INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022–30
July 25, 2022

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.

EMPLOYEE PLANS

Rev. Rul. 2022-13, page 99.
This revenue ruling addresses the application of section 432(b)(7) in the case of a merger of a multiemployer defined benefit pension plan that receives special financial assistance (SFA) from the Pension Benefit Guaranty Corporation into a multiemployer defined benefit pension plan that does not receive SFA.

ESTATE TAX

Rev. Proc. 2022-32, page 101.
This revenue procedure provides a simplified method for certain estates to obtain an extension of time under § 301.9100-3 to file a return on or before the fifth anniversary of the decedent's death to elect portability of the deceased spousal unused exclusion (DSUE) amount pursuant to § 2010(c)(5)(A). This revenue procedure applies to estates that are not normally required to file an estate tax return because the value of the gross estate and adjusted taxable gifts is under the filing threshold in § 6018(a).

INCOME TAX

REG 130675-17, page 104.
These proposed regulations define the term "foreign currency contract" under section 1256(g)(2) to include only foreign currency forward contracts.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I

Applicability of section 432(b)(7) following a merger involving a multiemployer defined benefit plan that has received special financial assistance

Rev. Rul. 2022-13

I. ISSUE

If a multiemployer defined benefit pension plan that has received special financial assistance (SFA) from the Pension Benefit Guaranty Corporation (PBGC) is merged into a multiemployer defined benefit pension plan that has not received SFA, and the plan that has not received SFA is designated as the ongoing plan after the merger, is the ongoing plan deemed to be in critical status under section 432(b)(7) of the Internal Revenue Code (Code) solely as a result of the merger?

II. FACTS

Plan A, a multiemployer defined benefit pension plan with a calendar year plan year, is an eligible multiemployer plan under section 4262(b) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (88 Stat. 829 (1974)), as amended (ERISA), and section 432(k)(3) of the Code. Plan A applies to PBGC for SFA and receives $50 million of SFA in October 2022. On March 30, 2023, the actuary for Plan A makes the annual certification required under section 432(b)(3) of the Code and certifies that Plan A is in critical status for the 2023 plan year in accordance with section 432(b)(7).

Plan B, a multiemployer defined benefit pension plan that was in effect on July 16, 2006, has a calendar year plan year and is not an eligible multiemployer plan described in section 432(k)(3) that may apply for SFA. After January 1, 2023, the sponsors of Plan A and Plan B agree to merge Plan A and Plan B, effective as of January 1, 2024. Pursuant to the terms of the merger agreement, Plan B will be designated as the ongoing plan after the merger and will obtain all the assets, and assume all the liabilities, of Plan A. Effective as of the date of the merger, all assets of the merged plan will be available to pay all benefits and plan expenses of the merged plan. In addition, with respect to plan years beginning on or after the merger, all plan-related documentation and reports, including Form 5500, Annual Return/Report of Employee Benefit Plan, and attachments (Form 5500), will use the name of Plan B and will be filed under the Employer Identification Number (EIN) and Plan Number of Plan B.

Plan A and Plan B request approval from PBGC for the merger pursuant to 29 CFR 4262.16(f), and PBGC approves the merger. Plan A and Plan B implement the merger as of January 1, 2024, in accordance with the merger agreement. Following the merger, Plan B complies with the restrictions and conditions that applied to Plan A before the merger to the extent required under 29 CFR 4262.16(f)(3). Thus, for example, pursuant to 29 CFR 4262.16(f)(3)(i), Plan B maintains a separate account for the SFA funds received by Plan A (adjusted to reflect earnings on those funds and payments for benefits and plan-related expenses from that separate account) in accordance with 29 CFR 4262.13(b) and invests the assets of that separate account in permissible investments in accordance with 29 CFR 4262.14.

III. LAW AND ANALYSIS

Section 432 imposes certain requirements on multiemployer defined benefit plans in effect on July 16, 2006. One of those is the requirement under section 432(a)(2), which provides that the sponsor of a plan in critical status within the meaning of section 432(b)(2) must adopt and implement a rehabilitation plan that satisfies the requirements of section 432(e)(3). In general, a multiemployer plan is in critical status for a plan year if, as determined by the plan actuary, the plan is described in section 432(b)(2)(A), (B), (C), or (D) as of the beginning of the plan year.

Under section 432(b)(3), a multiemployer plan's actuary must certify the plan's status under section 432 to the Internal Revenue Service and to the plan sponsor not later than the 90th day of each plan year. The certification must state whether or not the plan is in endangered status for the plan year (or would be in endangered status for that plan year but for the application of section 432(b)(5)); whether or not the plan is or will be in critical status for the plan year or for any of the succeeding 5 plan years; and whether or not the plan is or will be in critical and declining status (within the meaning of section 432(b)(6)) for that plan year. For a plan that is in a funding improvement or rehabilitation period, the certification must also state whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Section 432(b)(7), which was added to the Code by section 9704(d)(2) of the American Rescue Plan Act of 2021, Pub. L. 117-2 (135 Stat. 4 (2021)), is one of several provisions under which a multiemployer plan is treated as being in critical status for a plan year even if the plan is not described in section 432(b)(2)(A), (B), (C) or (D) of the Code.[1] Specifically, section 432(b)(7) provides that if an eligible multiemployer plan that receives SFA under section 4262 of ERISA meets the requirements of section 432(k)(2) of the Code, then, notwithstanding the preceding paragraphs of section 432(b), the plan is deemed to be in critical status for plan years beginning with the plan year in which the effective date of the SFA occurs and ending with the last plan year ending in 2051.[2]

[1] Other provisions under which this occurs include section 432(b)(4) (which permits the sponsor of a multiemployer plan that is projected to enter critical status within 5 years to elect to be treated as being in critical status effective for the current plan year) and section 432(e)(4)(B) (which provides that a plan in critical status remains in critical status until a plan year for which the actuary certifies that the plan is not described in any of the subparagraphs of section 432(b)(2) and meets certain other indicia of financial health).

[2] See also section 4262(m)(4) of ERISA ("An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 305(b)(2) [of ERISA] until the last plan year ending in 2051.").

Under section 432(e), if a plan is in critical status, the sponsor is required to adopt a rehabilitation plan. As described in section 432(e)(3)(A)(i), the rehabilitation plan must be reasonably expected to enable the plan to emerge from critical status by the end of its 10-year rehabilitation period described in section 432(e)(4) (unless, as described in section 432(e)(3)(A)(ii), the plan sponsor determines that the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period using all reasonable measures). Subject to certain exceptions, section 432(f) provides that a plan in critical status may not be amended to increase benefits and may not make lump-sum or similar payments. Pursuant to section 4971(g)(1), the excise tax under section 4971(a) would not apply to any accumulated funding deficiency under a plan in critical status, but the plan sponsor and contributing employers could be subject to other excise taxes under section 4971(g)(2), (3) and (4).

The merger agreement between Plan A and Plan B designates Plan B as the ongoing plan for the plan years beginning on or after January 1, 2024 (the effective date of the merger) and provides that Plan B will obtain all of Plan A's assets and assume all of its liabilities**.** In accordance with the designation of Plan B as the ongoing plan, all plan-related documentation and reports with respect to all plan years beginning on or after January 1, 2024, including Form 5500, are in the name of Plan B and use Plan B's EIN and Plan Number.

Section 432(b)(7), which provides for deemed critical status, applies only to an eligible multiemployer plan described in section 432(k)(3) that applies for and receives SFA. Thus, if a multiemployer plan that is eligible for and has received SFA merges into a plan that did not receive SFA, and, under the terms of the merger, the plan that did not receive SFA is designated as the ongoing plan, that ongoing plan is not deemed to be in critical status under section 432(b)(7). Under the facts of this revenue ruling, because Plan B is not an eligible multiemployer plan described in section 432(k)(3) that may apply for and receive SFA under section 4262 of ERISA, section 432(b)(7) of the Code does not apply to Plan B. Accordingly, Plan B is not deemed to be in critical status pursuant to section 432(b)(7) as a result of the merger with Plan A for the plan years beginning on or after the effective date of the merger.

IV. HOLDING

After a merger of a multiemployer defined benefit pension plan that has received SFA from PBGC with a second multiemployer defined benefit pension plan that has not received SFA, with the second plan designated as the ongoing plan after the merger, the ongoing plan is not deemed to be in critical status under section 432(b)(7) of the Code solely as a result of the merger.

V. DRAFTING INFORMATION

The principal author of this revenue ruling is Diane S. Bloom of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information, please contact Ms. Bloom at (202) 317-6700. This telephone call is not toll-free.

Part III

26 CFR 601.201: Rulings and determination letters. (Also Part I, Section 2010; 20.2010-2; 301.9100-3)

Rev. Proc. 2022-32

SECTION 1. PURPOSE

This revenue procedure supersedes Rev. Proc. 2017-34, 2017-26 I.R.B. 1282, and provides a simplified method for certain taxpayers to obtain an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a "portability" election under § 2010(c)(5)(A) of the Internal Revenue Code (Code). For purposes of the Federal estate and gift taxes, a portability election allows a decedent's unused exclusion amount (deceased spousal unused exclusion amount, or DSUE amount) to become available for application to the surviving spouse's subsequent transfers during life or at death. The simplified method provided in this revenue procedure is to be used in lieu of the letter ruling process. No user fee is required for submissions filed under this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 303(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA), Pub. L. No. 111-312, 124 Stat. 3296, 3302 (2010), amended § 2010(c) of the Code to allow the estate of a decedent who is survived by a spouse to make a portability election. For purposes of the Federal estate and gift taxes, a portability election allows the surviving spouse to apply the decedent's DSUE amount to the surviving spouse's own transfers during life and at death. The portability election applies to estates of decedents dying after December 31, 2010, if such decedent is survived by a spouse. The portability provisions under § 2010(c) of the Code were scheduled to expire on January 1, 2013, pursuant to §§ 101(a)(1) and 304 of TRUIRJCA. However, § 101(a) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013), made the ability to elect portability permanent.

.02 Section 2010(c)(5)(A) provides certain requirements that the estate of a deceased spouse must satisfy to elect portability, including that the estate must elect portability of the DSUE amount on an estate tax return that is filed within the time prescribed by law (including extensions) for filing such return.

.03 For estates that are not required to file an estate tax return under § 6018(a) of the Code (as determined based on the value of the gross estate and adjusted taxable gifts), § 20.2010-2(a)(1) of the Estate Tax Regulations clarifies that the due date of an estate tax return required to elect portability is nine months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained). Section 20.2010-2(a)(1) further provides that an extension of time under § 301.9100-3 to elect portability may be available to an estate that is not required to file an estate tax return under § 6018(a).

.04 On June 26, 2017, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Rev. Proc. 2017-34, which provides a method for obtaining an extension of time under § 301.9100-3 to make a portability election under § 2010(c)(5)(A) that is available to the estates of decedents dying after December 31, 2010, if that estate was not required by § 6018(a) to file an estate tax return and if such a decedent was survived by a spouse. Under Rev. Proc. 2017-34, this method is a simplified method that is to be used in lieu of the letter ruling process and is available for a period extending to the second anniversary of the decedent's date of death.

.05 Since the publication of Rev. Proc. 2017-34, the IRS has continued to issue numerous letter rulings under § 301.9100-3 granting an extension of time to elect portability under § 2010(c)(5)(A) in situations in which the decedent's estate was not required by § 6018(a) to file an estate tax return and the time for obtaining relief under the simplified method had expired. The IRS has observed that a significant percentage of these ruling requests have been from estates of decedents who died within five years preceding the date of the request. The number of these requests continues to place a significant burden on the available resources of the IRS. The Treasury Department and the IRS have determined that the considerable number of ruling requests for an extension of time to elect portability received since the publication of Rev. Proc. 2017-34 indicates a need for continuing relief for the estates of decedents having no filing requirement under § 6018(a). Accordingly, this revenue procedure supersedes Rev. Proc. 2017-34 and updates the procedures set forth therein by extending the period within which the estate of a decedent may make the portability election under that simplified method to on or before the fifth anniversary of the decedent's date of death.

SECTION 3. SCOPE

.01 *In General*. The simplified method of this revenue procedure is available to the executor (either an appointed executor or, if none, a non-appointed executor, as provided in § 20.2010-2(a)(6)) of the estate of a decedent if:

(1) The decedent:

(a) was survived by a spouse;

(b) died after December 31, 2010; and

(c) was a citizen or resident of the United States on the date of death.

(2) The executor is not required to file an estate tax return under § 6018(a) as determined based on the value of the gross estate and adjusted taxable gifts and without regard to the need to file for portability purposes;

(3) The executor did not file an estate tax return within the time required by § 20.2010-2(a)(1) for filing an estate tax return; and

(4) The executor satisfies all requirements of section 4.01 of this revenue procedure.

.02 *Executors that Timely Filed an Estate Tax Return*. The simplified method of this revenue procedure is not available to the estate of a decedent whose executor filed an estate tax return within the time prescribed by § 20.2010-2(a)(1). Such an executor either will have elected portability of the DSUE amount by timely filing that estate tax return or will have

affirmatively opted out of portability in accordance with § 20.2010-2(a)(3)(i).

.03 *Estates with a § 6018 Filing Requirement*. As set forth in § 20.2010-2(a)(1), an extension of time to elect portability under § 301.9100-3, including through the simplified method of this revenue procedure, is not available to an estate that is required to file an estate tax return under § 6018(a) (as determined based on the value of the gross estate and adjusted taxable gifts) because, in that case, the due date of the election is prescribed by statute and not by regulation.

.04 *Failure to Qualify for Relief under this Revenue Procedure*. The executor of an estate not within the scope described in section 3.01 of this revenue procedure only because the executor does not satisfy the requirements of section 4.01 of this revenue procedure may request an extension of time to make the portability election under § 2010(c)(5)(A) by requesting a letter ruling under the provisions of § 301.9100-3. The requirements for requesting a letter ruling are described in Rev. Proc. 2022-1 I.R.B. 1 (or any successor revenue procedure).

SECTION 4. RELIEF FOR CERTAIN LATE PORTABILITY ELECTIONS

.01 *Requirements for Relief*. The requirements for relief under this revenue procedure are as follows:

(1) A person permitted to make the election on behalf of the estate of a decedent--that is, an executor described in § 20.2010-2(a)(6)--must file a complete and properly prepared Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the fifth annual anniversary of the decedent's date of death. The Form 706 will be considered complete and properly prepared if it is prepared in accordance with § 20.2010-2(a)(7).

(2) The executor filing the Form 706 on behalf of the decedent's estate must state at the top of the Form 706 that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."

.02 *Extent of Relief*. Satisfaction of the requirements for relief provided in section 4.01 of this revenue procedure, by an executor for whom the relief is available pursuant to section 3.01 of this revenue procedure, is deemed to satisfy the requirements for relief under § 301.9100-3 and upon that satisfaction, relief is granted under the provisions of § 301.9100-3 to extend the time to elect portability under § 2010(c)(5)(A). Accordingly, for purposes of electing portability, the Form 706 of that decedent's estate will be considered to have been filed timely in accordance with § 20.2010-2(a)(1).

.03 *Subsequent Determination that Executor Is Required to File a Return under § 6018(a)*. If, subsequent to the grant of relief pursuant to this revenue procedure, it is determined that, based on the value of the gross estate and taking into account any taxable gifts, the executor was required to file an estate tax return under § 6018(a), the grant of an extension as provided in section 4.02 of this revenue procedure is deemed null and void *ab initio*.

SECTION 5. IMPACT OF RELIEF ON SURVIVING SPOUSE

.01 *Application of DSUE Amount*. If the decedent's estate is granted relief under this revenue procedure so that the estate tax return is considered to have been timely filed for purposes of electing portability, the DSUE amount of that decedent is available to the decedent's surviving spouse or the estate of the surviving spouse for application to the surviving spouse's transfers made on or after the decedent's date of death in accordance with the rules prescribed under § 20.2010-3 of the Estate Tax Regulations and § 25.2505-2 of the Gift Tax Regulations. However, if the increase in the surviving spouse's applicable exclusion amount attributable to the addition of the decedent's DSUE amount as of the decedent's date of death results in an overpayment of gift or estate tax by the surviving spouse or his or her estate, no claim for credit or refund may be made if the period of limitations under § 6511(a) of the Code for filing a claim for credit or refund of an overpayment of tax with respect to such transfer has expired. That is, an extension of time to elect portability granted under this revenue procedure does not extend the period during which the surviving spouse or the surviving spouse's estate may make a claim for credit or refund under § 6511(a).

.02 *Protective Claim for Credit or Refund of Tax in Anticipation of Relief under this Revenue Procedure*. Because a surviving spouse has no DSUE amount from a deceased spouse to apply to such surviving spouse's transfers until the portability election has been made by the deceased spouse's executor (see §§ 20.2010-3(a)(2) and 25.2505-2(a)(2)), a claim for credit or refund of tax filed within the time prescribed in § 6511(a) by the surviving spouse or the estate of the surviving spouse in anticipation of a Form 706 being filed to elect portability pursuant to this revenue procedure, and otherwise meeting applicable legal requirements, will be considered a protective claim for credit or refund of tax.

.03 *Examples*.

(1) *Example 1*.

(a) Predeceasing Spouse (S1) dies on January 1, 2018, survived by Surviving Spouse (S2). The assets includible in S1's gross estate consist of cash on deposit in bank accounts held jointly with S2 with rights of survivorship in the amount of $4,500,000. S1 made no taxable gifts during life. S1's executor is not required to file an estate tax return under § 6018(a) and does not file such a return.

(b) S2 dies on January 29, 2021. S2's taxable estate is $17,000,000 and S2 made no taxable gifts during life. S2's executor files a Form 706 on behalf of S2's estate on October 29, 2021, claiming an applicable exclusion amount of $11,700,000. S2's executor includes payment of the estate tax with the Form 706.

(c) Pursuant to this revenue procedure, S1's executor files a complete and properly prepared Form 706 on behalf of S1's estate on December 1, 2022, reporting a DSUE amount of $11,180,000. The executor includes at the top of the Form 706 the statement required by section 4.01(2) of this revenue procedure. The filing of the return satisfies the requirements for a grant of relief under this revenue procedure and S1's estate is deemed to have made a valid portability election. The IRS accepts the return of S1's estate with no changes.

(d) To recover the estate tax paid, S2's executor must file a claim for credit or refund of tax by October 29, 2024 (the end of the period of limitations prescribed in § 6511(a)), even though a Form 706 to elect portability was not filed on behalf of S1's estate at the time S2's estate filed its Form 706. Such a claim filed on Form 843, *Claim for Refund and Request for Abatement*, in anticipation of the filing of the Form 706 by S1's executor will be considered a protective claim for credit or refund of tax. Accordingly, as long as the Form 843 is filed on or before October 29, 2024, the IRS can consider and process that claim for credit or refund of tax once S1's estate is deemed to have made a valid portability election and S2's estate notifies the IRS that the claim for credit or refund is ready for consideration.

(2) *Example 2*.

(a) The facts relating to S1 and S1's estate are the same as in *Example 1*. S2 makes a gift to Child of $13,000,000 on December 1, 2020. S2 has made no prior taxable gifts. On April 15, 2021, S2's executor files a Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, claiming an applicable exclusion amount of $11,580,000. S2's executor tenders payment of the gift tax with the Form 709.

(b) To recover the gift tax paid, S2's executor must file a claim for credit or refund of tax (protective or otherwise) within the time prescribed in § 6511(a) for filing a claim for credit or refund; in this case, April 15, 2024.

(3) *Example 3*.

(a) The facts are the same as in *Example 2* except that S2's Form 709 claims an applicable exclusion amount of $22,760,000, including a DSUE amount of $11,180,000 from S1's estate. As a result, the Form 709 reports no tax due and S2's executor tenders no gift tax.

(b) Although the portability election, once made, makes S1's DSUE amount available to S2 retroactively to S1's date of death, that DSUE amount is not available until the election is made. Because S2's executor files the Form 709 before S1's estate makes the portability election, the claimed application of the DSUE amount will be denied and gift tax on the transfer will be assessed. S2's executor pays the gift tax assessed. To recover that gift tax once the portability election has been made by S1's estate, S2's executor must file a claim for credit or refund of tax (protective or otherwise) within the time prescribed in § 6511(a) for filing a claim for credit or refund.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2017-34, 2017-26 I.R.B. 1282, is superseded. Rev. Proc. 2022-3, 2022-1 I.R.B. 144, is amplified.

SECTION 7. EFFECTIVE DATE

.01 *In General*. This revenue procedure is effective July 8, 2022.

.02 *Letter Rulings Will Not Be Issued*. On or before the fifth anniversary of a decedent's date of death, the exclusive procedure for obtaining an extension of time under § 301.9100-3 to make a portability election under § 2010(c)(5)(A) for the estate of a decedent, if the decedent and executor meet the requirements of section 3.01(1) through (3) of this revenue procedure, is the procedure described in section 4.01 of this revenue procedure. If an executor of such an estate has filed a request for a letter ruling seeking an extension of time under § 301.9100-3 to make a portability election under § 2010(c)(5)(A) and that letter ruling is pending in the National Office on July 8, 2022, the Office of the Associate Chief Counsel (Passthroughs & Special Industries) will close its file on the ruling request and refund the user fee, and the estate may obtain the relief granted by this revenue procedure only by complying with section 4.01 of this revenue procedure.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Juli Ro Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Ms. Kim at (202) 317-6859 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Definition of Foreign Currency Contract Under Section 1256

REG-130675-17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that define the term "foreign currency contract" under section 1256 of the Internal Revenue Code (the "Code") to include only foreign currency forward contracts. The proposed regulations affect certain holders of foreign currency options.

DATES: Written or electronic comments and requests for a public hearing must be received by September 6, 2022.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-130675-17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury ("Treasury Department") and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-130675-17), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

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. For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG-130675-17).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, D. Peter Merkel or Karen Walny at (202) 317-6938; concerning submissions of comments or requests for a public hearing, Regina L. Johnson at (202) 317-5177 (not toll-free numbers) or by sending an email to publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would provide that the term foreign currency contract as defined in section 1256(g)(2) of the Code applies only to a foreign currency forward contract.

I. *Statutory Development of Section 1256*

A. *Section 1256 Generally*

Section 1256(a)(1) provides that each section 1256 contract held by a taxpayer at the close of the taxable year is treated as sold for its fair market value on the last business day of that taxable year (and any gain or loss is taken into account for the taxable year). Section 1256(a)(2) provides that proper adjustment must be made in the amount of any gain or loss subsequently realized to take into account the gain or loss previously recognized under section 1256(a)(1). Generally, section 1256(a)(3) provides that any gain or loss on a section 1256 contract is treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss ("60/40 treatment").

Section 1256(b)(1) defines a section 1256 contract as any regulated futures contract, any foreign currency contract, any nonequity option, any dealer equity option, and any dealer securities futures contract. Section 1256(b)(2) excludes the following contracts from the definition of a section 1256 contract: (1) any securities futures contract or option on such a contract unless it is a dealer securities futures contract, or (2) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

Section 1256(g)(2)(A) defines the term foreign currency contract as a contract that (1) requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts, (2) is traded in the interbank market, and (3) is entered into at arm's length at a price determined by reference to the price in the interbank market. Section 1256(g)(2)(B) grants the Secretary authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of the foreign currency contract definition, including the authority to exclude any contract or type of contract from that definition if it would be inconsistent with those purposes.

Section 1256(g)(3) defines the term nonequity option as any listed option (generally, an option traded on or subject to the rules of a qualified board or exchange) that is not an equity option.

Section 1256(f)(2) provides that 60/40 treatment does not apply to gain or loss that otherwise would be ordinary. Section 988(a)(1) provides that if a futures contract, forward contract, option, or similar financial instrument is a section 988 transaction, the gains and losses from the transaction are treated as ordinary, absent an election for certain transactions. However, regulated futures contracts and nonequity options that are marked-to-market under section 1256 are not section 988 transactions unless a taxpayer makes an election to treat the contract as a section 988 transaction. *See* section 988(c)(1)(D)(i) and (ii).

B. *Scope of Section 1256 When Enacted in 1981*

When it was enacted in 1981, section 1256 applied only to regulated futures contracts, including regulated futures contracts involving foreign currency. *See* Economic Recovery Tax Act of 1981 ("ERTA"), Public Law 97-34 (95 Stat. 172, section 503(a) (1981)). One of the hallmarks of regulated futures contracts is the daily cash settlement, mark-to-market system employed by U.S. futures exchanges to determine margin requirements. In contrast to U.S. futures exchanges, the interbank market and other over-the-counter ("OTC") markets did not employ a daily cash settlement, mark-to-market system for margin requirements.

C. *Technical Corrections Act of 1982*

As originally enacted, section 1256 applied to regulated futures contracts requiring the delivery of foreign currency, but not to similar foreign currency forward contracts that were traded in the OTC market rather than on an exchange. In 1983, Congress extended the application of the statute to foreign currency contracts traded in the interbank market and provided a definition in section 1256(g)(1) for the term foreign currency contract. *See* Technical Corrections Act of 1982, Public Law 97-448, section 105(c)(5)(B) and (C) (96 Stat. 2365 (1983)). In adding section 1256(g)(1), Congress specified that the term foreign currency contract included only a contract that requires delivery of the foreign currency.

The legislative history explains that this expansion was grounded in the economic comparability of trading foreign currency through forward contracts in the interbank market to trading foreign currency through regulated futures contracts and the interchangeability of the two types of contracts by traders. H.R. Rep. No. 97-794, at 23 (1982). In addition, the pricing of these foreign currency forward contracts was readily available because they trade through the larger, liquid interbank market. *Id.* Nothing in the statute or legislative history indicates Congress intended to include option contracts, which are not generally economically comparable to regulated futures contracts. Moreover, while the definition of foreign currency contract enacted in 1983 required the delivery of foreign currency, option contracts will not always result in settlement (either by physical delivery or delivery of the cash equivalent value).

D. *Deficit Reduction Act of 1984*

In 1984, Congress further expanded the types of contracts to which section 1256 applied to include nonequity options and dealer equity options. *See* Deficit Reduction Act of 1984, Public Law 98-369 at section 102(a)(3) (98 Stat. 494 (1984)). It also amended the definition of a foreign currency contract to allow for cash settlement. *Id*. The Deficit Reduction Act of 1984 also added section 1256(g)(2)(B), which provides the Treasury Department with authority to issue regulations that are necessary or appropriate to carry out the purposes of the foreign currency contract definition. *Id.*

Before this 1984 amendment, the term foreign currency contract applied only to contracts that required the physical delivery of the foreign currency. However, the futures contract and forward contract market had developed in a manner that no longer required physical delivery. Instead, contracts permitted the parties to settle contracts for their cash equivalent value. The definition of regulated futures contract was amended in 1983 to remove the requirement of delivery of personal property. *See* H.R. Conf. Rep. 97-986, at 26-27 (1982). The amendment to the definition of foreign currency contract in 1984 was intended similarly to treat the delivery requirement as met where the contract provides for a settlement determined by reference to the value of foreign currency. Specifically, the House Report explained the reason for the 1984 amendment as follows:

> PRESENT LAW
>
> The Technical Corrections Act of 1982 provided that certain foreign currency contracts entered into after May 11, 1982 (or earlier, if certain elections were made) will be treated as regulated futures contracts and therefore be taxed on the marked-to-market system with a maximum tax rate of 32 percent. In order for a contract to qualify as a foreign currency contract, the contract must require delivery of a foreign currency which is a currency in which positions are also traded through regulated futures contracts.
>
> EXPLANATION OF PROVISION
>
> Because certain contracts may call for a cash settlement by reference to the value of the foreign currency rather than actual delivery of the currency, the bill provides that the delivery of a foreign currency requirement is met where the contract provides for a settlement determined by reference to the value of the foreign currency.

H.R. Rep. 98-432 Part 2, at 1646 (1984). At the same time, Congress addressed foreign currency options by adding nonequity options to the list of section 1256 contracts, as described above. Consequently, listed foreign currency options became subject to section 1256 by explicit Congressional action. While the legislative history expressly stated that Congress amended the definition of a foreign currency contract to include cash-settled foreign currency forward contracts, the legislative history does not indicate that Congress intended also to expand the scope of section 1256 to include OTC foreign currency options regardless of whether they may be cash-settled.

E. *Technical and Miscellaneous Revenue Act of 1988*

The legislative history with respect to a 1988 amendment to section 988 also indicates that Congress understood that a foreign currency contract, as defined by section 1256(g)(2), does not include a foreign currency option. Section 988 generally applies to forward contracts, futures contracts, options, and similar financial instruments if the amount that a taxpayer is entitled to receive or is required to pay is denominated in terms of a nonfunctional currency or determined by reference to the value of one or more nonfunctional currencies. *See* section 988(c)(1)

(A) and (B)(iii); *see also* section 988(c)(1)(D) (providing an exception to section 988(c)(1)(B)(iii) for certain regulated futures contracts and nonequity options). In 1988, Congress amended section 988 to add section 988(c)(1)(E). Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, at section 6130(b) (102 Stat. 3342 (1988)). Section 988(c)(1)(E) provides that any instrument described in section 988(c)(1)(B)(iii) (that is, any forward contract, futures contract, option, or similar financial instrument) is not a section 988 transaction if it is held by certain partnerships (each, a "qualified fund") and would be marked to market under section 1256. Section 988(c)(1)(E)(iv)(I) further provides that any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or any similar instrument to the extent provided in regulations that is not otherwise a section 1256 contract is treated as a section 1256 contract for purposes of section 1256 when held by a qualified fund.

The legislative history indicates that Congress believed that the term foreign currency contract generally meant bank forward contracts on foreign currency, and that OTC foreign currency options were not already section 1256 contracts. *See* H.R. Conf. Rep. No. 100-1104 (Vol. 2), at 189, *reprinted in* 1988-3 C.B. 473, 679 ("[T]he [conference] agreement expands the definition of section 1256 contracts to generally include … bank forwards: that is, foreign currency contracts (as that term is defined in section 1256(g)(2) of the Code), and [certain other contracts] …. [T]he [conference] agreement provides the Treasury with regulatory authority to treat other similar instruments (*for example, options*) held by qualified funds as section 1256 contracts.") (emphasis added).

II. *Listed Transactions Using Offsetting Foreign Currency Options*

Taxpayers entered into tax avoidance transactions that relied upon treating OTC foreign currency options, in a currency in which regulated futures were traded, as section 1256(g)(2) foreign currency contracts. On December 22, 2003, the IRS published Notice 2003-81, 2003-51 I.R.B. 1223, which identified a tax avoidance transaction involving offsetting foreign currency options. This transaction is often referred to as a "major-minor" transaction because it involved the taxpayer purchasing call and put options in a "major" foreign currency (one in which regulated futures contracts traded) and writing call and put options in a "minor" currency (one in which regulated futures contracts were not traded). The purchased and written foreign currency options were in two different currencies that historically had a high positive correlation, such that the taxpayer could be reasonably certain to have offsetting gains and losses in the options. The taxpayer treated its major currency options as foreign currency contracts under section 1256(g)(2) and treated its options on the minor currency as not subject to section 1256. When there was unrecognized gain and loss on the options, the taxpayer assigned the purchased major currency option with a loss to a charity, and the charity assumed the offsetting written minor currency option from the taxpayer (the taxpayer, however, retained the premium received on the written option). The taxpayer treated the assignment of the major currency option as a mark-to-market recognition event under section 1256(c), claiming a loss upon the assignment. However, the taxpayer did not report the recognition of gain on the offsetting minor currency option assumed by the charity because the option was a non-section 1256 contract and the taxpayer treated the assumption as a non-recognition event. The "Facts" section of Notice 2003-81 stated, without legal analysis, that the purchased major currency options were foreign currency contracts within the meaning of section 1256(g)(2)(A) because the major currency was traded through regulated futures contracts. Notice 2003-81 identified this transaction as a listed transaction and indicated that the taxpayer would be required under the Code to account for the gain attributable to the premium originally received by the taxpayer for writing the minor currency option.

On August 27, 2007, the IRS published Notice 2007-71 (2007-35 I.R.B. 472), which modified and supplemented Notice 2003-81. Notice 2007-71 explained that "foreign currency options, whether or not the underlying currency is one in which positions are traded through regulated futures contracts, are [not] foreign currency contracts as defined in § 1256(g)(2)." Notice 2007-71 explained that the "Facts" section of Notice 2003-81 included "an erroneous conclusion of law." Notice 2007-71 corrected this error in the "Facts" section of Notice 2003-81, stating that the pertinent sentence should have read as follows: "'The taxpayer takes the position that the purchased options are 'foreign currency contracts' within the meaning of §1256(g)(2)(A) of the Internal Revenue Code and §1256 contracts within the meaning of §1256(b).'"

III. *Judicial Interpretations of Section 1256(g)(2)*

The IRS challenged taxpayers' characterization of the major-minor transactions in several cases before the United States Tax Court ("Tax Court"). In a series of rulings on motions for partial summary judgment, the Tax Court held that foreign currency options were not "foreign currency contracts" under section 1256. In one case, however, the Sixth Circuit disagreed and held that a foreign currency option could be a foreign currency contract.

A. *Summitt v. Commissioner*

The IRS successfully challenged the listed transactions described in Notice 2003-81 in *Summitt v. Commissioner*, 134 T.C. 248 (2010). The Tax Court held that a foreign currency option is not a foreign currency contract as defined by section 1256(g)(2).

Explaining that the plain meaning of the statutory language controls the decision, the Tax Court held that the term foreign currency contract does not include an option contract and that the major currency option was not subject to the mark-to-market rules of section 1256. *Id.* at 264, 266. The court noted that forwards and options confer different rights and obligations to the parties to these contracts. *Id.* at 264. The court found that it was clear that the words "or the settlement of which depends on the value of" in section 1256(g)(2)(A)(i) meant that a foreign currency contract must require settlement at expiration and

that the reference in the statute to settlements was included to permit a foreign currency contract to be physically settled or cash-settled. *Id.* at 265. In contrast, an option may expire without any settlement occurring. The court further observed that "[t]here is no evidence in the legislative history that a literal reading of the statute will defeat Congress' purpose in enacting it." *Id.*

Subsequently, the Tax Court followed its decision in *Summitt* in two other cases. *See Garcia v. Commissioner*, T.C. Memo. 2011-85; *Wright v. Commissioner*, T.C. Memo. 2011-292. In both cases, the Tax Court noted that the taxpayers did not show a material factual difference between their cases and the earlier Tax Court opinion on the same issue. *Garcia*, T.C. Memo. 2011-85; *Wright*, T.C. Memo. 2011-292.

B. *Wright v. Commissioner*

The taxpayer appealed the Tax Court's decision in *Wright*. The Sixth Circuit reversed the Tax Court, holding that a foreign currency option could be a foreign currency contract based on the plain meaning of section 1256(g)(2). *Wright v. Commissioner*, 809 F.3d 877, 885 (6th Cir. 2016). Specifically, the Sixth Circuit found that the plain language of section 1256(g)(2)(A)(i) ("which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts") does not require settlement. *Id.* at 883. The court reasoned that the plain meaning of section 1256(g)(2)(A)(i) provides that a "foreign currency contract" is "(1) 'a contract ... which requires delivery of ... a foreign currency' or (2) 'a contract ... the settlement of which depends on the value of ... a foreign currency.'" *Id.* Therefore, it found that a contract is a "foreign currency contract" if the settlement of the contract depends on the value of a foreign currency, even if the contract does not mandate settlement. *Id.* In concluding that the statutory language in section 1256(g)(2)(A) was unambiguous, the Sixth Circuit noted that the Treasury Department and the IRS had express authority to change this result for future taxpayers. *Id.* at 885.

Explanation of Provisions

Under the authority of section 1256(g)(2)(B), and to carry out the purposes of section 1256(g)(2)(A), these proposed regulations provide that only a forward contract on foreign currency is a "foreign currency contract" as defined in section 1256(g)(2). The legislative history to section 1256, as discussed in part I of this preamble, indicates that Congress's purpose in amending the definition of foreign currency contract in 1984 was merely to include cash-settled foreign currency forward contracts within the definition of foreign currency contract. It would be inconsistent with this purpose to construe the term foreign currency contract as including options or other derivatives.

These proposed regulations do not change the status of foreign currency options that otherwise qualify as section 1256 contracts. Specifically, nonequity options are separately listed as section 1256 contracts in section 1256(b)(1)(C). Section 1256(g)(3) provides that a nonequity option is any listed option which is not an equity option. Section 1256(g)(5) defines a listed option as "any option . . . which is traded on (or subject to the rules of) a qualified board or exchange." Therefore, a foreign currency option that is listed on a qualified board or exchange is a "nonequity option" and remains subject to section 1256.

These proposed regulations do not define the term forward contract. For purposes of these proposed regulations, whether a derivative contract is properly characterized as a forward contract for U.S. federal income tax purposes is determined under current law. In addition, the IRS may consider applying existing anti-abuse rules and judicial doctrines to a contract and any related transactions in order to evaluate whether a transaction is properly characterized as a forward contract or whether a transaction characterized as some other type of derivative contract should be treated as a forward contract.

Proposed Applicability Date

These proposed rules are proposed to apply to contracts entered into on or after the date that is 30 days after the date of publication of the Treasury decision adopting these proposed rules as final regulations in the **Federal Register** (the "proposed applicability date"). This proposed applicability date is intended to provide taxpayers in the Sixth Circuit with time to transition from the holding in *Wright v. Commissioner* to the rule described in these proposed regulations. However, for contracts entered into before the proposed applicability date by taxpayers in other circuits, the IRS intends to continue to adhere to its prior published position that foreign currency options are not foreign currency contracts under section 1256(g)(2). *See* Notice 2007-71, 2007-35 I.R.B. 472. A taxpayer may rely on these proposed regulations for taxable years ending on or after July 6, 2022, provided the taxpayer and its related parties, within the meaning of sections 267(b) (determined without regard to section 267(c)(3)) and 707(b)(1), consistently follow the proposed regulations for all contracts entered into during the taxable year ending on or after July 6, 2022 through the proposed applicability date of the final regulations.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

II. *Regulatory Flexibility Act*

The proposed rule affects any taxpayer that enters into a foreign currency option contract in the interbank market and that would otherwise treat the option as a "foreign currency contract" within the meaning of section 1256(g), contrary to the position set forth by the IRS in Notice 2007-71. No data is available about the number of small entities that are taking such a position. However, the Secretary has determined that the economic impact on any small entities affected by the proposed rule would not be significant.

The proposed rule clarifies that a "foreign currency contract" as defined in

section 1256(g)(2) means only a foreign currency forward contract (and not a foreign currency option contract). The proposed rule does not require taxpayers to collect additional information to determine whether section 1256 applies to the taxpayer's option contracts. Taxpayers that would have otherwise reported these over-the-counter foreign currency options on IRS Form 6781 (Gains and Losses from Section 1256 Contracts and Straddles) as section 1256 contracts may collect less information under the proposed rule since the options will not be treated as section 1256 contracts. In addition, the proposed rule does not impose any new costs on taxpayers since it reaffirms the IRS's published position that over-the-counter foreign currency options are not "foreign currency contracts" within the meaning of section 1256(g). Similarly, the proposed rule does not affect a taxpayer's reporting obligation with respect to over-the-counter foreign currency options since the same amount of information is required to be reported.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Secretary hereby certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS invite comment from members of the public about potential impacts on small entities.

III. *Section 7805(f)*

Pursuant to section 7805(f), 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.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Statement of Availability of IRS Documents

IRS 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 Publishing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically by sending an email to publichearings@irs.gov. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2020-4, 2020-17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 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 1.1256(g)-2 also issued under 26 U.S.C. 1256(g)(2)(B).

*****

Par. 2. Section 1.1256(g)-2 is added to read as follows:

§1.1256(g)-2 Foreign currency contract defined.

(a) *Foreign currency contract*. For purposes of section 1256, the term *foreign currency contract* means a forward contract that—

(1) Requires delivery of, or the settlement of which depends on the value of, a foreign currency that is a currency in which positions are also traded through regulated futures contracts;

(2) Is traded in the interbank market; and

(3) Is entered into at arm's length at a price determined by reference to the price in the interbank market.

(b) *Applicability date*. This section applies to contracts entered into on or after [date 30 days after date of publication of the final rule in the **Federal Register**].

Paul J. Mamo,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on July 05, 2022, 8:45 a.m., and published in the issue of the Federal Register for July 06, 2022, 87 F.R. 40168)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

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Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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Washington, DC 20224

INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

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