2016 the SHOP Exchanges in Wisconsin will not have QHPs available in certain counties for employers to offer to their employees. Under HHS regulations governing employer eligibility for SHOP Exchanges, an employer may either (1) offer coverage to all of its eligible full-time employees through the SHOP whose service area includes the employer's principal business address, or (2) offer coverage to each eligible full-time employee through the SHOP whose ser-

vice area includes that employee's primary worksite. 45 CFR 155.710(b)(3). Under either approach, an employer may offer SHOP coverage to employees whose primary worksite is at its principal business address only if that address is located within the service area of the SHOP. As a result, absent the relief provided in this notice, an otherwise eligible small employer with its principal business address in a county without any QHPs available would be denied the opportunity to claim the section 45R credit for 2016. To provide these otherwise eligible small employers an opportunity to claim the section 45R credit for 2016, this notice provides relief for those employers for the plan year of the employer's group health plan beginning in 2016, including any portion of that plan year that continues into 2017, with respect to employees whose primary worksite is at the employer's principal business address.

On December 17, 2013, the Treasury Department and the IRS issued Notice 2014–6, 2014–2 I.R.B. 279, which provided transition relief for employers in certain counties in Washington and Wisconsin with no SHOP coverage available in 2014. On January 16, 2015, Notice 2015–08, 2015–6 I.R.B. 589, was issued which provided similar relief for employers in certain counties in Iowa with no SHOP coverage available in 2015. The Treasury Department and the IRS have determined that similar relief, described in section III of this notice, is appropriate for employers in certain counties in Wisconsin with no SHOP coverage available in 2016. Nothing in this notice is intended to modify or otherwise affect the relief provided in Notice 2014–6 or Notice 2015–08.

III. 2016 RELIEF

An eligible small employer with a principal business address in one of the counties listed in section IV below may calculate the credit under section 45R by treating health insurance coverage provided for the 2016 health plan year as qualifying for the section 45R credit, provided that that the coverage would have qualified for a credit under section 45R under the rules applicable before January 1, 2014. This treatment applies with respect to the coverage provided during the 2016 calendar year and during any portion of a health plan year beginning in 2016 that continues into 2017. If the eligible small employer claims the section 45R credit for the 2016 taxable year, then the credit will be calculated at the 50 percent rate (35 percent for tax-exempt eligible small employers) for the entire 2016 taxable year. If the eligible small employer first claims the section 45R credit for the 2016 taxable year, the 2016 taxable year will be the first year of the two-consecutive-taxable year credit period. If the eligible small employer first claims the section 45R credit for the 2015 taxable year, then the 2016 taxable year will be the second year of the two-consecutive-taxable year credit period, regardless of whether the eligible small employer takes advantage of the relief in this notice regarding the credit for coverage provided under the rules applicable before January 1, 2014.

The relief in this notice is illustrated by the following examples. The examples assume that the employer is an eligible small employer that is not a tax-exempt employer, and that its principal business address is in a county listed in this notice.

Example 1. (i) *Facts*. Employer does not claim the credit for coverage provided for its 2015 taxable year. Employer has a 2016 health plan year and a 2016 taxable year that both begin January 1, 2016, and end December 31, 2016. Employer provides health insurance coverage from January 1, 2016, through December 31, 2016, that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) *Conclusion*. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided for the entire 2016 taxable year. If Employer claims the credit for coverage provided for the 2016 taxable year, the 2016 taxable year is the first year of its two-consecutive-taxable year credit period.

Example 2. (i) *Facts*. Employer does not claim the credit for coverage provided for its 2015 taxable year. Employer has a 2016 taxable year that begins January 1, 2016, and ends December 31, 2016, and a 2016 health plan year that begins April 1, 2016, and ends March 31, 2017. From April 1, 2016 through December 31, 2016 (the initial months of its plan year that begins April 1, 2016) and from January 1, 2017 through March 31, 2017, Employer provides coverage that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) *Conclusion*. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided from April 1, 2016 through December 31, 2016. Employer may also claim the credit under section 45R for coverage provided for its 2017 taxable year from January 1, 2017 through March 31, 2017 (in addition to any credit under section 45R for which Employer is eligible based on coverage provided from April 1 through December 31 of the 2017 taxable year).

Example 3. (i) *Facts*. Employer has a 2016 taxable year that begins January 1, 2016 and ends December 31, 2016, and a 2016 health plan year that begins May 1, 2016 and ends April 30, 2017. Employer provided coverage through a SHOP plan for 2015 and qualifies for, and claims, the credit for 2015. In 2016, Employer provides coverage through a SHOP plan for January 2016. Beginning February 1 and through April 30, 2016, Employer provides coverage with a policy for the remainder of the plan year that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014. From May 1, 2016, through December 31, 2016 (the initial months of its plan year that begins May 1, 2016), and from January 1, 2017, through April 30, 2017, Employer provides coverage that would have qualified Employer for a credit under section 45R under the rules applicable to taxable years beginning before January 1, 2014.

(ii) *Conclusion*. Employer may claim the credit at the 50 percent rate under section 45R for coverage provided from January 1, 2016, through December 31, 2016. Employer may not claim the credit under section 45R for coverage provided for its 2017 taxable year because its two-consecutive-taxable year period ends with 2016.

IV. LIST OF WISCONSIN COUNTIES

Pierce, Polk, St. Croix.

V. EFFECTIVE DATE

This notice is effective as of December 2, 2016 and applies to periods after December 31, 2015.

DRAFTING INFORMATION

The principal author of this notice is Stephanie Caden of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Stephanie Caden at (202) 317-5500 (not a toll-free number).

IRS Enforcement and Administration of Section 871(m) and Related Withholding Provisions During the Phase-In Period

Notice 2016–76

I. PURPOSE

This notice provides taxpayers with guidance for complying with final and temporary regulations under sections 871(m), 1441, 1461, and 1473 of the Internal Revenue Code (the Code) (collectively, referred to as the section 871(m) regulations) in 2017 and 2018, and explains how the Internal Revenue Service (IRS) intends to administer those regulations in 2017 and 2018. Because amendments to the section 871(m) regulations are expected, the Treasury Department and the IRS have determined that it is appropriate to phase in the application of certain rules in the section 871(m) regulations to facilitate the implementation of those regulations. Comments have noted that taxpayers and withholding agents will face challenges complying with certain aspects of the section 871(m) regulations by their applicability date of January 1, 2017. Those challenges include designing, building, and testing new withholding and reporting infrastructure for dealers, issuers, and other withholding agents; implementing new system requirements for paying agents and clearing organizations; and enhancing and developing data sources for determining whether transactions are section 871(m) transactions.[1] In addition, certain taxpayers may face additional challenges applying for status as a qualified derivatives dealer (QDD) under the Qualified Intermediary (QI) withholding agreement (QI agreement) and implementing the QDD regime in a timely manner. The Treasury Department and the IRS have determined that the phased-in application of certain rules as provided by this notice—in combination with the expected changes to the final and temporary regulations—will allow for the orderly implementation of the section 871(m) regulations.

As described in detail in section III of this notice, this notice provides as follows:

- For 2017,[2] the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations in enforcing the section 871(m) regulations for any delta-one transaction;
- For 2018, the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations in enforcing the section 871(m) regulations for any non-delta-one transaction;
- For 2017, withholding agents may rely on a simplified standard for determining whether transactions are combined transactions pursuant to § 1.871–15(n);
- For 2017, withholding agents may remit amounts withheld for dividend equivalent payments quarterly;
- For 2017 and following years, a QDD's section 871(m) amount is to be determined by calculating the net delta exposure of the QDD;
- For 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with the QDD provisions in the QI agreement when enforcing those provisions;
- Prospective QDDs may apply for QDD status on or before March 31, 2017, and, if accepted by the IRS, be treated as having QDD status as of January 1, 2017;
- Before receiving a QI-EIN, QDDs may provide a statement on a Form W–8IMY that the QDD is "awaiting QI-EIN," and withholding agents may rely on this statement, to the extent permitted in this notice; and
- The section 871(m) regulations will not apply to certain existing exchange-traded notes specifically identified in section III.D of this notice until January 1, 2020.

The anti-abuse rule provided in § 1.871–15(o) will apply during the phase-in years described in this notice. As a result, a transaction that would not otherwise be treated as a section 871(m) transaction (including as a result of this notice), may be a section 871(m) transaction under § 1.871–15(o).

II. BACKGROUND

Section 871(m) treats dividend equivalent payments as U.S. source dividends for purposes of chapters 3 and 4 and sections 871(a), 881, and 4948(a). As a result, dividend equivalent payments are amounts subject to withholding (as defined in § 1.1441–2(a)) for purposes of sections 1441 through 1443 and withholdable payments (as defined in § 1.1473–1(a)) for purposes of sections 1471 and 1472. Accordingly, a withholding agent generally is required to deduct and withhold a tax equal to 30 percent on any dividend equivalent payment made to a foreign person unless an exception from, or lower rate of, withholding applies pursuant to the Code or regulations thereunder, or an applicable income tax treaty.

The Treasury Department and the IRS issued the section 871(m) regulations in several parts. On December 5, 2013, final regulations (TD 9648) were published at 78 FR 73079. On September 18, 2015, final regulations and temporary regulations (TD 9734) were published at 80 FR 56866 (2015 final regulations). Also on September 18, 2015, the Federal Register published a notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing at 80 FR 56415 (2015 proposed regulations). Correcting amendments to the 2015 final regulations were published on December 7, 2015, in the Federal Register at 80 FR 75946, and on December 7, 2015, in the Federal Register at 80 FR 75956.

On July 1, 2016, the Treasury Department and the IRS released Notice 2016–42, 2016–29 IRB 67, containing a proposed QI agreement (the proposed QI agreement) that describes requirements and obligations that will be applicable to

[1] Unless otherwise provided, for purposes of this notice, terms that are defined in the section 871(m) regulations and in the proposed QI agreement in Notice 2016–42 (for example, "section 871(m) transaction," "qualified derivatives dealer," "delta," "dividend equivalent," "underlying security," "payment," and "QDD tax liability") have the meanings described in those documents.

[2] Unless otherwise provided, all references to years refer to calendar years.

QDDs. The Treasury Department and the IRS have received written comments on Notice 2016–42. The Treasury Department and the IRS intend to publish a final QI agreement before the end of 2016, taking into account these comments. The final QI agreement will be effective on or after January 1, 2017.

III. ENFORCEMENT AND ADMINISTRATION OF COMPLIANCE WITH SECTION 871(M) DURING THE PHASED-IN YEARS

This section describes the phased-in application of the section 871(m) regulations. This notice does not apply to any transaction that is a section 871(m) transaction pursuant to § 1.871–15(d)(1).

A. *Phased-In Application for Delta-One and Non-Delta-One Transactions*

This notice announces that the Treasury Department and the IRS intend to amend the applicability dates of the section 871(m) regulations with respect to certain transactions.

1. *2017 Phase-in Year for Delta-One Transactions*

Section 1.871–15(d)(2) and (e) will continue to apply with respect to any payment made with respect to any potential section 871(m) transaction issued on or after January 1, 2017, that has a delta of one—including a transaction that is a combined transaction under § 1.871–15(n) (subject to the simplified standard provided in section III.B of this notice). However, as described in section III.A.3 of this notice, for taxpayers and withholding agents 2017 will be a phase-in year for any delta-one transaction that is a section 871(m) transaction pursuant to § 1.871–15(d)(2) or (e).

2. *2018 Phase-in Year for Non-Delta-One Transactions*

The Treasury Department and the IRS have determined that taxpayers and withholding agents need additional time to implement the section 871(m) regulations with respect to section 871(m) transactions other than delta-one transactions (non-delta-one transactions)—including transactions that are combined transactions under § 1.871–15(n). Therefore, the Treasury Department and the IRS intend to revise § 1.871–15(d)(2) and (e) to not apply to any payment made with respect to any non-delta-one transaction issued before January 1, 2018. In addition, 2018 will be a phase-in year for any non-delta-one transaction that is a section 871(m) transaction pursuant to § 1.871–15(d)(2) or (e).

3. *IRS Enforcement and Administration During the Phase-In Years*

When enforcing the section 871(m) regulations for the applicable phase-in year, the IRS will take into account the extent to which the taxpayer or withholding agent made a good faith effort to comply with the section 871(m) regulations. For example, the IRS will take into account whether a withholding agent made a good faith effort to (1) build or update its documentation and withholding systems to comply with the section 871(m) regulations; (2) determine whether transactions are combined transactions under § 1.871–15(n) (taking into account the simplified standard in section III.B of this notice for 2017); (3) report information to other parties to a transaction (as required under § 1.871–15(p)); and (4) implement the substantial equivalence test provided in § 1.871–15(h) for 2018. Any person that did not make a good faith effort to comply with the section 871(m) regulations will not be given relief from IRS administration or enforcement, including penalties.

During 2017, a withholding agent will be considered to have timely satisfied its deposit requirements for section 871(m) dividend equivalent payments if it makes deposits of amounts withheld for dividend equivalents during any calendar quarter on or before the last day of that calendar quarter. The withholding agent should write "Notice 2016–76" on the center, top portion of the tax year 2017 Form 1042 tax return.

In addition, during 2017, taxpayers may continue to rely on Notice 2010–46. Notice 2010–46 will be obsoleted as of January 1, 2018.

B. *Simplified Standard for Determining Whether Transactions Are Combined Transactions*

For purposes of determining whether transactions are section 871(m) transactions, two or more transactions are treated as a single transaction when (1) a long party (or a related person) enters into multiple transactions that reference the same underlying security, (2) the combined potential section 871(m) transactions replicate the economics of a transaction that would be a section 871(m) transaction, and (3) the transactions were entered into in connection with each other. § 1.871–15(n). In applying this combination rule, a broker acting as a short party may presume (absent actual knowledge to the contrary) that transactions are not entered into in connection with each other if (1) the long party holds the transactions in separate accounts, unless the broker has actual knowledge that the separate accounts were created or used to avoid section 871(m), or (2) the transactions are entered into two or more business days apart.

Comments to the final section 871(m) regulations noted that for withholding agents to comply with this combination rule would require the development of novel and complicated systems to identify transactions entered into in connection with each other. These comments recommended replacing the existing rule with a requirement to combine contracts if the withholding agent has actual knowledge that the contracts were priced, marketed, or sold in connection with each other. The Treasury Department and the IRS have determined that the "priced, marketed, or sold" standard would provide an inadequate long-term substitute for the combination rule and would undermine enforcement of the section 871(m) regulations.

However, this notice provides a simplified standard for withholding agents to determine whether transactions entered into in 2017 are combined transactions. A withholding agent will only be required to combine transactions entered into in 2017 for purposes of determining whether the transactions are section 871(m) transactions when the transactions are over-the-counter transactions that are priced, marketed, or sold in connection with each other. Withholding agents will not be re-

quired to combine any transactions that are listed securities that are entered into in 2017.

Transactions that are entered into in 2017 that are combined under this simplified standard will continue to be treated as combined transactions for future years and will not cease to be combined transactions as a result of applying § 1.871–15(n) or disposing of less than all of the potential section 871(m) transactions that are combined under this rule. Transactions that are entered into in 2017 that are not combined under this simplified standard will not become combined transactions as a result of applying § 1.871–15(n) to these transactions in future years, unless a reissuance or other event causes the transactions to be retested to determine whether they are section 871(m) transactions. This simplified standard only applies to withholding agents, and does not apply to taxpayers that are long parties to potential section 871(m) transactions.

C. *Phase-in Year for Qualified Derivatives Dealers*

A QI that is an eligible entity is permitted to be a QDD, provided that the entity enters into a QI agreement under § 1.1441–1(e)(5) and (6). Generally, a QDD described in § 1.1441–1(e)(6) will be liable for tax under section 881 on the dividend equivalents it receives in its capacity as an equity derivatives dealer only to the extent described in paragraph III.C.1 of this notice, provided that the QDD complies with its QDD obligations under the QI agreement.

Comments requested that eligible entities be given sufficient time to enter into QI agreements, determine their QDD tax liability, and comply with their reporting and withholding obligations. To facilitate implementation of the QDD system, paragraph III.C.2 of this notice describes how the IRS will administer the QDD rules for 2017.

1. *Net Delta Computation for QDD's Section 871(m) Amount*

A QDD is liable for tax under section 881(a)(1) on dividends on physical shares or deemed dividends (together "actual dividends") received by the QDD. Section 1.871–15T(q)(1), however, provides that a QDD is exempt from withholding under chapters 3 and 4 on actual dividends and dividend equivalents that the QDD receives in its capacity as an equity derivatives dealer, although the QDD remains liable for tax under section 881 to the extent that dividends and dividend equivalent payments the QDD receives on an underlying security exceed the dividend equivalent payments the QDD is obligated to make with respect to the same dividend on the same underlying security. This notice announces that the Treasury Department and the IRS intend to revise § 1.871–15(q)(1) to provide that a QDD will remain liable for tax under section 881(a)(1) and subject to withholding under chapters 3 and 4 on actual dividends it receives, and that the QI agreement will provide that a QDD's "section 871(m) amount" will be determined by calculating the net delta exposure (measured in number of shares) of the QDD on the date provided in § 1.871–15(j)(2), multiplied by the relevant dividend amount per share. A QDD's net delta exposure will be determined by aggregating the delta of all physical positions and potential section 871(m) transactions (as defined in § 1.871–15(a)(12)) with respect to an underlying security entered into by the QDD in its equity derivatives dealer capacity. If a QDD calculates net delta for non-tax business purposes, that net delta ordinarily will be the delta used for this purpose. A QDD's tax liability on the section 871(m) amount associated with an underlying security will be reduced (but not below zero) by the amount of tax paid by the QDD in its capacity as an equity derivatives dealer under section 881(a)(1) on the receipt of the same dividend payment on that same underlying security.

2. *General Phase-in Year for QDDs*

For purposes of the IRS's enforcement and administration of the QDD rules in the section 871(m) regulations and the relevant provisions of the QI agreement for 2017, the IRS will take into account the extent to which the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement. The QI agreement will accordingly provide that a QDD will be considered to satisfy the obligations that apply specifically to a QDD under the QI agreement for 2017 provided that the QDD made a good faith effort to comply with the relevant terms of the QI agreement. Any QDD that has not made a good faith effort to comply with its QDD obligations will not be given any relief from IRS administration or enforcement during 2017, including penalties.

3. *Effective Date of QI Agreement*

The proposed QI agreement described in Notice 2016–42 provides a three-month window in which to apply for a QI agreement within a calendar year. In particular, section 2.23 of the proposed QI agreement allows a prospective QI to have its QI agreement effective as of January 1 in any given year in which the QI applies on or before March 31 of that year. For a prospective QI that applies after March 31 of a given year and that has not received any reportable payments before the date the application is submitted, the effective date of the QI agreement will be January 1 of that year. For a prospective QI that applies after March 31 of a given year and that has received a reportable payment in the year before the date the application is submitted, the effective date of the QI agreement will be the first day of the first month in which both the QI application is complete and the QI has received its QI-EIN. For a QI that is renewing its QI agreement, the effective date of the QI agreement when renewed by March 31, 2017, will be January 1, 2017.

4. *Certifying QDD Status with QI Application Pending or Prior to Filing*

A QDD must provide a valid Form W–8IMY to a withholding agent certifying that it is a QDD, and the withholding agent is not required to withhold on any payment with respect to a potential section 871(m) transaction (including an actual section 871(m) transaction) that it makes to the QDD in its QDD capacity. Before approval of its QI agreement and QDD status, an applicant that has submitted a QI application applying for QDD status on or before March 31, 2017, may represent on a Form W–8IMY that it is a QDD until the end of the sixth full month

after the month in which it submits its QI application requesting QDD status. An applicant that has not yet submitted a QI application applying for QDD status but that intends to submit that application on or before March 31, 2017, may represent on a Form W–8IMY that it is a QDD until the end of the sixth full month after the month in which it actually submits its QI application requesting QDD status, provided that it submits that application by March 31, 2017. However, a QDD applicant may not represent that it is a QDD if it no longer intends to submit a QI application applying for QDD status by March 31, 2017, or its application has been denied. In addition, an applicant may not represent that it is a QDD if it receives a notice from the IRS stating that the QDD applicant may not make the representation until the applicant's QI and QDD status has been approved. (The IRS will generally only issue such notices in cases where an application is not substantially complete or when the IRS has determined on a preliminary basis that it will not enter into a QI agreement with the applicant or that the applicant is not an eligible entity.)

In cases where an applicant certifies to QDD status before its QDD application is approved, the applicant must immediately notify any withholding agent to whom it has certified that it no longer qualifies as a QDD if (1) it determines that it no longer intends to submit a QI application applying for QDD status by March 31, 2017, (2) it does not submit the application by March 31, 2017, or (3) its application is denied. The withholding agent will be required to inform the IRS of any notifications it receives when it files its Form 1042, listing the name and EIN (if available) of each person whose QDD certification was withdrawn for any of these reasons. When an applicant provides a valid W–8IMY with a QDD certification to a withholding agent, the withholding agent is not required to withhold on payments with respect to potential section 871(m) transactions made to the QDD when the QDD is acting as a principal (that is, not as an intermediary), unless it has been notified that the W–8IMY is no longer valid, including for the reasons mentioned above.

A withholding agent is required to withhold on any actual dividend paid to a QDD, whether the dividend is paid to the QDD in its capacity as a dealer in equity derivatives or otherwise.

5. Certifying QDD Status and Depositing Withheld Amounts Pending Receipt of QI-EIN

The IRS will issue a QI employer identification number (QI-EIN) upon approval of a QI application. After an applicant receives a QI-EIN from the IRS, the applicant must include its QI-EIN on any Form W–8IMY that the applicant provides as a QDD. If an applicant must provide a Form W–8IMY certifying its QDD status to a withholding agent before it has received a QI-EIN, the applicant should indicate that it is awaiting a QI-EIN by writing "awaiting QI-EIN" on line 8 of Part I of the form. If an applicant provides an "awaiting QI-EIN" statement on a Form W–8IMY, the applicant must provide its QI-EIN to its withholding agent as soon as practicable after the QDD receives its QI-EIN. It is not necessary, however, for the applicant to provide a newly executed Form W–8IMY with its QI-EIN after it receives its QI-EIN or after it receives the fully executed QI agreement, provided all of the information on the original form remains valid. The applicant may furnish its QI-EIN to its withholding agent in any manner agreed to by the applicant and its withholding agent. If an applicant is denied QDD status, it must notify the withholding agent immediately.

A withholding agent that receives a Form W–8IMY with an "awaiting QI-EIN" statement may treat the person that provides the form as a QDD unless it knows, or has reason to know, that the provider of the form cannot validly represent that it is a QDD. A withholding agent is not required to determine when a QDD applied for an agreement or if it is actually in possession of a fully executed agreement. A withholding agent is also not required to verify whether a QDD's EIN is a QI-EIN. A withholding agent may only rely on a Form W–8IMY that says "awaiting QI-EIN" for up to six months after receipt, unless a QI-EIN is provided to the withholding agent within that time.

The IRS will not assess any penalties for a QDD's failure to deposit withheld amounts before the date the QDD receives its QI-EIN, provided that within 3 days of receiving its QI-EIN the QDD deposits any amounts that the QDD was previously required to deposit. In addition, if a QDD applies to enroll in the Electronic Federal Tax Payment Systems (EFTPS) within 30 days of receiving a QI-EIN, no penalty will be assessed for the QDD's failure to deposit withheld amounts, provided that within 3 days of being enrolled in EFTPS the QDD deposits any amounts that the QDD was previously required to deposit.

D. *List of Exchange Traded Notes (ETNs) with Delayed Effective Date*

ETNs that reference underlying securities and are delta-one transactions will generally become subject to section 871(m) beginning on January 1, 2017. The Treasury Department and the IRS are aware that a certain number of these ETNs existed before the issuance of the 2015 final regulations and have been in continuous distribution (meaning that issuers continuously "create"—that is, issue and sell—new ETNs based on the same offering documents as the original ETN securities). The newly created ETNs have the same ticker symbol and CUSIP code as the previously issued ETNs and are therefore fungible with ETNs previously issued under the same offering documents. An ETN that is a delta-one transaction under the section 871(m) regulations but that is issued before January 1, 2017, however, would not be subject to section 871(m) withholding, while an identical newly created ETN issued on or after January 1, 2017, would be subject to section 871(m) withholding. This difference would result in otherwise identical ETNs not being fungible for tax purposes, even though they are indistinguishable for commercial and other legal purposes.

To permit issuers time to unwind the identified ETNs, maintain fungibility, and preserve market liquidity, the Treasury Department and the IRS intend to amend § 1.871–15(r)(3) to provide that § 1.871–15(d)(2) and (e) (regarding specified NPCs and specified ELIs, respectively) will not apply to the following ETNs (identified by name, ticker symbol, and CUSIP number) until January 1, 2020:

Ticker Symbol	*ETN Name*	*CUSIP*
CAPE	BARCLAYS ETN+ SHILLER CAPE	06742A669
CEFL	ETRACS MONTH PAY 2X LEV C/E	90270L842
CSLS	X-LINKS LONG/SHORT EQUITY	22542D878
CSMA	X-LINKS MERGER ARBITRAGE ETN	22542D845
DIVC	C-TRACKS ETN MILLER/HOWARD	17322H149
DOD	ELEMENTS-DOGS OF DOW	25153Q658
DVYL	ETRACS 2X DJ SEL DVD ETN	90268G607
EEH	ELEMENTS SPECTRUM ETN	870297504
FBG	FI ENHANCED BIG CAP GR ETN	90267L508
FBGX	FI ENHANCED LARGE CAP GROWTH	902677780
FIBG	CS FI ENHANCED BIG CAP GROW	22539T563
FIEG	FI ENHANCED GLOBAL HI YLD	25155L293
FIGY	FI ENHANCED GLOBAL HIGH YLD	06742C152
FLGE	FI LARGE CAP GROWTH ENHANCED	22542D423
GCE	CLAYMORE CEF GS CONNECT ETN	362273104
HDLV	ETRACS 2X HI DIV LOW VOL ETN	90270L727
HOML	ETRACS MON RST 2XLEV ISE EX	90274P302
HOMX	ETRACS ISE EXCLUSIV HOMEBUIL	90274P310
LRET	ETRACS MONTHLY PAY 2XLEVERAG	90274R100
MORL	ETRACS MONTHLY PAY 2XLEVERAG	90269A302
RODI	BARCLAYS RETURN ON DISABILIT	06740D830
SDYL	ETRACS 2X S&P DVD ETN	90267L409
SMHD	ETRACS MON PAY 2X LEV US SM	90274D838
WIL	BARCLAYS WOMEN IN LEADERSHIP	06742W430
WMW	ELEMENTS LKD TO MORNINGSTAR	25153Q708

Comments are requested on whether there are other delta-one ETNs that are not included in this list but that existed before September 18, 2015, and that will become subject to section 871(m) withholding on January 1, 2017. The Treasury Department and the IRS will consider allowing other ETNs that meet these criteria to be subject to the delayed effective date, if appropriate—either through published guidance or in a private letter ruling.

IV. ADJUSTING UNDERWITHHOLDING BEFORE THE DUE DATE (WITHOUT EXTENSIONS) FOR FILING FORM 1042

Under § 1.1461–2(b), a withholding agent that fails to withhold on a payment made to a beneficial owner may withhold on a future payment made to the beneficial owner or may satisfy the tax from property that it holds in custody for the beneficial owner or from property over which it has control. That additional withholding or satisfaction of tax must be made no later than the due date (not including extensions) for filing Form 1042 for the year in which the underwithholding occurred. Under the IRS's interpretation of § 1.1461–2(b), a withholding agent that adjusts its underwithholding pursuant to these procedures will not be subject to any penalties for failure to deposit or failure to pay under sections 6656, 6672, and 7202 when it timely deposits the additional amounts withheld or otherwise obtained. Therefore, a withholding agent that fails to withhold on a dividend equivalent payment made to a foreign person may rely on the procedures in § 1.1461–2(b) to adjust its underwithholding without penalty before March 15 of the year following the year in which the underwithholding occurred.

V. DRAFTING INFORMATION

The principal authors of this notice are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Merkel or Ms. Walny at (202) 317-6938 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.(Also: Part I, Sections 846; 1.846–1.)

Rev. Proc. 2016–58

SECTION 1. PURPOSE

This revenue procedure prescribes the loss payment patterns and discount factors for the 2016 accident year. These factors will be used to compute discounted unpaid losses under § 846 of the Internal Revenue Code. *See* Rev. Proc. 2012–44, 2012–49 I.R.B. 645, for background concerning the loss payment patterns and application of the discount factors.

SECTION 2. SCOPE

This revenue procedure applies to any taxpayer that is required to discount unpaid losses under § 846 for a line of business using the discount factors published by the Secretary.

SECTION 3. TABLES OF DISCOUNT FACTORS

.01 The following tables present separately for each line of business the discount factors under § 846 for accident year 2016. All the discount factors presented in this section were determined using the applicable interest rate under § 846(c) for 2016, which is 1.56 percent, and by assuming all loss payments occur in the middle of the calendar year.

.02 If the groupings of individual lines of business on the annual statement change, taxpayers must discount unpaid losses on the resulting line of business in accordance with the discounting patterns that would have applied to those unpaid losses based on their classification on the 2010 annual statement. *See* Rev. Proc. 2012–44, 2012–49 I.R.B. 645, section 2, for additional background on discounting under § 846 and the use of the Secretary's tables.

.03 Section V of Notice 88–100, 1988–2 C.B. 439, sets forth a composite method for computing discounted unpaid losses for accident years that are not separately reported on the annual statement. The tables separately provide discount factors for taxpayers who elect to use the composite method of section V of Notice 88–100. *See* Rev. Proc. 2002–74, 2002–2 C.B. 980.

.04 Tables

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

Taxpayers that do not use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the 2016 and later taxable years.

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount all unpaid losses in this line of business that are outstanding at the end of the 2016 taxable year.

Auto Physical Damage

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	90.2657	90.2657	9.7343	9.6535	99.1701
2017	99.7478	9.4822	0.2522	0.2483	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2018 and later years		0.1261	0.1261	0.1251	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.

Commercial Auto/Truck Liability/Medical

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	25.7034	25.7034	74.2966	71.8363	96.6886
2017	48.2664	22.5629	51.7336	50.2188	97.0718
2018	67.8834	19.6171	32.1166	31.2327	97.2479
2019	82.0630	14.1795	17.9370	17.4302	97.1744
2020	90.4161	8.3532	9.5839	9.2840	96.8715
2021	94.6293	4.2132	5.3707	5.1830	96.5045
2022	97.0203	2.3910	2.9797	2.8543	95.7897
2023	98.2283	1.2081	1.7717	1.6814	94.9023

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2024	98.6653	0.4370	1.3347	1.2672	94.9441
2025	98.8635	0.1982	1.1365	1.0872	95.6662

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		0.1982	0.9382	0.9044	96.3940
2027		0.1982	0.7400	0.7187	97.1264
2028		0.1982	0.5417	0.5302	97.8602
2029		0.1982	0.3435	0.3386	98.5845
2030 and later years		0.1982	0.1453	0.1441	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 97.0950 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Composite

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	39.5281	39.5281	60.4719	57.8180	95.6113
2017	62.0267	22.4986	37.9733	36.0465	94.9259
2018	73.7017	11.6750	26.2983	24.8432	94.4666
2019	80.0846	6.3830	19.9154	18.7981	94.3901
2020	85.7818	5.6971	14.2182	13.3500	93.8935
2021	90.2809	4.4992	9.7191	9.0241	92.8498
2022	91.9588	1.6778	8.0412	7.4740	92.9464
2023	92.9722	1.0134	7.0278	6.5693	93.4763
2024	94.0835	1.1113	5.9165	5.5519	93.8371
2025	94.7469	0.6634	5.2531	4.9700	94.6094

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		0.6634	4.5898	4.3790	95.4073
2027		0.6634	3.9264	3.7788	96.2399
2028		0.6634	3.2631	3.1692	97.1241
2029		0.6634	2.5997	2.5502	98.0937
2030 and later years		0.6634	1.9364	1.9214	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 96.4927 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Fidelity/Surety

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	22.8449	22.8449	77.1551	75.5562	97.9277
2017	55.8585	33.0137	44.1415	43.4648	98.4669

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2018 and later years		22.0707	22.0707	21.9006	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.					

Financial Guaranty/Mortgage Guaranty

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	6.2515	6.2515	93.7485	91.7295	97.8464
2017	43.0154	36.7639	56.9846	56.1110	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2018 and later years		28.4923	28.4923	28.2726	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.					

International (Composite)

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	39.5281	39.5281	60.4719	57.8180	95.6113
2017	62.0267	22.4986	37.9733	36.0465	94.9259
2018	73.7017	11.6750	26.2983	24.8432	94.4666
2019	80.0846	6.3830	19.9154	18.7981	94.3901
2020	85.7818	5.6971	14.2182	13.3500	93.8935
2021	90.2809	4.4992	9.7191	9.0241	92.8498
2022	91.9588	1.6778	8.0412	7.4740	92.9464
2023	92.9722	1.0134	7.0278	6.5693	93.4763
2024	94.0835	1.1113	5.9165	5.5519	93.8371
2025	94.7469	0.6634	5.2531	4.9700	94.6094
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2026		0.6634	4.5898	4.3790	95.4073
2027		0.6634	3.9264	3.7788	96.2399
2028		0.6634	3.2631	3.1692	97.1241
2029		0.6634	2.5997	2.5502	98.0937
2030 and later years		0.6634	1.9364	1.9214	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 96.4927 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.					

Medical Professional Liability — Claims-Made

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	6.3462	6.3462	93.6538	89.1520	95.1953
2017	23.0958	16.7496	76.9042	73.6651	95.7881
2018	41.6827	18.5868	58.3173	56.0830	96.1686
2019	56.5267	14.8440	43.4733	41.9985	96.6076
2020	71.2882	14.7615	28.7118	27.7775	96.7458
2021	82.3023	11.0141	17.6977	17.1111	96.6856
2022	86.5143	4.2120	13.4857	13.1334	97.3871
2023	91.1422	4.6279	8.8578	8.6744	97.9290
2024	94.8664	3.7242	5.1336	5.0566	98.4989
2025	97.5408	2.6745	2.4592	2.4402	99.2290

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

2026 and later years		2.4592	–	–	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Medical Professional Liability — Occurrence

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	1.2044	1.2044	98.7956	91.6674	92.7849
2017	4.3376	3.1332	95.6624	89.9398	94.0180
2018	11.8161	7.4785	88.1839	83.8063	95.0358
2019	24.7088	12.8928	75.2912	72.1207	95.7891
2020	42.3863	17.6774	57.6137	55.4311	96.2115
2021	57.1600	14.7738	42.8400	41.4072	96.6556
2022	68.9797	11.8196	31.0203	30.1417	97.1676
2023	82.4247	13.4450	17.5753	17.0624	97.0618
2024	86.7084	4.2837	13.2916	13.0116	97.8935
2025	91.6701	4.9617	8.3299	8.2144	98.6127

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

2026 and later years		4.9617	3.3683	3.3423	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Miscellaneous Casualty

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	69.0731	69.0731	30.9269	30.3590	98.1638
2017	85.5169	16.4438	14.4831	14.2610	98.4669

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2018 and later years		7.2415	7.2415	7.1857	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.

Multiple Peril Lines (Homeowners/Farmowners, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	60.9719	60.9719	39.0281	37.9001	97.1096
2017	82.9059	21.9341	17.0941	16.3869	95.8627
2018	89.2783	6.3724	10.7217	10.2205	95.3261
2019	91.5605	2.2822	8.4395	8.0800	95.7413
2020	94.4255	2.8649	5.5745	5.3189	95.4145
2021	96.5899	2.1644	3.4101	3.2206	94.4441
2022	97.6023	1.0124	2.3977	2.2506	93.8655
2023	98.0034	0.4011	1.9966	1.8815	94.2357
2024	98.3410	0.3376	1.6590	1.5706	94.6737
2025	98.5727	0.2317	1.4273	1.3617	95.3998

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		0.2317	1.1957	1.1495	96.1346
2027		0.2317	0.9640	0.9340	96.8791
2028		0.2317	0.7324	0.7151	97.6355
2029		0.2317	0.5007	0.4928	98.4099
2030 and later years		0.2317	0.2691	0.2670	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 96.9112 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Other (Including Credit)

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	54.6589	54.6589	45.3411	44.6328	98.4380
2017	84.2314	29.5725	15.7686	15.5268	98.4669

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2018 and later years		7.8843	7.8843	7.8235	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.					

Other Liability — Claims-Made

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	7.4270	7.4270	92.5730	87.8256	94.8717
2017	25.2808	17.8538	74.7192	71.2032	95.2943
2018	44.2108	18.9301	55.7892	53.2368	95.4250
2019	56.4956	12.2848	43.5044	41.6871	95.8227
2020	69.2838	12.7883	30.7162	29.4498	95.8772
2021	77.6662	8.3823	22.3338	21.4618	96.0953
2022	83.1572	5.4910	16.8428	16.2629	96.5568
2023	88.1777	5.0205	11.8223	11.4571	96.9106
2024	93.1315	4.9539	6.8685	6.6435	96.7242
2025	92.9490	–0.1826	7.0510	6.9311	98.2990
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2026		3.2639	3.7871	3.7499	99.0184
2027 and later years		3.2639	0.5232	0.5192	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.0369 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.					

Other Liability — Occurrence

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	10.0721	10.0721	89.9279	84.0612	93.4762
2017	24.3995	14.3274	75.6005	70.9339	93.8272
2018	37.3366	12.9372	62.6634	59.0027	94.1583
2019	52.4142	15.0776	47.5858	44.7284	93.9954
2020	64.3437	11.9295	35.6563	33.4040	93.6834
2021	73.7950	9.4512	26.2050	24.4004	93.1136
2022	79.7756	5.9807	20.2244	18.7539	92.7295
2023	84.0963	4.3206	15.9037	14.6923	92.3828
2024	85.6878	1.5915	14.3122	13.3176	93.0508
2025	86.9224	1.2346	13.0776	12.2812	93.9100

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2026		1.2346	11.8431	11.2286	94.8119
2027		1.2346	10.6085	10.1597	95.7689
2028		1.2346	9.3740	9.0740	96.8001
2029		1.2346	8.1394	7.9714	97.9360
2030 and later years		1.2346	6.9048	6.8516	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 96.2276 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Private Passenger Auto Liability/Medical

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	42.9881	42.9881	57.0119	55.6793	97.6626
2017	71.9931	29.0051	28.0069	27.3175	97.5386
2018	84.8250	12.8318	15.1750	14.8121	97.6085
2019	92.3500	7.5251	7.6500	7.4597	97.5123
2020	96.2665	3.9165	3.7335	3.6291	97.2044
2021	97.9880	1.7214	2.0120	1.9509	96.9616
2022	98.7958	0.8078	1.2042	1.1672	96.9294
2023	99.2445	0.4487	0.7555	0.7332	97.0542
2024	99.4543	0.2097	0.5457	0.5333	97.7195
2025	99.6370	0.1827	0.3630	0.3575	98.4721
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2026 and later years		0.1827	0.1803	0.1789	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Products Liability — Claims-Made

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	4.5270	4.5270	95.4730	88.8146	93.0259
2017	16.0134	11.4865	83.9866	78.6245	93.6155
2018	45.1313	29.1179	54.8687	50.5069	92.0504
2019	39.2459	–5.8854	60.7541	57.2259	94.1927
2020	44.8357	5.5898	55.1643	52.4854	95.1438
2021	72.1615	27.3258	27.8385	25.7661	92.5555
2022	80.4448	8.2834	19.5552	17.8203	91.1284
2023	73.2957	–7.1491	26.7043	25.3029	94.7525

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2024	87.4824	14.1866	12.5176	11.4008	91.0781
2025	87.7500	0.2677	12.2500	11.3089	92.3180

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		0.2677	11.9823	11.2156	93.6014
2027		0.2677	11.7147	11.1208	94.9310
2028		0.2677	11.4470	11.0246	96.3099
2029		0.2677	11.1793	10.9268	97.7413
2030 and later years		0.2677	10.9117	10.8275	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 95.8264 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Products Liability – Occurrence

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	7.1936	7.1936	92.8064	86.0592	92.7297
2017	16.9555	9.7619	83.0445	77.5639	93.4004
2018	28.3624	11.4069	71.6376	67.2784	93.9149
2019	39.7945	11.4321	60.2055	56.8070	94.3552
2020	54.3906	14.5961	45.6094	42.9837	94.2430
2021	60.9060	6.5154	39.0940	37.0882	94.8693
2022	67.7760	6.8700	32.2240	30.7434	95.4053
2023	75.7119	7.9359	24.2881	23.2254	95.6247
2024	79.5966	3.8847	20.4034	19.6728	96.4195
2025	83.9430	4.3464	16.0570	15.5996	97.1513

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		4.3464	11.7107	11.4628	97.8837
2027		4.3464	7.3643	7.2615	98.6044
2028 and later years		4.3464	3.0179	2.9947	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 98.2573 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Reinsurance — Nonproportional Assumed Property

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	20.1003	20.1003	79.8997	77.4053	96.8780
2017	59.2833	39.1830	40.7167	39.1254	96.0916
2018	73.0867	13.8034	26.9133	25.8251	95.9565
2019	80.3675	7.2808	19.6325	18.8905	96.2208

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2020	87.7278	7.3603	12.2722	11.7677	95.8895
2021	94.4454	6.7175	5.5546	5.1816	93.2838
2022	96.5143	2.0689	3.4857	3.1774	91.1552
2023	97.9468	1.4326	2.0532	1.7833	86.8559
2024	97.4560	–0.4909	2.5440	2.3058	90.6356
2025	97.0652	–0.3908	2.9348	2.7356	93.2116

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		0.1836	2.7512	2.5932	94.2578
2027		0.1836	2.5675	2.4486	95.3671
2028		0.1836	2.3839	2.3017	96.5527
2029		0.1836	2.2003	2.1526	97.8320
2030 and later years		0.1836	2.0166	2.0011	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 96.0251 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Reinsurance — Nonproportional Assumed Liability

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	3.4987	3.4987	96.5013	89.5392	92.7855
2017	23.2170	19.7183	76.7830	71.0645	92.5524
2018	43.7483	20.5313	56.2517	51.4823	91.5213
2019	38.9131	–4.8352	61.0869	57.1582	93.5686
2020	47.9298	9.0167	52.0702	48.9631	94.0328
2021	80.0315	32.1017	19.9685	17.3758	87.0160
2022	76.5053	–3.5292	23.4947	21.2005	90.2350
2023	78.1701	1.6649	21.8299	19.8534	90.9460
2024	80.0717	1.9015	19.9283	18.2468	91.5621
2025	79.8791	–0.1926	20.1209	18.7255	93.0650

Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		1.1246	18.9963	17.8843	94.1462
2027		1.1246	17.8717	17.0300	95.2901
2028		1.1246	16.7471	16.1623	96.5079
2029		1.1246	15.6225	15.2811	97.8145
2030 and later years		1.1246	14.4979	14.3861	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 95.9885 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Reinsurance — Nonproportional Assumed Financial Lines

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	1.5423	1.5423	98.4577	93.0298	94.4871
2017	20.9273	19.3850	79.0727	74.9455	94.7805
2018	30.4705	9.5433	69.5295	66.4972	95.6390
2019	46.3043	15.8337	53.6957	51.5778	96.0558
2020	51.8464	5.5421	48.1536	46.7973	97.1834
2021	72.7869	20.9405	27.2131	26.4241	97.1007
2022	82.0967	9.3097	17.9033	17.4542	97.4915
2023	89.2630	7.1664	10.7370	10.5045	97.8346
2024	95.3692	6.1062	4.6308	4.5147	97.4934
2025	96.7995	1.4303	3.2005	3.1437	98.2266

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2026		1.4303	1.7702	1.7513	98.9364
2027 and later years		1.4303	0.3399	0.3372	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 98.9741 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Burglary and Theft)

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	55.6145	55.6145	44.3855	43.8006	98.6824
2017	89.3328	33.7182	10.6672	10.5037	98.4669

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2018 and later years		5.3336	5.3336	5.2925	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.

Warranty

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	85.4101	85.4101	14.5899	14.4669	99.1571
2017	99.5388	14.1287	0.4612	0.4541	98.4669

Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2018 and later years		0.2306	0.2306	0.2288	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2018 taxable year.

Workers' Compensation

Tax Year	Estimated Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
2016	21.8973	21.8973	78.1027	72.4793	92.8001
2017	43.4962	21.5989	56.5038	51.8433	91.7519
2018	56.0061	12.5099	43.9939	40.0450	91.0240
2019	63.5544	7.5482	36.4456	33.0628	90.7181
2020	68.9880	5.4337	31.0120	28.1027	90.6188
2021	73.9567	4.9687	26.0433	23.5338	90.3641
2022	76.0580	2.1013	23.9420	21.7833	90.9836
2023	77.6365	1.5785	22.3635	20.5323	91.8119
2024	80.1194	2.4828	19.8806	18.3505	92.3034
2025	81.3456	1.2262	18.6544	17.4010	93.2810
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount unpaid losses incurred in this line of business in the 2016 accident year and that are outstanding at the end of the tax year shown.					
2026		1.2262	17.4281	16.4367	94.3111
2027		1.2262	16.2019	15.4573	95.4044
2028		1.2262	14.9757	14.4627	96.5746
2029		1.2262	13.7494	13.4525	97.8408
2030 and later years		1.2262	12.5232	12.4266	99.2290

Taxpayers that use the composite method of Notice 88–100 should use 96.0431 percent to discount unpaid losses incurred in this line of business in 2016 and prior years and that are outstanding at the end of the 2026 taxable year.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Sharon Y. Horn of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Ms. Horn at (202) 317-4426 (not a toll free number).

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26 CFR 601.201: Rulings and determination letters. (Also: Part I, Section 832, 846; 1.832–4, 1.846–1.)

Rev. Proc. 2016–59

SECTION 1. PURPOSE

This revenue procedure prescribes the salvage discount factors for the 2016 accident year. These factors must be used to compute discounted estimated salvage recoverable under § 832 of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 832(b)(5)(A) requires that all estimated salvage recoverable (including that which cannot be treated as an asset for state accounting purposes) be taken into account in computing the deduction for losses incurred. Under § 832(b)(5)(A), paid losses are reduced by salvage and reinsurance recovered during the taxable year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. An adjustment is then made to reflect any changes in discounted estimated salvage recoverable and reinsurance recoverable.

Pursuant to § 832(b), the amount of estimated salvage is determined on a discounted basis in accordance with procedures established by the Secretary.

SECTION 3. SCOPE

This revenue procedure applies to any taxpayer that is required to discount estimated salvage recoverable under § 832.

SECTION 4. TABLES OF DISCOUNT FACTORS

.01 The following tables present separately for each line of business the discount factors under § 832 for the 2016 accident year. All the discount factors presented in this section were determined using the applicable interest rate under § 846(c) for 2016, which is 1.56 percent, and by assuming all estimated salvage is recovered in the middle of the calendar year.

.02 These tables must be used by taxpayers irrespective of whether they elected to discount unpaid losses using their own experience under § 846(e).

.03 Section V of Notice 88–100, 1988–2 C.B. 439, provides a composite discount factor to be used in determining the discounted unpaid losses for accident years that are not separately reported on the annual statement approved by the National Association of Insurance Commissioners. The tables separately provide discount factors for taxpayers who elect to use the composite method. Rev. Proc. 2002–74, 2002–2 C.B. 980, clarifies that for certain insurance companies subject to tax under § 831 the composite method for discounting unpaid losses set forth in Notice 88–100, section V, is permitted but not required. Rev. Proc. 2002–74 further provides alternative methods for computing discounted unpaid losses that are permitted for insurance companies not using the composite method, and sets forth a procedure for insurance companies to obtain automatic consent of the Commissioner to change to one of the methods described therein.

.04 Tables.

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

Taxpayers that do not use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable with respect to losses incurred in this line of business in the 2016 accident year as of the end of the 2016 and later taxable years.

Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount all salvage recoverable in this line of business as of the end of the 2016 taxable year.

Auto Physical Damage

Tax Year	Discount Factors (%)
2016	98.9012
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Commercial Auto/Truck Liability/Medical

Tax Year	Discount Factors (%)
2016	97.1365
2017	96.8308
2018	97.0777
2019	96.7064
2020	96.9932
2021	96.8099
2022	94.3972
2023	93.3971
2024	94.9982
2025	95.7201
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	96.4475
2027	97.1788
2028	97.9099

Tax Year	Discount Factors (%)
2029	98.6269
2030 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 97.1357 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Composite

Tax Year	Discount Factors (%)
2016	96.9439
2017	96.8171
2018	96.9416
2019	96.0697
2020	96.3473
2021	96.0938
2022	96.0154
2023	96.3954
2024	96.4109
2025	97.1429
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	97.8757
2027	98.5976
2028 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 98.2524 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Fidelity/Surety

Tax Year	Discount Factors (%)
2016	97.5442
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Financial Guaranty/Mortgage Guaranty

Tax Year	Discount Factors (%)
2016	97.2630
2017	98.4669

Tax Year	Discount Factors (%)
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

International (Composite)

Tax Year	Discount Factors (%)
2016	96.9439
2017	96.8171
2018	96.9416
2019	96.0697
2020	96.3473
2021	96.0938
2022	96.0154
2023	96.3954
2024	96.4109
2025	97.1429
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	97.8757
2027	98.5976
2028 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 98.2524 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Medical Professional Liability — Claims-Made

Tax Year	Discount Factors (%)
2016	96.5406
2017	97.0385
2018	95.6716
2019	97.2703
2020	97.4023
2021	97.6753
2022	98.1949
2023	98.5464
2024	98.5353
2025	99.2290
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	

Tax Year	Discount Factors (%)
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Medical Professional Liability — Occurrence

Tax Year	Discount Factors (%)
2016	96.9122
2017	98.0946
2018	97.7852
2019	98.4996
2020	97.9271
2021	98.7202
2022	98.3540
2023	98.3987
2024	97.3615
2025	98.0900
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	98.7938
2027 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 98.8774 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Miscellaneous Casualty

Tax Year	Discount Factors (%)
2016	97.9036
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Multiple Peril Lines (Homeowners/Farmowners, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))

Tax Year	Discount Factors (%)
2016	97.3546
2017	97.3274
2018	97.6245
2019	96.5274

Tax Year	Discount Factors (%)
2020	97.4327
2021	97.7088
2022	97.7950
2023	97.7390
2024	97.5499
2025	99.2290
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Other (Including Credit)

Tax Year	Discount Factors (%)
2016	98.3183
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Other Liability — Claims-Made

Tax Year	Discount Factors (%)
2016	96.4147
2017	96.6325
2018	96.6603
2019	97.3254
2020	97.3517
2021	97.4480
2022	98.0897
2023	98.0735
2024	98.2338
2025	98.9443
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Other Liability – Occurrence

Tax Year	Discount Factors (%)
2016	94.5756
2017	95.2376
2018	95.9306
2019	96.3122
2020	96.7612
2021	97.3807
2022	97.4860
2023	97.4330
2024	98.5057
2025	99.2290
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Private Passenger Auto Liability/Medical

Tax Year	Discount Factors (%)
2016	97.8611
2017	97.7880
2018	97.7715
2019	97.4240
2020	97.4156
2021	97.4991
2022	97.3643
2023	97.5496
2024	98.2703
2025	98.9853
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Products Liability — Claims-Made

Tax Year	Discount Factors (%)
2016	94.2878
2017	95.1999
2018	94.1633
2019	97.2406
2020	96.0735
2021	99.0044
2022	97.9881
2023	91.9449
2024	99.0448
2025	99.2290
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Products Liability — Occurrence

Tax Year	Discount Factors (%)
2016	94.7954
2017	94.8540
2018	95.3519
2019	96.1073
2020	96.4444
2021	96.9520
2022	96.9120
2023	98.1796
2024	97.8452
2025	98.5720
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Reinsurance — Nonproportional Assumed Property

Tax Year	Discount Factors (%)
2016	96.0218
2017	97.3451
2018	96.1342
2019	95.4143
2020	96.6974
2021	96.1040
2022	98.3107
2023	94.5059
2024	97.7680
2025	98.5096
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Reinsurance — Nonproportional Assumed Liability

Tax Year	Discount Factors (%)
2016	92.8739
2017	94.2242
2018	91.1182
2019	91.9045
2020	95.3016
2021	97.0444
2022	96.5643
2023	96.8858
2024	95.8989
2025	98.1496
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	98.8541
2027 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 98.9166 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Reinsurance — Nonproportional Assumed Financial Lines

Tax Year	Discount Factors (%)
2016	93.3899
2017	94.3763
2018	96.4484
2019	96.5268
2020	97.3112
2021	96.2333
2022	97.3277
2023	97.2956
2024	99.1055
2025	99.2290
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Burglary and Theft)

Tax Year	Discount Factors (%)
2016	97.9965
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Warranty

Tax Year	Discount Factors (%)
2016	97.7297
2017	98.4669
Taxpayers that do not use the composite method of Notice 88–100 should use the following factor to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2018 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 99.2290 percent to discount salvage recoverable as of the end of the 2018 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

Workers' Compensation

Tax Year	Discount Factors (%)
2016	95.1952
2017	96.0854
2018	96.5588
2019	95.7091
2020	95.3661
2021	94.9814
2022	95.3348
2023	96.1542
2024	96.3142
2025	97.0492
Taxpayers that do not use the composite method of Notice 88–100 should use the following factors to discount salvage recoverable as of the end of the tax year shown with respect to losses incurred in this line of business in the 2016 accident year.	
2026	97.7882
2027	98.5257
2028 and later years	99.2290
Taxpayers that use the composite method of Notice 88–100 should use 98.2013 percent to discount salvage recoverable as of the end of the 2026 taxable year with respect to losses incurred in this line of business in 2016 and prior years.	

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Sharon Y. Horn of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Ms. Horn at (202) 317-4426 (not a toll free number).

Part IV. Items of General Interest

Tax Return Preparer Due Diligence Penalty under Section 6695(g)

REG–102952–16

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Internal Revenue Bulletin**, the IRS is issuing temporary regulations that will modify the existing regulations related to the penalty under section 6695(g) of the Internal Revenue Code (Code) relating to tax return preparer due diligence. The temporary regulations implement recent law changes that expand the tax return preparer due diligence penalty under section 6695(g) so that it applies to the child tax credit (CTC), additional child tax credit (ACTC), and the American Opportunity Tax Credit (AOTC), in addition to the earned income credit (EIC). The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 5, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–102952–16), room 5205, 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–102952–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (IRS REG–102952–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rachel L. Gregory, 202-317-6845; concerning submissions of comments and the hearing, Regina Johnson, 202-317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in current §1.6695–2 was previously reviewed and approved under control number 1545-1570. Control number 1545-1570 was discontinued in 2014, as the burden for the collection of information contained in §1.6695–2 is reflected in the burden on Form 8867, "Paid Preparer's Due Diligence Checklist," under control number 1545-1629.

Background and explanation of provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Internal Revenue Bulletin** amend 26 CFR 1.6695–2 by imposing due diligence requirements on tax return preparers with respect to determining the eligibility for, or the amount of, the CTC/ACTC or AOTC, in addition to the EIC, on any return or claim for refund. The temporary regulations also amend section 1.6695–2 to reflect the changes made by section 208(c), Div. B of the Tax Increase Prevention Act of 2014, Pub. L. 113–295 (128 Stat. 4010, 4073 (2014)), requiring the IRS to index the penalty for inflation for returns and claims for refund filed after December 31, 2014.

The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. When an agency issues a notice of proposed rulemaking, the RFA requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect tax return preparers who determine the eligibility for, or the amount of, the EIC, the CTC/ACTC and/or the AOTC. The North American Industry Classification System (NAICS) code that relates to tax return preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to this notice of proposed rulemaking. Entities identified as tax return preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $20.5 million. The IRS estimates that approximately 75 to 85 percent of the 505,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has therefore determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has further determined, however, that the economic impact on entities affected by the proposed rules will not be significant. The current regulations under section 6695(g) already require tax return preparers to complete the Form 8867 when a return or claim for refund includes a claim of the EIC. Tax return preparers also must currently maintain records of the checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer. The information needed to document eligibility for the CTC/ACTC and the AOTC largely duplicates the information needed to compute the EIC and complete other parts of the return or claim for refund. Even if certain preparers are required to maintain the checklists and complete Form 8867 for the first time, the IRS estimates that the total time required should be minimal for these tax return preparers. Further, the IRS does not expect that the requirements in these proposed regula-

tions would necessitate the purchase of additional software or equipment in order to meet the additional information retention requirements.

Based on these facts, the IRS hereby certifies that the collection of information contained in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the 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 written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and Treasury Department 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 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 this regulation is Rachel L. Gregory, Office of the Associate Chief Counsel (Procedure & Administration).

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6695–2 is amended by revising the section heading and paragraphs (a), (b)(1)(i) introductory text, (b)(1)(ii), (b)(2), (b)(3)(i) and (ii), (b)(4)(i)(B) and (C), (c)(3), and (e) to read as follows:

§ 1.6695–2 Tax return preparer due diligence requirements for certain credits.

(a) [The text of the proposed amendment to §1.6695–2(a) is the same as the text of §1.6695–2T(a) published elsewhere in this issue of the **Federal Register**].

(b) * * *

(1) * * *

(i) [The text of the proposed amendment to §1.6695–2(b)(1)(i) is the same as the text of §1.6695–2T(b)(1)(i) published elsewhere in this issue of the **Internal Revenue Bulletin**].

* * * * *

(ii) [The text of the proposed amendment to §1.6695–2(b)(1)(ii) is the same as the text of §1.6695–2T(b)(1)(ii) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(2) [The text of the proposed amendment to §1.6695–2(b)(2) is the same as the text of §1.6695–2T(b)(2) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(3) * * *

(i) [The text of the proposed amendment to §1.6695–2(b)(3)(i) is the same as the text of §1.6695–2T(b)(3)(i) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(ii) [The text of the proposed amendment to §1.6695–2(b)(3)(ii) is the same as the text of §1.6695–2T(b)(3)(ii) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(4) * * *

(i) * * *

(B) [The text of the proposed amendment to §1.6695–2(b)(4)(i)(B) is the same as the text of §1.6695–2T(b)(4)(i)(B) published elsewhere in this issue of the **Internal Revenue Bulletin**].

(C) [The text of the proposed amendment to §1.6695–2T(b)(4)(i)(C) is the same as the text of §1.6695–2T(b)(4)(i)(C) published elsewhere in this issue of the **Internal Revenue Bulletin**].

* * * * *

(c) * * *

(3) [The text of the proposed amendment to §1.6695–2T(c)(3) is the same as the text of §1.6695–2T(c)(3) published elsewhere in this issue of the **Internal Revenue Bulletin**].

* * * * *

(e) *Applicability date*. The rules of this section apply to tax returns and claims for refunds prepared on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** with respect to tax years beginning after December 31, 2015.

John M Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 2, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 5, 2016, 81 F.R. 87502)

Update to Minimum Present Value Requirements for Defined Benefit Plan Distributions

REG–107424–12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would provide guidance on changes made by the Pension Protection Act of 2006 and would provide other modifications to these rules as well. These regulations would affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 27, 2017. Outlines of topics to be discussed at the public hearing scheduled for March 7,

2017, must be received by February 27, 2017.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG–107424–12), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–107424–12), 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–107424–12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Neil S. Sandhu or Linda S. F. Marshall at (202) 317-6700; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(11) of the Internal Revenue Code (Code) provides that, in order for a defined benefit plan to qualify under section 401(a), except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity. In the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a defined benefit plan must provide a qualified preretirement survivor annuity to the surviving spouse of such participant, except as provided under section 417.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. However, the last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 417(e)(1) provides that a plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if that present value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of a qualified joint and survivor annuity or the qualified preretirement survivor annuity only if the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.[3]

Section 417(e)(3)(B) of the Code, as amended by section 302 of the Pension Protection Act of 2006 (PPA '06), Public Law 109–280, 120 Stat. 780 (2006), provides that the term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (3)(D)).

Section 417(e)(3)(C) of the Code, as amended by section 302 of PPA '06, provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) of the Code for the month before the date of the distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are to be determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are to be determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan," as defined by section 411(a)(13)(C), is not treated as failing to meet the requirements of section 417(e) with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation.

Section 1107(a)(2) of PPA '06 provides that a pension plan does not fail to meet the requirements of section 411(d)(6) by reason of a plan amendment to which section 1107 applies, except as provided by the Secretary of the Treasury. Section 1107 of PPA '06 applies to plan amendments made pursuant to the provisions of PPA '06 or regulations issued thereunder that are adopted no later than a specified date, generally the last day of the first plan year beginning on or after January 1, 2009.

Final regulations under section 417 relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements have not been amended to reflect PPA '06. The regulations, which were issued on August 22, 1988, were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103–465 (GATT).

[3]Under section 411(a)(11)(B), the same applicable mortality table and applicable interest rate are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

Section 1.417(e)–1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)–1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)–1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a qualified preretirement survivor annuity, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Notice 2007–81, 2007–2 CB 899 (see 26 CFR 601.601(d)(2)(ii)(*b*)), provides guidance on the applicable interest rate. Rev. Rul. 2007–67, 2007–2 CB 1047 (see 26 CFR 601.601(d)(2)(ii)(*b*)), provides guidance on the applicable mortality table[4] and the timing rules that apply to the determination of the applicable interest rate and the applicable mortality table.

The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 109–280 (120 Stat. 780), amended section 415(b)(2)(E)(v) to provide that the applicable mortality table under section 417(e)(3)(B) applies for purposes of adjusting a benefit or limitation pursuant to section 415(b)(2)(B), (C), or (D).

Sections 205(g), 203(e), and 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) contain rules that are parallel to Code sections 417(e), 411(a)(11), and 411(d)(6), respectively. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations apply for purposes of the Code and the corresponding provisions of ERISA.

In *West v. AK Steel Corporation Retirement Accumulation Pension Plan*, 484 F.3d 395 (6th Cir. 2007), the court held that a preretirement mortality discount could not be used in the computation of the present value of a participant's single-sum distribution under a cash balance plan if the death benefit under the plan was equal in value to the participant's accrued benefit under the plan. The court found that, if a participant's beneficiary is entitled to the participant's entire accrued benefit upon the participant's death before attainment of normal retirement age, the use of a mortality discount for the period before normal retirement age would result in a partial forfeiture of benefits in violation of the ERISA vesting rules that correspond to the rules of section 411(a). See also *Berger v. Xerox Corporation Retirement Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003); *Crosby v. Bowater, Inc. Ret. Plan*, 212 F.R.D. 350 (W.D. Mich. 2002), rev'd on other grounds, 382 F.3d 587 (6th Cir. 2004) (accrued benefits include not only retirement benefits themselves, but also death benefits which are directly related to the value of the retirement benefits). In *Stewart v. AT&T Inc.*, 354 Fed. Appx. 111 (5th Cir. 2009), however, the court held that a preretirement mortality discount was appropriately applied to determine a single-sum distribution under a traditional defined benefit plan. The court distinguished *AK Steel* and *Berger* on the basis that the plans at issue in those cases did not provide for a forfeiture of the accrued benefit on the death of the participant before retirement, whereas the plan at issue in *Stewart* provided for such a forfeiture.

Final regulations (TD 9783) under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form were published by the Treasury Department and the IRS in the **Federal Register** on September 9, 2016 (81 FR 62359).

Explanation of Provisions

Overview

These proposed regulations would amend the current final regulations under section 417(e) regarding the minimum present value requirements of section 417(e)(3) in several areas. Specifically, the proposed regulations would update the regulations for changes made by PPA '06 and to eliminate certain obsolete provisions. The proposed regulations also contain a few other clarifying changes.

Updates to reflect statutory and regulatory changes

The proposed regulations would update the existing regulatory provisions to reflect the statutory changes made by PPA '06, including the new interest rates and mortality tables set forth in section 417(e)(3) and the exception from the valuation rules for certain applicable defined benefit plans set forth in section 411(a)(13). The proposed regulations clarify that the interest rates that are published by the Commissioner pursuant to the provisions as modified by PPA '06 are to be used without further adjustment. In addition, the proposed regulations would eliminate obsolete provisions of the regulations relating to the transition from pre-1995 law to the interest rates and mortality assumptions provided by GATT. Furthermore, the proposed regulations make conforming changes to reflect the final regulations under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form.

Other clarifying changes

A. *Treatment of preretirement mortality*

The proposed regulations would include rules relating to the treatment of

[4]Notice 2008–85, 2008–2 CB 905, Notice 2013–49, 2013–32 IRB 127, Notice 2015–53, 2015–33 IRB 190, and Notice 2016–50, 2016–38 IRB 371, set forth the section 417(e)(3) applicable mortality tables for 2009 through 2017.

preretirement mortality discounts in determining the minimum present value of accrued benefits under the regulations to address the issue raised by *AK Steel* and *Berger* of whether a plan that provides a death benefit equal in value to the accrued benefit may apply a preretirement mortality discount for the probability of death when determining the amount of a single-sum distribution.

Section 411(a) generally prohibits forfeitures of accrued benefits. Under section 411(a)(1), an employee's rights in his accrued benefit derived from employee contributions must be nonforfeitable, and under section 411(a)(2), an employee's rights in his accrued benefit derived from employer contributions must become nonforfeitable in accordance with a vesting schedule that is specified in the statute. Section 411(a)(3)(A) provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

Section 411(a)(7)(A)(i) defines a participant's accrued benefit under a defined benefit plan as the employee's accrued benefit determined under the plan and, except as provided in section 411(c)(3), expressed in the form of an annual benefit commencing at normal retirement age. Section 1.411(a)–7(a)(1) defines a participant's accrued benefit under a defined benefit plan as the annual benefit commencing at normal retirement age if the plan provides an accrued benefit in that form. If a defined benefit plan does not provide an accrued benefit in the form of an annual benefit commencing at normal retirement age, § 1.411(a)–7(a)(1)(ii) defines the accrued benefit as an annual benefit commencing at normal retirement age which is the actuarial equivalent of the accrued benefit determined under the plan. The regulation further clarifies that the term "accrued benefits" refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits, such as incidental death benefits.

Section 411(d)(6)(A) prohibits a plan amendment that decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits for this purpose. Section 1.411(d)–3(g)(2)(v) provides that a death benefit under a defined benefit plan other than a death benefit that is part of an optional form of benefit is an ancillary benefit. Section 1.411(d)–3(g)(6)(ii)(B) describes death benefits payable after the annuity starting date that are considered part of an optional form of benefit. Pursuant to § 1.411(d)–3(g)(14) and (15), section 411(d)(6) protected benefits do not include a death benefit under a defined benefit plan that is an ancillary benefit and not part of an optional form of benefit.

A death benefit under a defined benefit plan that is payable when the participant dies before attaining normal retirement age and before benefits commence is not part of the participant's accrued benefit within the meaning of section 411(a)(7). Accordingly, the anti-forfeiture rules of section 411(a) do not apply to such a death benefit. This is the case even if the amount of the death benefit is the same as the amount the participant would have received had the participant separated from service and elected to receive a distribution immediately before death. Moreover, such a death benefit is an ancillary benefit within the meaning of § 1.411(d)–3(g)(2)(v) — rather than a section 411(d)(6) protected benefit — and therefore can be eliminated by plan amendment (provided that a qualified preretirement survivor annuity for a surviving spouse is preserved, pursuant to section 401(a)(11)).

The minimum present value requirements of section 417(e)(3) do not take into account the value of ancillary benefits that are not part of the participant's accrued benefit under the plan. Consistent with this, § 1.417(e)–1(d)(1)(i) does not require ancillary death benefits to be taken into account in the required minimum present value calculation. Because questions have arisen regarding this rule, the proposed regulations would clarify that the probability of death under the applicable mortality table is generally taken into account for purposes of determining the present value under section 417(e)(3), without regard to the death benefits provided under the plan other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit (as described in § 1.411(d)–3(g)(6)(ii)(B)) for which present value is determined.

However, a different rule applies with respect to whether the probability of death under the applicable mortality table is taken into account for purposes of determining the present value with respect to the accrued benefit derived from contributions made by an employee. This is because an employee's rights in the accrued benefit derived from the employee's own contributions are nonforfeitable under section 411(a)(1), and the exception for death under section 411(a)(3)(A) to the nonforfeitability of accrued benefits does not apply to the accrued benefit derived from employee contributions. As a result, for purposes of determining the present value under section 417(e)(3) with respect to the accrued benefit derived from contributions made by an employee (that is computed in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

The proposed regulations include an example to illustrate the application of the minimum present value requirements of section 417(e)(3) in the case of a single-sum distribution of a participant's entire accrued benefit that consists both of an accrued benefit derived from employee contributions and an employer-provided accrued benefit. Consistent with the rules in these proposed regulations, the example illustrates that a single-sum distribution of the participant's entire accrued benefit in such a case must equal the sum of the minimum present value of the accrued benefit derived from employee contributions, determined under section 417(e)(3) (applying the special rules set forth in the preceding paragraph), and the minimum present value of the employer-provided accrued benefit, determined under section 417(e)(3). Note that Rev. Rul. 89–60,

1989–1 CB 113 (1989) suggests that it is sufficient for a single-sum distribution in such a case to merely equal the greater of the minimum present value of the accrued benefit derived from employee contributions and the minimum present value of the participant's entire accrued benefit. To the extent the guidance under Rev. Rul. 89–60 is inconsistent with the final regulations that adopt these proposed regulations, the regulations would supersede the guidance in Rev. Rul. 89–60.

B. *Social security level income options*

Questions have arisen regarding whether the minimum present value requirements of section 417(e)(3) apply to a social security level income option. As noted above, § 1.417(e)–1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits.

A social security supplement is defined in § 1.411(a)–7(c)(4) as a benefit for plan participants that commences before and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. A social security supplement (other than a QSUPP as defined in § 1.401(a)(4)–12) is an ancillary benefit that is not a section 411(d)(6) protected benefit.

A social security level income option is an optional form of benefit (protected under section 411(d)(6)) under which a participant's accrued benefit is paid in the form of an annuity with larger payments in earlier years, before an assumed social security commencement age, to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. It is appropriate to subject a social security level income option to the rules of section 417(e)(3) because, when a participant's accrued benefit is paid as a social security level income option, a portion of the participant's accrued benefit (which may be substantial) is accelerated and paid over a short period of time until social security retirement age. Because the periodic payments under a social security level income option decrease during the lifetime of the participant and the decrease is not the result of the cessation of an ancillary social security supplement, § 1.417(e)–1(d)(6) does not provide an exception from the minimum present value requirements of section 417(e)(3) for such a distribution. These proposed regulations contain an example that illustrates this point.

C. *Application of required assumptions to the accrued benefit*

The proposed regulations would clarify the scope of the rule of § 1.417(e)–1(d)(1) under which the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit (with both values determined using the applicable interest rate and the applicable mortality table). The proposed regulations would require that the present value of any optional form of benefit cannot be less than the present value of the accrued benefit payable at normal retirement age, and would provide an exception for an optional form of benefit payable after normal retirement age to the extent that a suspension of benefits applies pursuant to section 411(a)(3)(B). *Effective/ Applicability Dates*

The changes under the proposed regulations are proposed to apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register.** Prior to this applicability date, taxpayers must continue to apply existing regulations relating to section 417(e), modified to reflect the relevant statutory provisions during the applicable period (and guidance of general applicability relating to those statutory provisions, such as Rev. Rul. 2007–67).

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 assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the proposed regulation does 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, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. In addition, the Treasury Department and the IRS specifically request comments on whether, in the case of a plan that provides a subsidized annuity payable upon early retirement and determines a single-sum distribution as the present value of the early retirement annuity, the present-value determination should be required to be calculated using the applicable interest rate and the applicable mortality table applied to the early retirement annuity (or whether the requirement to have a minimum present value that is equal to the present value of the annuity payable at normal retirement age determined in accordance with section 417(e)(3) provides the level of protection for the participant that is required by section 417(e)(3)). See *Rybarczyk v. TRW*, 235 F.3d 975 (6th Cir. 2000).

All comments will be available at www.regulations.gov or upon request. A public hearing has been scheduled for March 7, 2017, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more

than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 27, 2017, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by February 27, 2017. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Neil S. Sandhu and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.417(e)–1 is amended by:

1. Revising paragraphs (d)(1)(i), (d)(2), (d)(3), (d)(4), and (d)(6).
2. Adding paragraph (d)(8)(vi).
3. Revising paragraph (d)(9).
4. Removing paragraph (d)(10).

The addition and revisions read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans*—(A) *In general*. A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable mortality table described in paragraph (d)(2) of this section and the applicable interest rate described in paragraph (d)(3) of this section, as determined for the month described in paragraph (d)(4) of this section. The present value of any optional form of benefit, determined in accordance with the preceding sentence, cannot be less than the present value of the accrued benefit payable at normal retirement age, except to the extent that, for an optional form of benefit payable after normal retirement age, the requirements for suspension of benefits under section 411(a)(3)(B) are satisfied. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(B) *Payment of a portion of a participant's benefit*. The rules of this paragraph (d)(1) apply with respect to a payment of only a portion of the accrued benefit in the same manner as these rules would apply to a distribution of the entire accrued benefit. See paragraph (d)(7) of this section.

(C) *Special rules for applicable defined benefit plans*. See section 411(a)(13) and the regulations thereunder for an exception from the rules of section 417(e)(3) and this paragraph (d) that applies to certain distributions from certain applicable defined benefit plans.

* * * * *

(2) *Applicable mortality table*—(i) *In general*. The applicable mortality table for a calendar year is the mortality table that is prescribed by the Commissioner in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. This mortality table is to be based on the table specified under section 430(h)(3)(A), but without regard to section 430(h)(3)(C) or (D).

(ii) *Mortality discounts*—(A) *In general*. Except as provided under paragraph (d)(2)(ii)(B) of this section, the probability of death under the applicable mortality table is taken into account for purposes of determining the present value under this paragraph (d) without regard to the death benefits provided under the plan (other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit, as described in § 1.411(d)–3(g)(6)(ii)(B), for which present value is determined).

(B) *Special rule for employee-provided benefit*. For purposes of determining the present value under this paragraph (d) with respect to the accrued benefit derived from employee contributions (that is determined in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

(3) *Applicable interest rate*—(i) *In general*. The applicable interest rate for a month is determined using the first, second, and third segment rates for that month under section 430(h)(2)(C), as modified pursuant to section 417(e)(3)(D) (and without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv)). The applicable interest rate is specified by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, and is applied under rules similar to the rules under § 1.430(h)(2)–1(b). Thus, for example, in determining the present value of a straight life annuity, the first segment is applied with respect to payments expected to be made during the 5-year period beginning on the annuity starting date, the second segment rate is applied with respect to payments expected to be made during the 15-year period following the end of that 5-year period, and the third segment rate is applied with respect to payments expected to be made after the end of that 15-year period. The interest rates that are published by the

Commissioner are to be used for this purpose without further adjustment.

(ii) *Examples*. The following examples illustrate the rules of paragraphs (d)(2) and (3) of this section.

Example 1. (i) Plan A is a non-contributory single-employer defined benefit plan with a calendar-year plan year, a one-year stability period coinciding with the calendar year, and a two-month lookback used for determining the applicable interest rate. The normal retirement age is 65, and all participant elections are made with proper spousal consent. Plan A provides for optional single sum payments equal to the present value of the participant's accrued benefit. Plan A provides that the applicable interest rates are the segment rates as specified by the Commissioner for the second full calendar month preceding the calendar year that contains the annuity starting date. The applicable mortality table is the table specified by the Commissioner for the calendar year that contains the annuity starting date.

(ii) Participant P retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment. P has an accrued benefit of $2,000 per month payable as a life annuity beginning at the plan's normal retirement age of 65. The applicable mortality rates for 2017 apply. The applicable interest rates published by the Commissioner for November 2016 are 1.57%, 3.45%, and 4.39% for the first, second, and third segment rates, respectively. The deferred annuity factor calculated based on these interest rates and the applicable mortality table for 2017 is 10.931 for a participant age 60. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single-sum payment received by P cannot be less than $262,344 (that is, $2,000 x 12 x 10.931).

Example 2. (i) The facts are the same as for *Example 1* of this paragraph (d)(3)(ii), except that Plan A provides for mandatory employee contributions. Participant Q retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment of Q's entire accrued benefit. Q has an accrued benefit of $2,000 per month payable as a life annuity beginning at Plan A's normal retirement age of 65, consisting of an accrued benefit derived from employee contributions determined in accordance with section 411(c)(2) (Q's employee-provided accrued benefit) of $500 per month and an accrued benefit derived from employer contributions (Q's employer-provided accrued benefit) of $1,500 per month.

(ii) Pursuant to paragraph (d)(2)(ii)(B) of this section, the single-sum payment used to settle Q's employee-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates described in paragraphs (d)(3)(i) and (d)(2)(ii) of this section, determined without taking the probability of death during the assumed deferral period into account. The deferred annuity factor calculated based on the interest and mortality rates specified in *Example 1* of this paragraph (d)(3)(ii) (taking the probability of death only after age 65 into account) is 11.266 for a participant age 60. To satisfy the requirement of section 417(e)(3) and this paragraph (d), the single-sum payment received by Q with respect to the employee-provided portion of the accrued benefit cannot be less than the minimum present value of $67,596 (that is, $500 x 12 x 11.266).

(iii) The single-sum payment used to settle Q's employer-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates. However, for this purpose, Plan A is permitted to take the probability of death during the assumed deferral period into account. The single-sum payment received by Q with respect to the employer-provided portion of the accrued benefit cannot be less than $196,758 (that is, $1,500 x 12 x 10.931).

(iv) The total single-sum payment received by Q cannot be less than the sum of the minimum present value of Q's employee- and employer-provided accrued benefits, or $264,354 ($67,596 + $196,758).

(4) *Time for determining interest rate and mortality table*—(i) *Interest rate general rule*. Except as provided in paragraph (d)(4)(v) or (vi) of this section, the applicable interest rate to be used for a distribution is the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iv) of this section) for the stability period (as described in paragraph (d)(4)(iii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Mortality table general rule*. The applicable mortality table to be used for a distribution is the mortality table that is published for the calendar year during which the stability period containing the annuity starting date begins.

(iii) *Stability period*. A plan must specify the period for which the applicable interest rate remains constant (the stability period). This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year. This same stability period also applies to the applicable mortality table.

(iv) *Lookback month*. A plan must specify the lookback month that is used to determine the applicable interest rate with respect to a stability period. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(v) *Permitted average interest rate*. A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average applicable interest rate with respect to the plan's stability period for the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average applicable interest rate with respect to a stability period is the applicable interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(v) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(vi) *Additional determination dates*. The Commissioner may prescribe, in guidance published in the Internal Revenue Bulletin, other times that a plan may provide for determining the applicable interest rate.

(vii) *Example*. The following example illustrates the rules of this paragraph (d)(4):

Example. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section, except that Plan A provides that the applicable interest rates are the rates for the third full calendar month preceding the beginning of the plan quarter that contains the annuity starting date. Plan A also provides that the applicable mortality table is the table specified by the Commissioner for the calendar year that contains the beginning of the stability period.

(ii) The segment interest rates that apply for annuity starting dates during the period beginning April 1, 2017 and ending June 30, 2017 are the segment rates for January 2017. This plan design permits the applicable interest rate to be fixed for each plan quarter and for the applicable interest rate for all distributions made during each plan quarter to be determined before the beginning of the plan quarter.

* * * * *

(6) *Exceptions*—(i) *In general*. This paragraph (d) (other than the provisions relating to section 411(d)(6) requirements in paragraph (d)(9) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that—

(A) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(B) Decreases during the life of the participant merely because of—

(*1*) The death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of the survivor annuitant): or

(*2*) The cessation or reduction of a social security supplement or qualified disability benefit (as defined in section 411(a)(9)).

(ii) *Example*. The following example illustrates the rules of this paragraph (d)(6).

Example. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section. Plan A also provides an optional distribution in the form of a Social Security level income option. Under this provision, the participant's benefit is adjusted so that a larger amount is payable until age 65, at which time it is reduced to provide a level income in combination with the participant's estimated social security benefit beginning at age 65. Participant R's reduced early retirement benefit payable as a straight life annuity benefit commencing at age 60 is $1,300 per month (which is less than the actuarially equivalent benefit that would have been determined using the applicable interest and mortality rates under section 417(e)(3)) and R's estimated social security benefit is $1,000 per month beginning at age 65.

(ii) Because the benefit payable under the social security level income option decreases at age 65 and the decrease is not on account of the death of the participant or a beneficiary or the cessation or reduction of social security supplements or qualified disability benefits, the benefits payable under the social security level income option are subject to the minimum present value requirements of section 417(e)(3). As illustrated in *Example 1* of paragraph (d)(3)(ii) of this section, the minimum present value of Participant R's benefits under section 417(e)(3) is $262,344, which is based on the present value of R's accrued benefit, not R's benefit that would be payable as a straight life annuity at the annuity starting date.

(iii) The deferred annuity factor for a participant age 60 with lifetime benefits commencing at age 65, based on the November 2016 segment rates and the applicable mortality table for 2017, is 10.931. The corresponding temporary annuity factor to age 65 is 4.752. The minimum benefits payable to Participant R in the form of a social security level income option (with a decrease of $1,000 – equal to the participant's estimated social security benefit – occurring at age 65) are $2,090.99 per month until age 65 and $1,090.99 per month thereafter. Any amounts less than this would have a present value smaller than the required amount of $262,344, and thus would fail to satisfy the minimum present value requirement of section 417(e)(3).

* * * * *

(8) * * *

(vi) *Applicability date for provisions reflecting PPA '06 updates and other rules.* Paragraphs (d)(1) through (4) of this section apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register.** Prior to this applicability date, taxpayers must continue to apply the provisions of § 1.417(e)–1(d) as contained in 26 CFR part 1 as in effect immediately before publication of those final regulations, except to the extent superseded by statutory changes and guidance of general applicability relating to those statutory changes.

(9) *Relationship with section 411(d)(6)*—(i) *In general*. A plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section (including a plan amendment that changes the time for determining those assumptions) is generally subject to section 411(d)(6). However, for certain exceptions to the rule in the preceding sentence, see paragraph (d)(7)(iv) of this section, § 1.411(d)–4, Q&A-2(b)(2)(v) (with respect to plan amendments relating to involuntary distributions), and section 1107(a)(2) of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006) (PPA '06) (with respect to certain plan amendments that were made pursuant to a change to the Internal Revenue Code by PPA '06 or regulations issued thereunder).

(ii) *Section 411(d)(6) relief for change in time for determining interest rate and mortality table*. Notwithstanding the general rule of paragraph (d)(9)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (and, if the amendment changes the stability period described in paragraph (d)(4)(iii) of this section, the time for determining the applicable mortality table), including an indirect change as a result of a change in plan year, the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(9)(ii) are satisfied. If the plan amendment is effective on or after the date the amendment is adopted, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be determined using the interest rate and mortality table provided under the plan determined at either the date for determining the interest rate and mortality table before the amendment or the date for determining the interest rate and mortality table after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate and mortality table determination dates resulting in the larger distribution for distributions with annuity starting dates occurring during the period beginning with the effective date and ending one year after the adoption date.

* * * * *

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

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Dollar-Value LIFO Regulations: Inventory Price Index Computation (IPIC) Method Pools

REG–125946–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that relate to the establishment of dollar-value last-in, first-out (LIFO) inventory pools by certain taxpayers that use the inventory price index computation (IPIC) pooling method. The proposed regulations provide rules regarding the proper pooling of manufactured or processed goods and wholesale or retail (resale) goods. The proposed regulations would affect taxpayers who use the IPIC pooling method and whose inventory for a trade or business consists of manufactured or processed goods and resale goods.

DATES: Comments and requests for a public hearing must be received by February 27, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125946–10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA: LPD:PR (REG–125946–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov/ (IRS REG–125946–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natasha M. Mulleneaux, (202) 317-7007; concerning submission of comments and requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 472 of the Internal Revenue Code permits a taxpayer to account for inventories using the LIFO method of accounting. The LIFO method of accounting for goods treats inventories on hand at the end of the year as consisting first of inventory on hand at the beginning of the year and then of inventories acquired during the year.

Section 1.472–8(a) of the Income Tax Regulations (26 CFR part 1) provides that any taxpayer may elect to determine the cost of its LIFO inventories using the dollar-value method, provided such method is used consistently and clearly reflects income. The dollar-value method of valuing LIFO inventories is a method of determining cost by using "base-year" cost expressed in terms of total dollars rather than the quantity and price of specific goods as the unit of measurement. The "base-year" cost is the aggregate of the cost (determined as of the beginning of the tax year for which the LIFO method is first adopted) of all items in a pool.

Pooling is central to the operation of the dollar-value LIFO method. Pooling requires costs related to different inventory products to be grouped into one or more inventory pools. To determine whether there is an increment or liquidation in a pool for a particular taxable year, the end of the year inventory of the pool expressed in terms of base-year cost is compared with the beginning of the year inventory of the pool expressed in terms of base-year cost. The regulations prescribe rules for determining whether the number and composition of the pools used by the taxpayer are appropriate. The rules vary depending upon whether the taxpayer is engaged in the activity of manufacturing or processing or the activity of wholesaling or retailing.

The general pooling rules applicable to dollar-value LIFO taxpayers are in §1.472–8(b) and (c). These paragraphs provide separate pooling principles for taxpayers engaged in the manufacturing or processing of goods (§1.472–8(b)), and for taxpayers engaged in the wholesaling or retailing of goods purchased from others (§1.472–8(c)).

Section 1.472–8(b)(1) requires a manufacturer or processor to establish one pool for each natural business unit (natural business unit pooling method) unless the manufacturer or processor elects under §1.472–8(b)(3) to establish multiple pools. Further, §1.472–8(b)(2) provides that where a manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, the wholesaling or retailing operations with respect to such purchased goods shall not be considered a part of any manufacturing or processing unit. Additionally, §1.472–8(b)(1) requires that where the manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, any pooling of the LIFO inventory of such purchased goods for wholesaling and retailing operations shall be determined in accordance with §1.472–8(c).

In *Amity Leather Products Co. v. Commissioner*, 82 T.C. 726 (1984), the Tax Court considered whether a taxpayer that used the natural business unit pooling method was subject to the separate pooling requirements by virtue of being both a manufacturer and a wholesaler or retailer of merchandise. The court concluded that requiring separate inventory accounting for the two functions was reasonable and held that, where the taxpayer manufactured goods and regularly purchased identical goods from a subsidiary for resale, it was required to maintain separate pools for manufactured and purchased inventory.

A manufacturer or processor using the natural business unit pooling method may elect to use the multiple pooling method described in §1.472–8(b)(3) for inventory items that are not within a natural business unit. Alternatively, a manufacturer or processor that does not use the natural business unit pooling method may elect to use the multiple pooling method. Under the multiple pooling method, generally each pool should consist of a group of inventory items that are substantially similar. Thus, raw materials that are substantially similar should be pooled together. Similarly, finished goods and goods-in-process should be placed in pools classified by major classes or types of goods.

Section 1.472–8(c)(1) requires wholesalers, retailers, jobbers, and distributors to establish inventory pools by major lines, types, or classes of goods. Mirroring §1.472–8(b)(1), §1.472–8(c)(1) requires that where a wholesaler or retailer is also engaged in the manufacturing or processing of goods, the pooling of the LIFO inventory for the manufacturing or processing operations must be determined in accordance with §1.472–8(b).

In general, any taxpayer that elects to use the dollar-value LIFO method to value LIFO inventories may elect to use the IPIC method to compute the base-year cost and determine the LIFO value of a dollar-value pool for a trade or business. A taxpayer that elects to use the IPIC method of determining the value of a dollar-value LIFO pool for a trade or business may also elect to establish dollar-value pools, for those items accounted for using the IPIC method, using the IPIC pooling method provided in §1.472–8(b)(4) and (c)(2). Section 1.472–8(b)(4) governs the application of the IPIC pooling method to manufacturers and processors that elect to use the IPIC method for a trade or business. Section 1.472–8(c)(2) governs the application of the IPIC pooling method to wholesalers, retailers, jobbers, and distributors that elect to use the IPIC method for a trade or business.

For manufacturers and processors using the IPIC pooling method under §1.472–8(b)(4), pools may be established for those items accounted for using the IPIC method based on the 2-digit com-

modity codes (that is, major commodity groups) in Table 9 (formerly Table 6) of the Producer Price Index Detailed Report (PPI Detailed Report), which is published monthly by the United States Bureau of Labor Statistics (BLS). A taxpayer establishing IPIC pools under §1.472–8(b)(4) may combine IPIC pools that comprise less than 5 percent of the total inventory value of all dollar-value pools to form a single miscellaneous IPIC pool. If the resulting miscellaneous IPIC pool is less than 5 percent of the total inventory value of all dollar-value pools, the taxpayer may combine the miscellaneous IPIC pool with its largest IPIC pool.

For retailers using the IPIC pooling method under §1.472–8(c)(2), pools may be established for those purchased items accounted for using the IPIC method based on either the general expenditure categories (that is, major groups) in Table 3 of the Consumer Price Index Detailed Report (CPI Detailed Report), published monthly by BLS, or the 2-digit commodity codes (that is, major commodity groups) in Table 9 of the PPI Detailed Report. For wholesalers, jobbers, or distributors using the IPIC pooling method under §1.472–8(c)(2), pools may be established for those items accounted for using the IPIC method based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. A taxpayer establishing IPIC pools under §1.472–8(c)(2) may combine pools that comprise less than 5 percent of the total inventory value of all dollar-value pools to form a single miscellaneous IPIC pool. If the resulting miscellaneous IPIC pool is less than 5 percent of the total inventory value of all dollar-value pools, the taxpayer may combine the miscellaneous IPIC pool with its largest IPIC pool.

Each of the 5-percent rules provided in §1.472–8(b)(4) or (c)(2) is a method of accounting. Thus, a taxpayer may not change to, or cease using either 5-percent rule without obtaining the prior consent of the Commissioner. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted under a 5-percent rule is also a change in method of accounting. A taxpayer must secure the consent of the Commissioner before combining or separating pools. The general procedures under section 446(e) and §1.446–1(e) that a taxpayer must follow to obtain the consent of the Commissioner to change a method of accounting for federal income tax purposes are contained in Rev. Proc. 2015–13, 2015–5 I.R.B. 419 (or its successors), as modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067. See §601.601(d)(2)(ii)(b).

The general pooling rules of §1.472–8(b) and (c) provide that where a taxpayer is engaged in both a manufacturing or processing activity and a wholesaling or retailing activity, separate pooling rules apply to the separate activities, and goods purchased for resale may not be included in the same pool as manufactured or purchased goods. On the other hand, the IPIC pooling rules address circumstances where a trade or business consists entirely of a manufacturing, processing, retailing, or wholesaling activity. The Treasury Department and the IRS have become aware of confusion concerning how the IPIC pooling rules apply where a taxpayer is engaged in both a manufacturing or processing activity and a wholesaling or retailing activity. Accordingly, these proposed regulations address this issue.

Explanation of Provisions

Changes to IPIC Pooling Rules

The proposed regulations amend the IPIC pooling rules to clarify that those rules are applied consistently with the general LIFO pooling rule that manufactured or processed goods and resale goods may not be included in the same dollar-value LIFO pool. This general rule is intended to limit cost transference, an inherent problem with pooling. Cost transference may occur, among other circumstances, when inventory items from separate economic activities (for example, manufacturing and resale activities) are placed in the same pool and may cause misallocation of cost or distortion of income.

Accordingly, the proposed regulations clarify that an IPIC-method taxpayer who elects the IPIC pooling method described in §1.472–8(b)(4) or (c)(2) and whose trade or business consists of both manufacturing or processing activity and resale activity may not commingle the manufactured or processed goods and the resale goods within the same IPIC pool.

Specifically, the proposed regulations provide that a manufacturer or processor using the IPIC pooling method under §1.472–8(b)(4) that is also engaged, within the same trade or business, in wholesaling or retailing goods purchased from others may elect to establish dollar-value pools for the manufactured or processed items accounted for using the IPIC method based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. If the manufacturer or processor makes this election, the manufacturer or processor must also establish pools for its resale goods in accordance with §1.472–8(c)(2) (that is, based on the general expenditure categories in Table 3 of the CPI Detailed Report in the case of a retailer or the 2-digit commodity codes in Table 9 of the PPI Detailed Report in the case of a retailer, wholesaler, jobber, or distributor).

If the manufacturer or processor chooses to use the 5-percent method of pooling, manufactured or processed IPIC pools (IPIC pools consisting of manufactured or processed goods) of less than 5 percent of the total current year cost of all dollar-value pools may be combined to form a single miscellaneous IPIC pool of manufactured or processed goods. The manufacturer or processor may also combine resale IPIC pools (IPIC pools consisting of resale goods) of less than 5 percent of the total value of inventory to form a single miscellaneous IPIC pool of resale goods. If the miscellaneous IPIC pool of manufactured or processed goods is less than 5 percent of the total value of inventory, the manufacturer or processor may combine the miscellaneous IPIC pool of manufactured or processed goods with its largest manufactured or processed IPIC pool. The miscellaneous IPIC pool of resale goods may not be combined with any other IPIC pool.

The proposed regulations also provide that a wholesaler, retailer, jobber, or distributor using the IPIC pooling method under §1.472–8(c)(2) that is also engaged, within the same trade or business, in manufacturing or processing activities may elect to establish dollar-value pools for the

resale goods accounted for using the IPIC method in accordance with §1.472–8(c)(2) (that is, based on the general expenditure categories in Table 3 of the CPI Detailed Report in the case of a retailer or the 2-digit commodity codes in Table 9 of the PPI Detailed Report in the case of a wholesaler, retailer, jobber, or distributor). If the wholesaler, retailer, jobber, or distributor makes this election, it must also establish pools for its manufactured or processed goods based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report.

If the wholesaler, retailer, jobber, or distributor chooses to use the 5-percent method of pooling, resale IPIC pools of less than 5 percent of the total value of inventory may be combined to form a single miscellaneous IPIC pool of resale goods. The wholesaler, retailer, jobber, or distributor may also combine the IPIC pools of manufactured or processed goods of less than 5 percent of the total value of inventory to form a single miscellaneous IPIC pool of manufactured or processed goods. If the resale miscellaneous IPIC pool is less than 5 percent of the total value of inventory, the wholesaler, retailer, jobber, or distributor may combine the resale miscellaneous IPIC pool with the largest resale IPIC pool. The miscellaneous IPIC pool of manufactured or processed goods may not be combined with any other IPIC pool.

The Treasury Department and the IRS specifically request comments on the requirement that a taxpayer engaged in both manufacturing and resale activities within the same trade or business is required to use IPIC pooling for both activities.

Changes to Conform with Current BLS Publications

These proposed regulations modify §1.472–8(b), (c), and (e)(3) to update references from Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) to Table 9 (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) because of BLS changes in the PPI Detailed Report.

These proposed regulations also modify §1.472–8(e)(3)(ii) to remove the exception to the trade or business requirement for taxpayers using the Department Store Inventory Price Indexes because BLS discontinued publishing these indexes after December 2013.

Effective/Applicability Date

These regulations are proposed to apply for taxable years ending on or after the date the regulations are published as final regulations in the **Federal Register.**

Special Analyses

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

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of 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 written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

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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 1.472–8 also issued under 26 U.S.C 472. * * *

Par. 2. Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is revised.
2. Paragraph (c)(2) is revised.
3. Paragraph (e)(3)(ii) is revised.
4. Paragraph (e)(3)(iii)(B)(*2*) is amended by removing “Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted)” and adding in its place “Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted)” in the first sentence; and removing “Table 6” and adding in its place “Table 9” in the second sentence.
5. Paragraphs (e)(3)(iii)(C)(*1*) and (*2*) are amended by removing “Table 6” and adding in its place “Table 9”.
6. Paragraph (e)(3)(v) is revised.

The revisions read as follows:

§1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *IPIC method pools*—(i) *In general*. A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-

value pools for those manufactured or processed items accounted for using the IPIC method as provided in this paragraph (b)(4)(i) based on the 2-digit commodity codes (that is, major commodity groups) in Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report" published monthly by the United States Bureau of Labor Statistics (available at http://www.bls.gov). A taxpayer electing to establish dollar-value pools under this paragraph (b)(4)(i) may combine IPIC pools of manufactured or processed goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous manufactured or processed IPIC pool. A taxpayer electing to establish dollar-value pools under this paragraph (b)(4)(i) may combine a miscellaneous manufactured or processed IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest manufactured or processed IPIC pool. Each of these 5-percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific manufactured or processed IPIC pool or the miscellaneous manufactured or processed IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to §1.446–1(e) before combining or separating manufactured or processed IPIC pools and must combine or separate its manufactured or processed IPIC pools in accordance with paragraph (g)(2) of this section.

(ii) *Pooling of goods a manufacturer or processor purchased for resale*. A manufacturer or processor electing to establish dollar-value pools under paragraph (b)(4)(i) of this section and that is also engaged, within the same trade or business, in wholesaling or retailing goods purchased from others (resale), must establish pools for its resale goods in accordance with paragraph (c)(2)(i) of this section. A manufacturer or processor that must establish dollar-value pools for resale goods under this paragraph (b)(4)(ii) may combine IPIC pools of resale goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous resale IPIC pool. The single miscellaneous resale IPIC pool established pursuant to this paragraph (b)(4)(ii) may not be combined with any other IPIC pool. This 5-percent rule is a method of accounting. A taxpayer may not change to, or cease using, this 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific resale IPIC pool satisfies the 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of this 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to §1.446–1(e) before combining or separating resale IPIC pools and must combine or separate its resale IPIC pools in accordance with paragraph (g)(2) of this section.

(iii) *No commingling of manufactured goods and resale goods within a pool*. Notwithstanding any other rule provided in paragraph (b) or (c) of this section, a manufacturer or processor electing to establish dollar-value pools under paragraph (b)(4)(i) of this section and that is also engaged in retailing or wholesaling may not include manufactured or processed goods in the same IPIC pool as goods purchased for resale. Further, in applying the 5-percent rules described in paragraphs (b)(4)(i) and (ii) of this section, a taxpayer may not combine an IPIC pool of manufactured or processed goods that comprises less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business with a resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools for the purpose of forming a single miscellaneous IPIC pool.

(iv) *Examples*. The rules of paragraph (b)(4) of this section may be illustrated by the following examples:

Example 1. (i) Taxpayer is engaged in the trade or business of manufacturing products A, B, and C. In order to cover temporary shortages, Taxpayer also purchases a small quantity of identical products for resale to customers. Taxpayer treats its manufacturing and resale activities as a single trade or business. Taxpayer uses the IPIC method described in paragraph (e)(3) of this section. Pursuant to its election, Taxpayer establishes dollar-value pools for the manufactured items under paragraph (b)(4)(i) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer also establishes dollar-value pools for the items purchased for resale under paragraph (b)(4)(ii) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer does not choose to use the 5-percent rules under paragraphs (b)(4)(i) and (ii) of this section.

(ii) Even though Taxpayer has manufactured items and resale items that share the same 2-digit commodity codes, under paragraph (b)(4)(iii) of this section, Taxpayer's manufactured goods may not be included in the same IPIC pool as its goods purchased for resale.

Example 2. (i) The facts are the same as in *Example 1*, except Taxpayer establishes three IPIC pools for its manufacturing activities and three IPIC pools for its resale activities. Further, Taxpayer chooses to use the 5-percent rules of paragraphs (b)(4)(i) and (ii) of this section. The percentage of total current-year cost of each IPIC pool to the current-year cost of all dollar-value pools for the trade or business is as follows:

	Percentage of total current-year cost of IPIC pool to current-year cost of all dollar-value pools
Manufacturing Pools:	
Pool A	90%
Pool B	1%
Pool C	1%
Resale Pools:	
Pool D	6%
Pool E	1%
Pool F	1%
	100%

(ii) For purposes of applying the 5-percent rules to Taxpayer's manufacturing operations under paragraph (b)(4)(i) of this section, because Pools B and C each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools B and C may be combined to form a single miscellaneous pool of manufactured or processed goods (new Pool G).

(iii) For purposes of applying the 5-percent rules to Taxpayer's resale operations under paragraph (b)(4)(ii) of this section, because Pools E and F each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools E and F may be combined to form a single miscellaneous pool of resale goods (new Pool H).

(iv) Because Pool G comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (b)(4)(i) of this section, Pool G may be combined with Pool A, the largest IPIC pool of manufactured goods.

(v) Although Pool H also comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (b)(4)(ii) of this section, Pool H may not be combined with Pool A, the largest pool of manufactured goods, or Pool D, the largest pool of resale goods.

* * * * *

(c) * * *

(2) *IPIC method pools*—(i) *In general*. A retailer that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those purchased items accounted for using the IPIC method as provided in this paragraph (c)(2)(i) based on either the general expenditure categories (that is, major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, detailed expenditure categories) of the "CPI Detailed Report" or the 2-digit commodity codes (that is, major commodity groups) in Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report." A wholesaler, jobber, or distributor that elects to use the IPIC method for a trade or business may elect to establish dollar-value pools for any group of resale goods accounted for using the IPIC method based on the 2-digit commodity codes (that is, major commodity groups) in Table 9 (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the "PPI Detailed Report." The "CPI Detailed Report" and the "PPI Detailed Report" are published monthly by the United States Bureau of Labor Statistics (BLS) (available at http://www.bls.gov). A taxpayer electing to establish dollar-value pools under this paragraph (c)(2)(i) may combine IPIC pools of resale goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous resale IPIC pool. A taxpayer electing to establish pools under this paragraph (c)(2)(i) may combine a miscellaneous resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest resale IPIC pool. Each of these 5-percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific resale IPIC pool or the miscellaneous resale IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted under a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to §1.446–1(e) before combining or separating resale IPIC pools and must combine or separate its resale IPIC pools in accordance with paragraph (g)(2) of this section.

(ii) *Pooling of manufactured or processed goods of a wholesaler, retailer, jobber, or distributor*. A wholesaler, retailer, jobber, or distributor electing to establish dollar-value pools under paragraph (c)(2)(i) of this section and that is also engaged, within the same trade or business, in manufacturing or processing, must establish pools for its manufactured or processed goods in accordance with paragraph (b)(4)(i) of this section. A wholesaler, retailer, jobber, or distributor that must establish dollar-value pools for manufactured or processed goods under this paragraph (c)(2)(ii) may combine IPIC pools of manufactured or processed goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous manufactured or processed IPIC pool. The single miscellaneous manufactured or processed IPIC pool established pursuant to this paragraph (c)(2)(ii) may not be combined with any other IPIC pool. This 5-percent rule is a method of accounting. A taxpayer may not change to, or cease using, this 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific manufactured or processed IPIC pool satisfies the 5-percent rule must be determined in the year of adoption or year of

change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to §1.446–1(e) before combining or separating manufactured or processed IPIC pools and must combine or separate its manufactured or processed IPIC pools in accordance with paragraph (g)(2) of this section.

(iii) *No commingling of manufactured goods and purchased goods within a pool*. Notwithstanding any other rule provided in paragraph (b) or (c) of this section, a wholesaler, retailer, jobber, or distributor electing to establish dollar-value pools under paragraph (c)(2)(i) of this section and that is also engaged in manufacturing or processing may not include manufactured or processed goods in the same IPIC pool as goods purchased for resale. Further, in applying the 5-percent rules described in paragraphs (c)(2)(i) and (ii) of this section, a taxpayer may not combine an IPIC pool of manufactured or processed goods that comprises less than 5 percent of the total current-year cost of all dollar-value pools with a resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools for purposes of forming a single miscellaneous IPIC pool.

(iv) *Examples*. The rules of paragraph (c)(2) of this section may be illustrated by the following examples:

Example 1. (i) Taxpayer is engaged in the trade or business of wholesaling products A, B, and C. Taxpayer also manufactures a small quantity of identical products for sale to customers. Taxpayer treats its wholesaling and manufacturing activities as a single trade or business. Taxpayer uses the IPIC method described in paragraph (e)(3) of this section. Pursuant to its election, Taxpayer establishes dollar-value pools for the wholesale items purchased for resale under paragraph (c)(2)(i) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer also establishes dollar-value pools for the manufactured items under paragraph (c)(2)(ii) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer does not choose to use the 5-percent rules under paragraphs (c)(2)(i) and (ii) of this section.

(ii) Even though Taxpayer has resale and manufactured items that share the same 2-digit commodity codes, under paragraph (c)(2)(iii) of this section, Taxpayer's resale goods may not be included in the same IPIC pool as its manufactured goods.

Example 2. (i) The facts are the same as in *Example 1*, except Taxpayer establishes three IPIC pools for its wholesale activities and three IPIC pools for its manufacturing activities. Further, Taxpayer chooses to use the 5-percent rules of paragraphs (c)(2)(i) and (ii) of this section. The percentage of total current-year cost of each IPIC pool to the current-year cost of all dollar-value pools for the trade or business is as follows:

	Percentage of total current-year cost of IPIC pool to current-year cost of all dollar-value pools
Wholesaling Pools:	
Pool J	90%
Pool K	1%
Pool L	1%
Manufacturing Pools:	
Pool M	6%
Pool N	1%
Pool O	1%
	100%

(ii) For purposes of applying the 5-percent rules to Taxpayer's wholesaling operations under paragraph (c)(2)(i) of this section, because Pools K and L each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools K and L may be combined to form a single miscellaneous pool of wholesale goods (new Pool P).

(iii) For purposes of applying the 5-percent rules to Taxpayer's manufacturing operations under paragraph (c)(2)(ii) of this section, because Pools N and O each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools N and O may be combined to form a single miscellaneous pool of manufactured goods (new Pool Q).

(iv) Because Pool P comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (c)(2)(i) of this section, Pool P may be combined with Pool J, the largest IPIC pool of resale goods.

(v) Although Pool Q also comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (c)(2)(ii) of this section, Pool Q may not be combined with Pool J, the largest pool of resale goods, or Pool M, the largest pool of manufactured goods.

* * * * *

(e) * * *

(3) * * *

(ii) *Eligibility*. Any taxpayer electing to use the dollar-value LIFO method may elect to use the IPIC method. Except as provided in other published guidance, a taxpayer that elects to use the IPIC method for a specific trade or business must use that method to account for all items of dollar-value LIFO inventory.

* * * * *

(v) *Effective/applicability date*. The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years ending on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register.**

* * * * *

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 25, 2016, 8:45 a.m., and published in the issue of the Federal Register for November 28, 2016, 81 F.R. 85450)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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